

Commission on Human Rights and Opportunities, : CHRO No. 9310191
ex rel. Jane Doe (1993)¹, Complainant

v.

Ice Cream Delight and Bakery, Inc.,

Mehdi Ali Al-Hussein and Hussein El-Husseini,

Respondents : September 1, 1999

FINAL DECISION AND ORDER OF RELIEF

Procedural Background

The complainant filed an Affidavit of Illegal Discriminatory Practice with the Connecticut Commission on Human Rights and Opportunities on October 29, 1992. The complainant alleged she had been sexually assaulted, harassed and discharged by the Respondents, Ice Cream Delight and Bakery, Inc. and its agents Mehdi Ali Al-Hussein and Hussein El-Husseini, because of her sex (female) and age (17- years old). The Commission investigated her complaint and made a finding of reasonable cause on October 31, 1994. The case was certified for Public Hearing on November 7, 1994.

On March 17, 1999, Commission and Complainant filed a joint Motion for Default on the dual grounds of failure of the respondents to file an answer to the complaint and failure to attend a duly noticed Status Conference scheduled by the Office of Public Hearings on March 1, 1999. The joint motion of the Commission and Complainant was granted and an Order of Default was issued against the Respondents on March 29, 1999. A Hearing in Damages was scheduled for May 12, 1999. The parties were sent notice of the entry of the default and the date, time and place of the Hearing in Damages. The Hearing in Damages was convened on May 12, 1999. The respondents failed to appear at the hearing or to respond in any other way to the notices sent to them.

¹ A pseudonym is used pursuant to section 46a-54-37a of the Regulations of Connecticut State Agencies.

I. Findings of Fact

The following findings of fact are made based on the Record Exhibits submitted by the Commission, the exhibits admitted into evidence at the Hearing in Damages, and the testimony of the Complainant:

1. The complainant started working at the Yogurt Fantasy store on Park Avenue in Bloomfield, Connecticut at a time when it was owned by a prior owner. Transcript 7 (hereinafter TR7); Bloomfield Police Report, Page 1, (hereinafter BPR-1).
2. Mr. Mehdi Ali Al-Hussein, also known as Ali, bought the yogurt store where the complainant worked in May of 1992. TR 7, 8; BPR-1; Complaint preamble.
3. The complainant continued working part-time for the respondents after the transfer of ownership. TR 7, 8; BPR-1.
4. The complainant operated the yogurt machines and the cash register on the night shift. TR 7, 8; BPR-1.
5. The complainant's brother would pick her up at the end of her shift and drive her home. BPR-1.
6. Mr. Al-Hussein told the complainant not to have her brother pick her up because he did not want him hanging around the store. She told him it was someone else hanging around the store, not her brother. Mr. Al-Hussein instructed her not to have her brother pick her up and told her that he would drive her home from work every night. BPR-1.
7. On July 3, 1992, Mr. Al-Hussein sent his father, Mr. Hussein El-Husseini, also known as Ali Baba, to pick up the complainant and take her home. Complaint, sec. 4 (hereinafter C-4); TR-8; BPR-1.
8. July 3, 1992 was the first time Mr. El-Husseini had picked her up. BPR-3.
9. When Mr. El-Husseini entered the store he told the complainant to take out the trash and walked in front of her into the poorly lit rear of the store. The complainant told him she had already taken out the trash but he kept saying, "Come on. Come on." C-4; BPR-1.
10. As they walked toward the back of the store Mr. El-Husseini suddenly stopped and the complainant said "What?" C-4; BPR-2.
11. Mr. El-Husseini grabbed the complainant in a bearhug and started kissing her on her lips and around her mouth, all the while pressing his face against hers, while at the same time, holding her left arm. C-4; BPR-2.
12. Mr. El-Husseini tried to feel the complainant's breasts. She kept trying to push him away. At the same time, he kept pulling down the complainant's pants. When she pulled them up, with her free hand, Mr. El-Husseini would pull them down again. C-4; BPR-2.
13. Mr. El-Husseini unsuccessfully tried to push the complainant against a bench. He then trapped her against a counter. She could not escape because he was pressing her against the counter while holding her left

