

**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights	:	CHRO No. 0420316
and Opportunities, <i>ex rel.</i>	:	EEOC No. 16AA400634
Jennifer Taranto, Complainant	:	
v.	:	
Big Enough, Inc., Respondent	:	October 5, 2006

FINAL DECISION UPON RECONSIDERATION

On January 20, 2006, I issued an order of default against the respondent due to its failure to file an answer to the complaint and its failure to appear at the duly-noticed hearing conference. Thereafter, I conducted a hearing in damages on February 24, 2006 and issued a final decision on June 30, 2006, ordering the respondent to pay to the complainant \$45,384 for back pay (along with pre-judgment interest compounded through the date of the decision, June 30, 2006); \$3604.50 for travel expenses; and \$3000 for her emotional distress. I also awarded post-judgment interest, accruing daily at the annual rate of ten per cent.

Significant to this proceeding is my allowance of back pay from the date of the complainant's termination only until June 30, 2005, the date the respondent allegedly ceased operations. Although no formal exhibit identified the exact date of the respondent's closure, several documents in the record (including letters from the respondent and documents from the Delaware secretary of state, all of which were known to and in the possession of the commission) pointed to June 30, 2005 as the likely date of the respondent's legal dissolution,¹ and thus, absent any suggestion to the contrary, as a logical limit for my calculations.

On July 14, 2006, the commission filed a timely petition for reconsideration ("petition") pursuant to General Statutes § 4-181a and § 46a-54-95a of the

Regulations of Connecticut State Agencies, claiming that the record lacks proper basis for my choice of June 30, 2005 as the termination point for back pay calculations.² In particular, the commission argued that the documents upon which I relied were neither authenticated nor admitted into evidence, and that it did not have the opportunity to address such documents. The commission also intimated that the date of the respondent's dissolution might not even be the date it ceased operations. Thus, in the closing paragraph of its petition, the commission emphasized that "the reopening of the public hearing for the limited purpose of the status of the Respondent would allow the Complainant the opportunity to present evidence regarding the date of the dissolution of the Respondent. Additional evidence on this issue is essential for the comprehensive calculation of Complainant's damages."

On August 4, 2006, I granted the petition and stated, "Once the commission files [a] certified copy of the respondent's certificate of dissolution, I will, with reasonable dispatch, review the record and take all appropriate steps under [General Statutes] § 4-181a (a) (3) to render a decision modifying or affirming my prior decision." On August 22, 2006, the commission filed a certified document from the Delaware secretary of state identifying July 6, 2005 as the date of the respondent's formal dissolution in that state. (See General Statutes § 1-14, which states that a certified copy of a public record shall be prima facie evidence of the facts set forth therein.)

Upon receipt of this document, I formally opened the record to take additional evidence, and I scheduled a hearing for September 8, 2006. In my August 22, 2006 notice of the hearing, I directed the commission and the complainant to be prepared to address the following issues:

1. On what date did the respondent actually cease operations?
2. On what date would the respondent have terminated the complainant for legitimate business reasons (i.e., the respondent's cessation of operations), had she not been terminated in October 2003?

3. If the complainant had remained employed by the respondent until it ceased operations, would she have received a severance package? Did other employees receive a severance package at that time?
4. What are the ramifications, if any, of the document(s) filed with the Connecticut secretary of the state in January 2006?
5. In light of the answers to the foregoing questions, how might the damages award be modified, if at all?

The commission offered no additional evidence at the hearing on reconsideration. On my own motion, I admitted into evidence the certified statement from the Delaware secretary of state that confirmed the respondent's dissolution on July 6, 2005.³ I had previously apprised the parties that I would consider this document (especially in conjunction with the other documents indicating that the respondent had ceased operations in mid-2005), but other than objecting to its admission, the commission offered nothing to counter its content. The precise date of the respondent's cessation of business remains unidentified.

The commission now concedes that it lacks the factual basis for addressing the first three of my questions,⁴ arguing instead that the respondent bears the burden of presenting any evidence to reduce the damage award. (Without addressing the validity of this argument at this juncture, I note that the commission appears to have abandoned its professed intent to introduce additional evidence, and has ignored my directive that it do so at the hearing on reconsideration.) The respondent, having been defaulted and having failed to appear at either hearing, did not, of course, offer any such evidence into the record. Thus, the commission again argues that I erred in relying upon documents not formally admitted into evidence when I limited the complainant's damages, and that I should instead award back pay from the date of the complainant's termination continuing until the date of the initial hearing. I did not open the record for this purpose and I hereby decline to change my approach to assessing back pay damages.

Rigid adherence to the suggested burden-shifting paradigm may well support the commission's argument in many instances. But to accept its argument in this particular case is akin to approaching the matter with blinders on, casting aside common sense, and disingenuously ignoring all of the indicia of respondent's closure sometime in the middle of 2005. Justice would not be served in this manner.

My intentions were clear in my original decision: the various documents indicating that the respondent ceased operations mid-2005 cannot be ignored. Moreover, the parties were well aware that, on reconsideration, I wanted a certified document from Delaware to clarify the date of the respondent's dissolution, precisely because the commission disagreed with my reliance on unauthenticated documents not formally admitted as exhibits.

Thus, my admission of that certified document in this hearing on reconsideration comes as no surprise to the parties. Furthermore, the complainant and commission were given ample opportunity to provide contrary evidence regarding the respondent's closure and dissolution, but they instead chose merely to object to the document and again to challenge my reliance upon documents not formally in evidence, albeit part of the overall record.

