

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

Commission on Human Rights & Opportunities
ex rel. Gloria Jackson,
Complainant

CHRO No. 0950094
Fed No. n/a

v.

Paul Pixbey,
Respondent

May 25, 2010

&

Commission on Human Rights & Opportunities
ex rel. Gloria Jackson,
Complainant

CHRO No. 0950095
Fed No. 01-09-0206-8

v.

Deborah Lutkowski,
Respondent

May 25, 2010

**FINAL DECISION AFTER
HEARING IN DAMAGES**

I.

PROCEDUREAL HISTORY

On June 27, 2009, Gloria Jackson (complainant) filed with Commission on Human Rights and Opportunities (commission or CHRO) two virtually identical affidavits of illegal discriminatory practice (original complaints), both alleging that Paul Pixbey and Deborah Lutkowski (respondents) harassed her to the degree that a hostile housing environment was created, because of her race and color, in violation of General Statutes § 46a-64 (c) (a) et seq. and (a), 42 U.S.C. 1981, 42 U.S.C. 1982, Title VII of the civil Rights Act of 1968 as

amended 42 U.S.C. 3610 and as enforced through § 46a-58 (a). That as a result of the aforementioned statutory violations the complainant and her family were forced to vacate the residence.

On May 15, 2009 the acting executive director of the commission, having waited 15 days after a default request was made, entered an order of default against the respondents for failing to answer the complaints filed against them pursuant to § 46a-83 as amended (see exhibits 6 and 6a).

On May 18, 2009 the Office of Public Hearings, after having been referred these matters, sent to all parties a notice "Hearing in Damages Pursuant to Order of Default" accompanied by the complaints. Included in the aforementioned notice was notification of the time and date of the hearing in damages (July 13, 2009 at 10:30 a.m.). Additionally, the notice stated "[t]he sole purpose of this hearing is to determine the relief necessary to eliminate the discriminatory practices(s) alleged in the complaints and to make the complainant whole. The hearing will not address the issue of liability" (see exhibits 7 and 7a).

On July 10, 2009, the commission moved that the hearing in damages scheduled for July 15, 2009 be continued. This motion was granted and an order was issued on July 10, 2009 stating that the hearing in damages would commence on August 27, 2009 at 10:30 a.m.

On August 27, 2009 prior to the start of the evidence, the undersigned consolidated¹ the two matters for purposes of the hearing in damages after which, the hearing in damages was held. The complainant appeared pro se and the commission was represented by Attorney Margaret Nurse-Goodison. Although the respondents were provided notice of the date and place of the hearing, both failed to appear or in the alternative file any pleading requesting any postponement or alternative relief to the order of default.

Upon the conclusion of the hearing a briefing schedule was ordered and the record closed on November 19, 2009 upon receipt of the commission's post-hearing memorandum.

On February 4, 2010 after having provided all parties (appearing and non-appearing) notice dated January 26, 2010 pursuant to § 4-178 and by the undersigned's ruling on commission's motion for articulation dated February 1, 2010, a hearing was conducted relative to taking judicial notice of documents; affidavits of discrimination (complaints) and any amendments thereto; settlement agreements executed by the complainant; and any transcript written or electronic of testimony or statements made by the complainant contained in files captioned Gloria Jackson v. Kenneth Perkins, CHRO Case No. 0850231 and Gloria Jackson v. Richard Jones and

¹ See Transcript pages 3 – 4.

Jacqueline Jones, CHRO No. 0850232. At said hearing, the parties were afforded the opportunity to contest the material noticed. At the conclusion of this hearing commission counsel sought and was granted until February 26, 2010 to file an additional memorandum at which time the record closed.

II.

PARTIES

The complainant is Gloria Jackson of 11 Clover Court, New London, Connecticut, 06320. The commission on human rights and opportunities is located at 21 Grand Street, Hartford, Connecticut 06106. The respondents are Paul Pixbey and Deborah Lutkowski both of 39 Montauk Avenue, New London, Connecticut 06320.

III.

COMPLAINANT'S POSITION

The complainant's near identical complaints proffer that she and her great nephew began to experience on a daily basis a prolonged campaign of racial harassment upon the respondents moving in next door. This harassment came in the form of the most vile and racially charged epithets, late night noise directed at preventing her from sleeping, blocking a shared driveway thereby preventing the complainant from moving her car and causing damage to her car. This racially motivated harassment commenced on the day the respondents moved in next door and continued up to and including the day the complainant moved to a new residence approximately two years later.