- arm. She kept telling him to let go of her and what did he think he was doing. C-4; BPR-3.
14. Mr. El-Husseini began moaning and the complainant felt something wet hit her feet. She was wearing sandals without socks and she suddenly realized Mr. El-Husseini had taken his penis out of his pants and was rubbing it against her. C-4; BPR-2.
 15. Mr. El-Husseini ejaculated on her T-shirt and sandals. C-4; BPR-2.
 16. Mr. El-Husseini said, "Here take this. Take this money" offering the complainant money. He also said "Don't tell Ali!" "Don't tell Ali!" C-4; BPR-2.
 17. The complainant told Mr. El-Husseini that she was not a prostitute and she did not want his money. She gave him the money but Mr. El-Husseini kept insisting and put the money back in her pocket. C-4; BPR-2.
 18. Mr. El-Husseini then told the complainant to get in the car and that he would drive her home. She got in the car. C-4; BPR-2.
 19. While driving the complainant home, Mr. El-Husseini kept saying "Thank you. Thank you." "Thank you very much" implying that what had happened with her was consensual. C-4; BPR-2.
 20. Mr. El-Husseini asked when the complainant was working next. She told him Sunday. He told her he would see her then. C-4; BPR-2.
 21. The complainant got out of Mr. El-Husseini's car at her home. C-4; BPR-2.
 22. The complainant reported the assault to the Bloomfield Police Department on July 4, 1992. The Department case number is 92-10412. C-5; BPR-1; TR-8.
 23. On July 4, 1992, the complainant called work to say she was not coming in to work. Vera, a cashier at the store, told the complainant not to return to work. C-7; BPR-2.
 24. The complainant gave a statement to Officer Kane of the Bloomfield Police Department. BPR-3.
 25. The complainant also gave Detective Crombie of the Bloomfield Police Department two (2) five dollar (\$5.00) bills given to her by Mr. El-Husseini and the orange T-shirt he had ejaculated on. BPR-3.
 26. The Bloomfield Police Department arrested Mr. El-Husseini based on the complaint filed by the complainant. TR-8.
 27. Mr. El-Husseini posted a bond in order to obtain his freedom. However, before his appearance in court, he fled the jurisdiction and forfeited the bond. TR-8.
 28. Because of the physical, emotional and psychological trauma inflicted on the complainant by Mr. El-Husseini; she received treatment from Dr. Sergio Mejia, a psychiatrist who practiced at the Institute of Living in Hartford. TR-8.
 29. The complainant' treatment began in July of 1992 and continued through March of 1993. TR-8.
 30. The complainant testified that due to her young age, the fact that the sexual assault was carried out by her employer, as well as the unexpectedness and severity of the assault all contributed to the fact that

- seven (7) years later she had not completely recovered from the assault, at the time of her testimony. TR-9, 15, 16 & 17.
31. The complainant testified that she was afraid that she might never recover from the assault in the future. TR-15, 16, 17.
 32. The complainant' hourly wage when she worked for the Respondents was six dollars (\$6.00) an hour. TR 8, 9; Exhibit C-1.
 33. The number of hours the complainant worked for the Respondents was fifteen (15) hours per week. TR-8, 9; Exhibit C-1.
 34. The complainant earned ninety (\$90.00) dollars a week. TR 8, 9; Exhibit C-1.
 35. The complainant did not work from July 3, 1992, the date of the assault, until July of 1994 because of the psychological trauma she suffered during the assault by Mr. El-Husseini. TR-15, 16 & 17; Exhibit C-3.
 36. The complainant began work at a nursing home in Bloomfield in July of 1994. She was paid eight (\$8.00) dollars per hour and she worked twelve (12) hours per week. She earned ninety-six (\$96.00) dollars a week. TR-9, 10, 11 & 12
 37. In September of 1998 she received a raise at her job to twelve dollars and sixty-seven cents (\$12.67) per hour and increased her hours to twenty-eight (28) per week. She earned three hundred fifty-four dollars and seventy-six cents (\$354.76) a week. TR-9, 10, 11 & 12
 38. Respondents, Ice Cream Delight and Bakery, Inc., and its agents Mr. Mehdi Ali Al-Hussein and Mr. Hussein El-Husseini, were given proper notice of the complainant's complaint and failed to file an answer. RE-1 through 15.
 39. Respondents, Ice Cream Delight and Bakery, Inc., and its agents Mr. Mehdi Ali Al-Hussein and Mr. Hussein El-Husseini, were also given proper notice of the Motion for Default, the Order of Default, and notice of the Hearing in Damages. RE-1 through 15.

II. Conclusions of Law

- a. Respondents, Ice Cream Delight and Bakery, Inc., and its agents Mr. Mehdi Ali Al-Hussein and Mr. Hussein El-Husseini, received legally sufficient notice of the Complaint, the Motion for Default, the Order of Default and the Hearing in Damages.
- b. The Presiding Human Rights Referee had the authority to enter the Order of Default on March 29, 1999, based on the Respondents' failure to file an answer and failure to appear at a properly noticed Status Conference. General Statutes § 46a-84(f); Regulations of Connecticut State Agencies 46a-54-95(a).
- c. The Entry of Default established Respondents' liability for violations of General Statutes §§ 46a-60(a)(1) and 46a-60(a)(8).
- d. The Presiding Human Rights Referee is authorized to award damages to make the Complainant whole and to eliminate the discriminatory practice pursuant to General Statutes § 46a-84(f).