In my original final decision, I concluded that

[t]he record does not reveal when the respondent ceased operations; at best it contains a certificate of dissolution filed on June 30, 2005. Moreover, the complainant has presented no evidence to suggest the existence of any purchaser or successor organization that might have retained the respondent's employees or carried on the respondent's business. Accordingly, any back pay award shall cease to accrue as of June 30, 2005, the most logical termination point on this less-than-thorough record.

The only new information adduced at the hearing on reconsideration, confirmed by the certified notice from the Delaware secretary of state (Ex. HRR-1), reveals

that the respondent was formally dissolved on July 6, 2005, rather than June 30, 2005.

Having reconsidered my original final decision, and in light of the additional document and the argument presented on September 8, 2006, I hereby affirm that decision with the following modifications:

(1) Finding of Fact 18 is deleted and replaced with the following: The respondent filed a certificate of dissolution with the State of Delaware and was duly dissolved in accordance with Delaware law on July 6, 2005. (Ex. HRR-1) ⁵

(2) Had the complainant remained employed by the respondent, she would have been earning an annual salary of \$120,000 (see original final decision), or \$328.77 per day. Payment allocated for the first five days in July 2005, therefore, would total \$1643.85. Any damage award for this amount would need to be offset by her income at Hilfiger, where, as a part time employee, she worked an average of nine hours per day, three days a week, at the rate of \$45 per hour. Given the weekend and July 4 holiday, the complainant would have worked, at most, two days, or eighteen hours, earning \$810.

Accordingly, the calculation for lost wages for calendar year 2005, previously set forth on page 16 of the original decision, is hereby modified as follows:

Lost wages (1/1/05-7/5/05)	\$61,644	[previously \$60,000]
Interim income	\$33,390	[same as prior calculation]
Add'l interim income	\$ 810	[July 2005]
Net loss	\$27,444	[previously \$26,610]
Compound interest (through 6/30/06)	\$ 1,386	
2005 Subtotal	\$28,830	

Adding to this figure the subtotals for calendar years 2003 (\$1,334) and 2004 (\$16,141), I find that the complainant is entitled to a back pay award in the amount of \$46,305. The total damage award, therefore, is increased from \$51,988.50 to \$52,909.50, with post judgment interest accruing daily on the revised balance at the rate of ten percent per year, beginning June 30, 2006.

David S. Knishkowy
Human Rights Referee

NOTES

¹ The documents include the following:

-An August 5, 2005 letter from the respondent to the commission investigator, indicating that the respondent was dissolved on June 30, 2005. This letter was part of the commission's file during the adjudicatory phase and, in fact, was attached to the commission's post-hearing brief.

-A December 30, 2005 letter from the respondent to the chief commission counsel, Robert Brothers, indicating that the respondent was dissolved on June 30, 2005. This letter, written in response to the notice of hearing conference, was also attached to the commission's post-hearing brief. Identical letters were addressed and sent to the presiding referee and the chief referee.

-A February 21, 2006 letter from the respondent to the presiding referee, with a copy sent to the commission, reiterating the June 30, 2005 date of dissolution and indicating that it would provide a copy of the certificate of dissolution.

-An uncertified copy of the certificate of dissolution that the respondent sent to commission counsel some time after the hearing. The document, which was subsequently attached to the commission's post-hearing brief, indicates both that the date of dissolution was June 30, 2005 and that the certificate of dissolution was filed on July 6, 2005. The disparity between these dates leaves unanswered the questions of when the respondent actually ceased operations and, for that matter, when the respondent was officially dissolved.

NOTES, CONTINUED

² The commission does not challenge my reliance upon the legal principle that back pay calculations must end at the time the respondent went out of business, because the complainant, had she remained employed by the respondent, would have been terminated for a legitimate business reason at that time. See, e.g., *EEOC v. Regency Architectural Metals Corp.*, 896 F. Sup. 260, 271 (D.Conn. 1995) (back pay calculations ended at the time the former employer went out of business).

³ As an alternative to admitting formally the certified record from the Delaware secretary of state, I could simply have taken official notice of the document. See General Statutes § 4-178 (6). This tribunal is authorized to take official notice of certified copies of formally recorded public records; *LaPenta v. Bank One, N.A.*, 2006 WL 1611872, *6 (Conn. Super.); even when the document comes from another jurisdiction. *White v. Armstrong*, 2001 950882, *2 (Conn. Super.). A certificate of dissolution is one example of the type of record of which this tribunal may take official notice, when its accuracy is not disputed. See, e.g., *NYC Medical & Neurodiagnostic, P.C. v. Republican Western Ins. Co.*, 798 N.Y.S.2d, 309, 314 (2004); *PacLink Communications v. Superior Court*, 109 Cal. Rptr.2d 436, 441 (Cal. App. 2nd Dist. 2001). The certification from the Delaware secretary of state vitiates any dispute over the document's accuracy.

⁴ The commission also acknowledged that it was unaware of any legal authority enabling it to provide a meaningful answer to my fourth question.

⁵ Finding of Fact 18 originally stated: "The respondent ceased doing business on or before June 30, 2005, filed a certificate of dissolution with the State of Delaware on June 30, 2005, and filed a certificate of withdrawal with the Connecticut secretary of the state on January 18, 2006."

c: J. Taranto
D. Kent
M. Dumas Keuler
J. Maisano