The consequences of the discriminatory conduct of the respondents caused the complainant to suffer emotional distress that manifested in loss of weight, loss of sleep and anxiety.

IV.

FINDINGS OF FACT²

After conducting the scheduled and noticed hearing in damages and based upon the commissions and complainant's exhibits along with the testimony taken, the following facts relevant to this decision are found.

1. All procedural notices and jurisdictional pre-requisites have been satisfied and this matter is properly before this presiding referee to hear the matter and render a decision.
2. On November 30, 2000, the complainant, a black female moved to 41 Montauk Ave., New London, Connecticut which was owned at that time by Kenneth Perkins (TR 11, 12, 14, 34, CHRO 1 and 1a).
3. Living with the complainant, was Joseph Rice, the complainant's great nephew, also referred to by the complainant as her son, who was nine

² Reference to an exhibit is by party designation and number. The commission's exhibits are denoted as CHRO Ex. followed by the exhibit number. The referees' exhibit is denoted by Ref. Ex. followed by the exhibit number. References to testimony are to the transcript page (TR.) where the testimony is found.

- years old on September 1, 2007 and was described as having special needs³ (TR 10-11).
4. On September 1, 2007 the respondents (both white) moved into property next door to that property occupied by the complainant whose address was 39 Montauk Ave., New London, Connecticut which was owned by Richard and Jacqueline Jones (TR 12-14, CHRO Ex. 1, 1a).
 5. On September 1, 2007, respondent Pixbey in front of the complainant, referred to a gentleman steam cleaning the complainant's home as a "F'in niggers". (TR 15).
 6. On that same date respondent Pixbey called the complainant a "fucking bitch" and said "that man shouldn't be washing a fucking bitches house." (TR 16).
 7. The properties occupied by the complainant and respondents shared a common driveway that ended in a parking pad in front of the complainant's house (TR 80, CHRO Ex. 1 and 3).
 8. The respondents almost immediately after moving into 39 Montauk would park their cars in the middle of the driveway despite having sufficient room to park so as to block the complainant's use of the driveway or park behind the complainant's car preventing her from using her car (TR 16, 17, CHRO Ex 1, 1a, 11, 12, 24 & 25).

³ The complainant in her testimony described her nephew as having "special need" however no description was given as to these special needs.

9. The respondent Pixbey would also at times when it was apparent that the complainant was about to use her car purposely move his car so as to block her from her car (TR 20).
10. The respondent Pixbey would on almost a nightly basis when the complainant was sleeping at or around 11:00 p.m. to 12 midnight flash his car headlights and blow his horn towards the complainant's house to awaken her. This activity coincided with the lights in the complainant's house being turned off (TR 26, 27).
11. The respondent Pixbey would at times kick the complainant's front door and identify himself to the complainant and tell her that he was going to "fuck up" her car (TR 28).
12. The respondent Lutkowski at times would stand on the complainant's front porch steps and call the complainant "nigger bitch" "f'in bitch" along with putting her grandchildren's toys in a position to block complainant's car (TR 28).
13. The respondents at times would also use racial epithets in front of the complainant's son (age 25) and his friends (TR 30, 34, 35, CHRO Ex. 1, 9, 10).
14. The respondents would on a regular basis refer to the complainant when she would walk her great nephew to or from the school bus as a "dumb ass nigger bitch" or would say the complainant must be "stupid" because the complainant refused to respond to the comments being made (TR 32).

15. The respondent Pixbey would at times spit at the complainant's great nephew on his way to the school bus though never hitting him (TR 9, 10).
16. The complainant at some point as a consequence of the respondents' use of racial slurs and harassment sought assistance from the New London Police Department which caused an officer to respond to the complainant's home. After being told the names she was being called, the officer refused to take a complaint. This refusal caused the complainant to go to the New London Police Department and complain, again the same officer was sent and again he refused to take a complaint (TR 25, 26).
17. On or about January 2008 the respondent Lutkowski was witnessed by the complainant on top of the complainant's car with a knife. As a consequence of the respondents actions cut marks were found on the cars bumper and scratches on the spoiler and trunk along with scrapes on the side of the care. At the time respondent Lutkowski was on the complainant's car respondent Pixbey was seen in the yard in proximity to complainant's car (TR 41-42).
18. The damages to the complainant's car caused by the respondent Lutkowski were estimated by Costal Collision to be \$1939.30 (CHRO Ex. 10)
19. The complainant on or about January 2008 again sought the assistance of the New London Police Department after the respondent Pixbey threatened to "fuck up" her car. Again the New London Police Department sent the same officer (William Edwards) to respond. The complainant