- e. The Complainant is entitled to monetary damages which will place her in the position she would have been in, if there had been no unlawful discrimination. *Fenn Manufacturing Company v. Commission on Human Rights and Opportunities*, 232 Conn. 117 652 A.2d 1011 (1994) judgment affirmed by 232 Conn. 117, 652 A. 2d 1011 (1995).

III. Discussion

The Complainant has requested back pay, front pay and interest. The issue is what type of monetary damages a Human Rights Referee can award in an employment discrimination case.

Back Pay:

On the issue of back pay, there is a Connecticut Superior Court case directly on point, *Silhouette Optical Limited v. Commission on Human Rights and Opportunities*, Judicial District of Hartford-New Britain at Hartford, Docket No. CV 92520590, January 27, 1994. Judge Maloney's decision deals with the monetary damages necessary to make an aggrieved party whole where unlawful employment discrimination has occurred. The decision makes the following statement concerning back pay:

"Under federal law, the purpose of back pay is to make whole a person who suffered employment discrimination. The purpose of back pay is to completely redress the economic injury the plaintiff has suffered as a result of discrimination." (internal citations omitted.) Id at 13.

In this decision, Judge Maloney was dealing with an award by the Commission on Human Rights and Opportunities of back pay, front pay, and interest. Back pay was calculated from the date of the discriminatory act until the date of the presiding officer's decision.

The United States Supreme Court in *Albermarle Paper Co. v. Moody* 422 U.S. 405, 419, 955. S.Ct. 2362 (1975) makes the following statements about back pay in the context of employment discrimination cases:

"It is also the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination. This is shown by the very fact that Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to secur[e] complete justice." (citation omitted) Id at 9.

"Title VII deals with legal injuries of an economic character occasioned by racial or other antiminority discrimination. The terms 'complete justice' and 'necessary relief' have acquired a clear meaning in such circumstances. Where racial discrimination is

concerned, the (district) court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." (emphasis added) Id at 10.

In *Jeannette Saulpaugh v. Monroe Community Hospital*, 4 F.3d 134 (2nd Cir.1993) the court makes the following statements relative to the purpose of monetary damages in Title VII cases:

"Given Saulpaugh's success on her claim for retaliatory discharge, she ordinarily would be entitled to an award of back pay from the date of her termination until the date of judgement. See *Dunlap – McCuller v. The Riese Organization* 980 F.2d 153, 159, *145 (2d Cir. 1992). The purpose of back pay is to completely redress the economic injury the plaintiff has suffered as a result of discrimination. (emphasis added) See *Gutzwiller v. Fenik*, 860 F.2d 1317, 1333 (6th Cir.1988); see also *Sellers v. Delgado Community College*, 839 F.2d 1132, 1126 (5th Cir.1988) (holding that a back pay award should make injured parties whole by placing them in a position that they would have been 'but for' the discrimination). This award should therefore consist of lost salary, including anticipated raises, and fringe benefits." (emphasis added) Id at 33.

Therefore, both the state and federal court precedent is uniform in allowing the awarding of back pay in employment discrimination cases. The Connecticut Supreme Court decision in *State v. Commission on Human Rights and Opportunities*, 211 Conn. 464, 470 (1989) allows me to look to federal law for guidance in making a decision.

The Complainant is entitled to an award of back pay.

Interest:

The other issue needing resolution is whether to grant pre-judgment interest on the award of back pay and whether the interest is compounded. Overruling the employer's claim that interest should not be compounded, Judge Maloney makes the following observation in *Silhouette Optical*,

"Generally, in civil cases, the award of interest and the method of its calculation, are within the discretion of the factfinder. This is particularly true in cases of employment discrimination. Prejudgment interest is an element of complete compensation. Interest rate calculations are not specified by federal employment laws but are set by the court and courts have the discretion to

choose a prejudgment interest calculation date best suited to make the victim whole." (internal citations omitted) supra 21-22.

In *Silhouette* Judge Maloney affirmed a CHRO award compounding the interest on the awards of both back and front pay. Judge Altimari in *Saulpaugh*, supra, makes the following statements concerning compound interest on back pay awards,

"Title VII authorizes a district court to grant pre-judgment interest on a back-pay award. See, e.g. *Clark v. Frank*, 960 F.2d 1146, 1153-54 (2d Cir.1992). Its purpose is to prevent an employer from attempting 'to enjoy an interest-free loan for as long as it can delay paying out back wages.' Id at 1154 (citation omitted) Therefore, this court has held that 'it is ordinarily an abuse of discretion not to include pre-judgement interest in a back-pay award.' (emphasis added). (emphasis in original). Given that the purpose of back pay is to make the plaintiff whole, it can only be achieved if interest is compounded." Id at 33.

