

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

Commission on Human Rights and  
Opportunities ex rel. Guy Recupero,  
Complainant  
v.

CHRO No. 0530022  
Fed No. 16aa401739

L. G. Defelice, Inc.,  
Respondent

April 10, 2008

**FINAL DECISION  
HEARING IN DAMAGES**

***I.***

***The Parties***

The complainant is Guy Recupero, 98 Leighton Road, Bridgeport, Connecticut 06606. The commission on human rights and opportunities ("commission") is located at 21 Grand Street, Hartford, Connecticut 06106. The commission and complainant are represented by Margaret Nurse-Goodison, commission attorney. The respondent is L. G. Defelice, Inc., 30 Bernard Road, P.O. Box 308, North Haven, CT. The respondent was represented by Jane L. Milas, Esq., 44 Trumbull Street, New Haven, CT 06510.

***II.***

***Procedural History***

The complainant filed his employment discrimination complaint with the commission on July 19, 2004. The complaint alleged termination on the basis of a mental disorder (Bi-

Polar) in violation of General Statutes §§ 46a-60 (a) (1), 46a-58 (a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. and Americans with Disabilities Act, 42 U.S.C. 12101 et seq. After an investigation of the complaint, the commission investigator issued a reasonable cause finding on May 30, 2007. The case was certified to public hearing on June 13, 2007.

On June 14, 2007, Chief Human Rights Referee Donna Maria Wilkerson issued a notice of contested case proceeding and hearing conference. Human Rights Referee J. Allen Kerr, Jr. was assigned as the presiding referee and the hearing conference was scheduled for July 18, 2007. Only commission counsel Margaret Nurse-Goodison and Referee J. Allen Kerr, Jr. were in attendance. The referee ordered that an answer be filed by July 27, 2007. No answer was filed and the respondent and its counsel ceased to participate in the public hearing proceedings.

On August 10, 2007, the commission filed a motion for default of the respondent and for a hearing in damages. On August 29, 2007, Referee Kerr issued an order of default against the respondent and scheduled a hearing in damages for October 24, 2007.

On October 24, 2007, a hearing in damages was held at the commission. The commission and the complaint were in attendance at the hearing. Neither the respondent nor any representative of the respondent appeared at the hearing in damages. Referee Kerr presided over the hearing.

The commission filed a post hearing brief on January 31, 2008.

As a result of the default, and based upon the pleadings, hearing and brief I conclude that the complainant was terminated from his employment on the basis of his mental disability – bipolar disorder in violation of General Statutes §§ 46a-60 (a) (1), 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 and the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.

### ***III.***

#### ***Findings of Fact***

1. The complainant began his employment with the respondent as a CDL truck driver in 2002. TR p.6, Commission (CHRO) Exhibit 1.
2. The complainant was paid as an hourly employee. TR p. 11, CHRO Exhibit 12.
3. The complainant worked an average of 40 hours per week. TR pp. 7, 12.
4. The complainant also worked some overtime hours. CHRO Exhibit 12.
5. The complainant received medical and dental insurance through the respondent. Tr. p 35.
6. In November of 2003 the complainant was hospitalized and diagnosed as having bipolar disorder, resulting in his medical leave. TR pp. 8-9, CHRO Exhibit 1.
7. The complainant was released to go back to work in April 2004 and informed respondent of the fact. TR pp. 8-9, CHRO Exhibit 1.

8. Having received no communication from the respondent, the complainant went to the respondent's place of business on May 7, 2004, and spoke to one Frank Quantrini, who informed him he was terminated and that he was now considered an insurance risk. TR pp. 8-10, 58, 59, CHRO Exhibit 1.
9. At the time the complainant went out on medical leave in November 2003, prior to his termination, the complainant was earning \$22.78 per hour. TR p. 12, CHRO Exhibit 12.
10. After his termination in 2004 the complainant made efforts, with limited success, to find other employment. TR pp. 18-36, CHRO Exhibits 14-22.
11. The complainant collected unemployment compensation after his termination, in 2004, 2006 and 2007. TR pp. 17, 25, 31, CHRO Exhibits 17, 23, 25.
12. The complainant incurred dental bills that would have been largely defrayed by the lost insurance coverage. TR p. 36.
13. The complainant suffered lost mandatory contributions to his pension. TR pp. 41-42, CHRO Exhibit 27.

#### ***IV.***

#### ***Analysis***

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. General Statutes § 46a-83 (i), Regulations of Connecticut State Agencies §46a-54-88a. The default admits the material facts that constitute a

cause of action and conclusively determines the liability of a defendant. *Skyler Ltd. Partnership v. S.P. Douthett & Co.*, 212 Conn. 802 (1989). 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).

The commission has provided authority in its brief that bipolar disorder is a qualifying disability. *Hatzakos v. Acme American Refrigeration, Inc.* 2007 WL 2020182 (E.D.N.Y.), *Siederbaum v. New York Transit Authority*, 309 F. Supp.2d 618 (S.D.N.Y. 2004). I also note that the commission has compiled a damages worksheet which is set forth in pages 19 and 20 of the commission's brief. My award will incorporate the amounts, computations and credits set for therein. I make no award for front pay, having noted the passage of sufficient time for the complainant to have secured full time employment, and having heard testimony from him that leads me to conclude that his efforts to do so have been overly selective in nature and generally less than compelling. TR pp. 33-34, 59-60.

**V.**

**Order**

1. The respondent is ordered to pay as damages, the sum of \$164,059.93, which sum represents back pay (\$176,772.80), lost pension contributions (\$29,248.00)

and dental expense (\$560.00), offset by unemployment compensation payments (\$12,703.00) and mitigation from temporary employment (\$29,817.87).

2. The respondent is ordered to pay prejudgment interest at the rate of 10% compounded annually on the following amounts, which amounts represent annual totals for back pay and lost pension contributions offset by corresponding annual totals for unemployment compensation and mitigation from temporary employment, from the date therein specified to the date of judgment.
  - a. On \$29,823.00 from December 31, 2004 to the date of judgment.
  - b. On \$52,204.26 from December 31, 2005 to the date of judgment.
  - c. On \$30,684.21 from December 31, 2006 to the date of judgment.
  - d. On \$47,143.46 from December 31, 2007 to the date of judgment.
3. The respondent is ordered to pay post judgment interest as allowed by General Statutes §46a-86 (b), compounded annually on the sum of \$164,059.93 increased by the total prejudgment interest allowed in paragraph 2 of this order.
4. The respondent shall pay to the commission the sum of \$12,703.00 in reimbursement for unemployment compensation benefits paid to the complainant by the State of Connecticut, which the commission shall then transfer to the appropriate state agency.
5. The respondent shall cease and desist from the practice complained of herein with regard to the complainant and all similarly situated employees and shall not engage in or allow any of its employees to engage in any conduct in violation of General Statutes § 46a-60 (a) (4).

It is so ordered this 10th day of April 2008.

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J. Allen Kerr, Jr.  
Presiding Human Rights Referee

cc.

Guy Recupero  
Jane Milas, Esq.  
Margaret Nurse-Goodison, Esq.