- again after explaining that the respondents were harassing her and using vulgar racial slurs along with damaging her car was told no complaint would be taken. When the complainant insisted that Officer Edwards take a complaint, he told her twice that he “would put [her] in jail if she didn’t shut up.” Officer Edwards stated he could see no damage (TR 40-43).
20. As a consequence of the respondents’ continual harassment the complainant’s great nephew would go to school upset and told his teacher that there were people where he lived that called his family names and would throw things at his house (TR 46-49).
21. The complainant on November 17, 2008 moved from 41 Montauk Ave to 11 Clover Court New London (TR 48, 49).
22. In preparation for the complainant’s move, arrangements were made for her to have complete access to the driveway. The driveway would be open to her from 5:00 p.m. to 10:00 p.m. Despite the arrangements the respondents blocked the driveway and in so doing prevented the moving truck from parking in the driveway closer to the complainant’s house. The respondents’ landlord was contacted and at 7:00 p.m. the driveway was cleared. On the second day of the move after returning to Montauk Ave. the complainant found broken glass on the driveway and sidewalk. The complainant as a consequence had to take time from the move and clean up the glass or risk cutting the tires on the moving truck (TR 70 – 77).

23. The complainant on Sunday of the move witnessed the respondent Pixbey, pull a bush out of the ground and throw it in front of the complainant's moving truck (TR 78-79).
24. The complainant as a consequence of the respondents referring to her as a "nigger" felt dirty, degraded, worthless; you're nothing, like she shouldn't be there. The complainant further felt that if she could have changed her color she would have instantly (TR 65 – 66).
25. The complainant further experienced fear believing that the respondents might really try to harm her and her family (TR 65 – 66).
26. The complainant as a consequence of the respondents' racial harassment experienced stress, trouble sleeping; felt tense all the time expecting something to happen and suffered weight loss of 30 pounds (TR 84 – 85).
27. The complainant spoke to her doctor (general practitioner), Dr. Hong and explained what she has been experiencing from the respondents. Dr. Hong advised her to get out her current stressful situation. Furthermore, he wanted to prescribe valium for her to help in relieving the stress she was experiencing. She refused as she needed to be alert for her great nephew (TR 85).
28. On April 16, 2008 the complainant filed with the commission an affidavit of illegal discriminatory practice against Kenneth Perkins case no. 0850231

29. On April 16, 2008 the complainant filed with the commission an affidavit of illegal discriminatory practice against Richard and Jacqueline Jones owners of 39 Montauk Ave., New London, Connecticut and former owners of 41 Montauk Ave., New London Conn. (Referee Ex. 1).
30. In both complaints it is alleged that “on or about October 23, 2007, I was so frustrated and upset by all the problems I was having with the Jones and their tenants [Pixbey and Lutkowski] that I wrote to the present property owner [Perkins] to urgently request his help in dealing with all the issues the Jones and their tenants were creating for me and all the racist hate speech from them I had been experiencing (Referee Ex. 1 ¶ 7, Referee Ex. 2 ¶ 7).
31. On January 8, 2009 the complainant executed a Pre-Determination conciliation agreement with Richard and Jacqueline Jones whereby she would receive \$10,000 as full settlement for all claims alleged in her complaint (case no. 0850232) (Referee Ex. 3).
32. On January 8, 2009 the complainant executed a Pre-Determination conciliation agreement with Kenneth Perkins whereby she would receive \$1,500 as full settlement for all claims alleged in complaint case no. 0850231 (Referee Ex. 4).

⁴ Findings of facts 28 – 34 are based on the taking of judicial notice of exhibits entered into the record at the hearing held on February 4, 2010.

33. The \$1,500 settlement reached with Kenneth Perkins represented the return to the complainant of her \$1,000.00 security deposit and \$500.00 to be used towards her moving expenses (TR 56).
34. The settlement reached with Richard and Jacqueline Jones for \$10,000 was as a consequence of their discriminatory conduct as well as of the respondents Pixbey and Lutkowski. Paragraph 15 states in part. "The respondent [Jones's] continues to subject me to unequal use and enjoyment of the premises I rent through his own direct behaviors and blocking my access to my house and by his failing to take appropriate efforts to stop the behaviors of his tenants [Pixbey and Lutkowski]..." (Referee Ex. 1 ¶15).

V.