Complainant is entitled to compound interest on her award of back pay from the date of the discriminatory act, July 3, 1994.

Front Pay:

The final issue before me is whether to award front pay to the Complainant.

Front pay is defined as Complainant's future wages starting from the date of the award by the presiding officer. *Saulpaugh* supra, notes that the awarding of front pay is solely within the discretion of the presiding officer or judge. However, it is an "abuse of discretion" not to award front pay where the award of front pay will make the victim of illegal discrimination whole in an economic sense. Id at 33.

Judge Maloney, in *Silhouette Optical*, makes the following statement regarding the ability of the Connecticut Commission on Human Rights and Opportunities to award front pay in employment discrimination cases,

"Furthermore, our Supreme Court has noted with approval the use of future economic benefits as compensation for past discrimination in employment. 'The victim of a discriminatory practice is to be accorded his rightful place in the employment scheme, that is, he has a right to be restored to the position he would have attained absent the unlawful discrimination....Such an order [for relief] may include retroactive and prospective monetary relief....' 'Where prohibited discrimination is involved, the hearing officer has not

merely the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future." (Citations omitted) (emphasis added)

"...On the basis of the authorities cited above, the court concludes that the CHRO was correct in construing § 46a-86(b) as permitting the discretionary award of front pay. It is a logical extension of the benefit that the statute specifically provides." supra 15-16.

The purpose of an award of front pay is to place the Complainant in the economic position she would have been in but for the unlawful discrimination. Complainant presently is employed at a job where her earning exceeds the amount of money she earned while working for the Respondents. Although Complainant has requested five (5) years of front pay, she earns more now than at the time of the discriminatory act. Therefore, she is not at an economic disadvantage.

In the *Saulpaugh* case, the Second Circuit Court of Appeals makes the following observation about the district court's decision not to award front pay:

"Finally, the district court did not abuse its discretion in denying *Saulpaugh* the remedy of front pay. The award of front pay is discretionary, and where as here the district court makes a specific finding that an award of back pay was sufficient to make plaintiff whole, no abuse of discretion can be found." (emphasis supplied) supra 33, 34.

The facts of this case are identical with *Saulpaugh*. Front pay is not called for because back pay is sufficient to make the Complainant economically whole.

In light of the foregoing, I deny Complainant's request for an award of front pay.

IV. Order of Relief

- A. The Respondents shall pay to the Complainant the sum of \$8,640.00 for lost wages. Lost wages are calculated as follows:

Back Pay: Fifteen (15) hours per week times six dollars (\$6.00) per hour equals ninety (\$90.00) dollars per week.

<u>YEAR</u>	<u>Months / Weeks Worked</u>	<u>Loss</u>
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1992	(July-December) 26 weeks X. \$2,160.00 \$90.00 per week =	
1993	52 weeks X \$90.00 per week \$4,320.00 =	
1994	26 weeks X. \$90.00 per week <u>\$2,160.00</u> =	
Total:		\$8,640.00

Respondents' liability for back pay begins when the discriminatory act causes economic injury. In this case that date is July 3, 1992. The period during which Respondents' are liable for Complainant's back pay ends when the Complainant obtains a comparable or higher paying job. *Harkless v. Sweeney Independent School District*. 466 F. Supp. 457, 469, 22 FEP 1557 (S.D. Tex.) aff'd 608 F.2d 594, 22 FEP 1571 (5th Cir.1979). In this case the respondents' liability for back pay ceases when the Complainant began working at the nursing home on July 1, 1994.

B. Interest:

1. Respondents shall pay to the Complainant the sum of eight thousand three hundred thirty dollars and sixty-four cents (\$8,330.64) which represents interest at the rate of ten (10%) percent compounded from the date of the discriminatory act, July 3, 1992, until the date of this decision.
2. Respondents shall pay to the Complainant statutory post-judgment interest at the rate of ten (10%) percent per annum in accordance with General Statutes § 37-3a.

C. Total Monetary Award

Respondents' shall pay to the Complainant a total monetary award of sixteen thousand nine hundred seventy dollars and sixty-four cents (\$16,970.64).

- D. The Respondents shall cease and desist from any discriminatory actions in violation of General Statutes §§ 46a-60(a)(1) and 46a-60(a)(8) with regard to all employees who may or will in the future become similarly situated.
- E. The Respondents shall place signs to be supplied by the Commission, specifying employees' rights regarding employment discrimination pursuant to General Statutes §§ 46a-60(a)(1) and 46a-60(a)(8) in a place where they can be seen by all employees. The signs shall be installed not later than thirty (30) days after the date of this order.

IT IS SO ORDERED this 1st day of September, 1999, at Hartford, Connecticut.

Hon. Leonard E. Trojanowski

Presiding Human Rights Referee