DISCUSSION

The entry of default pursuant to § 46-83(i) authorizes the presiding officer to issue an order eliminating the discriminatory practice complained of and making the complainant whole. In this instance the allegations brought by the complainant have not been responded to by the respondents and are deemed admitted without the need of further proof (Regulations of Connecticut State Agencies § 46a-54-88a(b)). Liability has been determined pursuant to the order of default and damages shall be awarded. Furthermore, I find that the discriminatory conduct of the two respondents is to be borne equally except in two instances reference below.

A.

DAMAGES

EMOTIONAL DISTRESS

Liability having been determined there remains the assessment of damages based on the evidence presented. In the cases pending, the complainant is requesting damages for her emotional distress, and for damage to her property (car) along with interest on any award made. The authority to award damages under § 46-86(c) ...”has been construed to include the authority to award damages for emotional distress or other non-economic harm.... Such awards must be limited to compensatory rather than punitive amounts...” *Commission on Human Rights and Opportunities ex rel. Ronald Little v. Stephen Clark, et al.*, 2000 WL 35575648, CHRO No. 9810387 at 17 (citations omitted).

In assessing damages based on emotional distress the criteria to be considered includes “the subjective emotional reaction of the respondent’s actions; the public nature of the respondent’s actions; the degree of the offensiveness of those actions; and the impact of those actions on the complainant.” *Commission on Human Rights and Opportunities ex rel. Hartling v. Carfi*, 2006 WL 4753467, CHRO No. 0550116.

In this matter the offensiveness of the respondents’ actions is glaring. For two years the respondents inflicted on the complainant, her great nephew and

other family members a tirade of racial hate which does not need to be re-itemized.

The complainant has offered evidence of the consequences of the racial harassment and the physical manifestations that it caused her to suffer. I can and do rely on her testimony without the need for expert medical testimony. *Blackburn v. Martin*, 982 F.2d 125, 132 (4th Cir. 1992).

“The public policy considerations in support of emotional distress damages in a housing discrimination case are discussed extensively in *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco*, No. 7930433 pp 12-14 (June 3, 1995). For example, [a]warding humiliation and mental distress damages would deter discrimination and encourage filing of complaints, particularly in the housing area where out of pocket damages are often small...[t]hat damages for emotional distress are not readily subject to precise mathematical compensation is sufficient reason to deny them once the right to such damages has been established...” (citations omitted, internal quotations omitted.) *Commission on Human Rights on Human Rights and Opportunities Hartling v. Carfi*, supra 2006 WL 4753467.

Having heard testimony of the complainant and applying the above criteria in assessing emotional distress damages, the offensiveness of the statements and conduct of the respondents is startlingly obvious. The respondents at

times jointly and at times individually chose to use the most demeaning, vile and ugliest terms when referring to or talking to an African-American. The respondents not content in the bigotry laced tirades also chose to bring their hateful conduct and visit it upon the complainant's great nephew both in words and deeds. In particular respondent Pixbey would spit at this child on his way to the school bus. While the respondent's spit did not actually hit this child, this action, based on the conduct both before and after, offers sufficient evidence that it was harassment based on this child's skin color and that of the complainant. This conduct (spitting) warrants an increase in the amount of damages assessed against the respondent Pixbey. As a consequence of this conduct my award for emotional distress against the respondent Pixbey will be increased by an additional \$1,000. The act of spitting at a child I find exceeds all bounds of conduct and is extreme in degree and must be regarded both as atrocious and intolerable.

While having said the above, I in no way wish to imply that the vile and hateful comments used by the respondents are not both atrocious and intolerable. However, the disgusting act of spitting at a child I find worthy of both comment and an increase in the award associated with the emotional distress experienced by and inflicted upon the complainant. Few actions aside from actual physical assault could come close to being so repugnant as spitting at a defenseless child regardless of color (though in this case it was solely due to color).

In the present case the commission has requested an award of \$50,000 dollars as damages for emotional distress. Clearly there is precedent for the awarding of emotional distress in and around the amount requested by the commission. The commission cites to cases in support of its request these are *Commission on Human Rights and Opportunities ex rel. Maybin v Berthiaume*, CHRO No. 9950026 (March 29, 1999) \$50,000 award for emotional distress and *CHRO ex rel. Lawton v. Jansen*, 2007 WL 4623071, CHRO No. 0550135 \$40,000 awarded for emotional distress. In *Maybin* the hearing officer's decision reflects that his award for emotional distress was based on harassment based on race and the consequences of the respondent's actions. However few actual facts were found that would allow for a proper comparison to the matter pending. In *Lawton* the complainant who was racially harassed over a 2 ½ year period. The harassment in the *Lawton* matter was similar and just as vile as alleged and found in this matter including the use of disgusting racial epithets, spitting, alleged damage to the complainant's car and the need for police intervention.

From the evidence presented the complainant is entitled to a substantial and meaningful award as a consequence of the harassment inflicted upon her. Of the two cases in which awards of \$40,000 and \$50,000 were made the *Lawton* case offers a better precedent for setting a figure for emotional distress. For this reason and having had the opportunity to witness the

testimony of the complainant and found her to credible, I conclude that an award of \$40,000 for her emotional distress is both fair, reasonable and in keeping with the precedent of prior awards. This amount is to be paid by the respondents equally.

B.

DAMAGES TO PROPERTY

Pursuant to § 46-86(c) I am authorized to award actual damages caused to be suffered by the complainant. As such I will make an award for damages to complainant's car as was evidenced by the estimate of damage introduced into evidence (CHRO Ex. 10) which reflects total amount of work needed to be done to fix the damage caused by the respondent Lutkowski in the amount of \$1939.30. This sum is to be paid by the respondent Lutkowski as there was no evidence that respondent Pixbey participated in the activity although being present.

VI.

INTEREST

The commission has sought an order of pre and post judgment interest. In these matters, I find that it appropriate to award post judgment interest and do make it a part of the award damages to the complainant. With regard to prejudgment interest, I decline to exercise my discretion in making such an award.

A.

***SETTLEMENT PROCEEDS RECCURED FROM KENNETH PERKINS
AND RECHARD AND JACQUELINE JONES***

The damages assessed in this matter reflect the emotional distress suffered by the complainant and for damages to her car. The commencement of emotional distress ran from the day the respondents moved in to 39 Montauk Ave. through the complainant's move to 11 Clover Ave. This time frame coincides with the timeframe associated with the claims against the Jones's and Mr. Perkins. Furthermore the complainant (particularly in the Jones' matter) produced a substantial settlement that references activities associated with tenants living at 39 Montauk Ave. during the timeframe that the respondents lived there though not specifically named. Additionally some of the discriminatory conduct described (racial slurs, blocking access to her home) are identical to that which is alleged in the pending matters.

Finally, in paragraph 14 of Referee Ex. 1 (Jones complaint) the complainant alleges and references the problems she had with the New London Police Department's lack of response when she sought assistance. This obviously is referring to the lack of assistance she received from Officer Edwards (See FF#19).

Having been presented with evidence that the complainant has to some degree been compensated for the discriminatory conduct of the respondents, it must be credited against any award I now make for the very same conduct. Failing to do so would cause the complainant to experience a windfall or a doubling of damages. I will therefore credit the respondents a total of \$5,000 of the Jones's settlement. I do not give total credit of the \$10,000 by virtue of the testimony of the complainant attributing to Mr. Jones that he was the one who stated "he didn't want niggers living there" (see TR 58, 59).

I purposefully make no credit for the settlement proceeds received by the complainant from Kenneth Perkins as this represents a return of her own monies (security deposit) and a token amount to be used towards expenses she incurred in having to move.

ORDER

1. The respondent Paul Pixbey shall pay to the complainant damages in the amount of \$ 19,500 calculated as follows:

Emotional Distress:	\$20,000
Emotional Distress: associated w/spitting at complainant's great nephew:	<u>\$1,000</u>
Subtotal:	\$21,000
Settlement Credit:	\$2,500
Total:	\$18,500

2. The respondent Deborah Lutkowski shall pay to the complainant damages in the amount of \$19,439.30 calculated as follows:

Emotional Distress:	\$20,000
Property Damage:	<u>\$1939.30</u>
Subtotal:	\$21,939.30
Settlement Credit:	\$2,500.00
Total:	\$19,439.30

3. The respondents shall pay post judgment simple interest on the award. Said interest shall accrue daily on the unpaid balance from the date of this decision at a rate of 10% per annum.

4. The respondents shall cease and desist from the discriminatory practices complained of as well as from any other acts of discrimination prohibited by state or federal law.

5. The respondents shall not retaliate against the complainant.

It is so ordered this 25th day of May 2010.

Thomas C. Austin, Jr.
Presiding Human Rights Referee

cc.
Gloria Jackson
Deborah Lutkowski
Paul Pixbey
Margaret Nurse-Goodison, Esq.