

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

Commission on Human Rights and
Opportunities ex rel. Jose Crispin,
Complainant

CHRO No. 0830024
Fed No. 16a200701491

v.

SY Management,
Respondent

February 10, 2011

**Final Decision
After
Hearing in Damages**

The complainant Jose Crispin (complainant) on July 16, 2007 filed with the commission on human rights and opportunities (commission or CHRO) an affidavit of illegal discriminatory practice (complaint) alleging that he had been discriminated against by SY Management (respondent). The alleged discriminatory conduct (termination) was as a consequence of his physical disability (back & shoulder) and age (D.O.B. 12/4/1951), national origin (Puerto Rican) and color (black) in violation of Conn. Gen. Statute 46a-60(a) (1) and Title VII of the Civil Rights Act of 1964 as amended by, 42 U.S.C. 200e and the Civil Rights Act of 1991 and enforced through § 46a-58(a), the American with Disabilities Act, 42 U.S.C. 12101 et seq. and the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634.

On January 19, 2010, the commission after a preliminary investigation determined that there was reasonable cause for believing that an unfair practice was committed as alleged in the complaint and that having endeavored to

eliminate the unfair practice by conference, conciliation and persuasion and having failed, certified this matter to public hearing.

On January 26, 2010, the Office of Public Hearings (OPH) sent to all parties a "Notice of Contested Case Proceeding and Hearing Conference" and a copy of the complaint. The notice states in pertinent part:

[T]he hearing conference shall be held on February 16, 2010 at 10:00 a.m. ...

All parties shall appear at the hearing conference.... Absent a showing of good cause, **failure to appear** at any proceeding, including the hearing conference, may result in the imposition of **sanctions**. Sanctions may include the default of the absent party or the dismissal of the complaint.....

A copy of the complaint, and any applicable amendment, is hereby served on the respondent with this notice. **Within fifteen (15) days after receipt of this notice and complaint, the respondent shall file an answer under oath to the complaint and any amendments thereto in accordance with § 46a-54-86a of the Regulations of Connecticut State Agencies (Regulations).** Even if the respondent intends to adopt the answer that was filed during the earlier investigation of the complaint, an answer must be filed at this stage because the contested case process is a de novo proceeding. Failure to file an answer may result in an order of default and a hearing in damages pursuant to § 46a-54-88a (a) (1) of the Regulations. (emphasis in original).

On February 16, 2010¹ a hearing conference was held. Present was Attorney David Kent representing the commission. Neither the complainant nor the respondent was in attendance.² At the conclusion of the hearing the then presiding referee (Levine) issued a “Hearing Conference Summary and Order” which included an order requiring the respondent to file answer on or before February 26, 2010. The order further notified the parties that a settlement conference was ordered and scheduled for April 6, 2010.

On April 6, 2010, a settlement conference was convened pursuant to the “Hearing Conference Summary and Order’ dated February 16, 2010, at which the respondent or its legal representative failed to appear.

On April 9, 2010, the commission filed a “Motion for Default of the Respondent and for Hearing in Damages” for having failed to appear and file an answer (see CHRO Ex. 2).

¹ A hearing conference is the initial hearing in the contested case process. It is at this hearing that the presiding referee establishes dates for the public hearing and other conferences, such as a settlement conference and shall address discovery, exchange of witness and exhibit lists that occurs before a referee other than the presiding referee. At the conclusion of the hearing conference the presiding referee issues a hearing conference summary and order. It is in this order that the respondents were ordered to file an answer to the pending complaint.

² On February 4, 2010, counsel for the complainant motioned this tribunal for a continuance due to her unavailability and David Merenstein’s being out of the country. This motion was denied without prejudice subject to being refilled.

On April 20, 2010 having received neither an answer to the complaint as previously ordered nor a response to the motion for default, the then presiding referee granted the commission's motion for default and gave notice to all parties that pursuant to Regulations of Connecticut State Agencies § 46a-54-88a (b) that a hearing in damages would be held on June 8, 2010 at 10:00 a.m. at the OPH located at 21 Grand Street, Hartford, CT (see CHRO Ex. 3).

On May 24, 2010, the then presiding referee issued a ruling and again issued an order of default against the respondent for having failed to file an answer as well as failing to appear and ordered that a hearing in damages would be held in accordance with a notice of "cancellation and continuance" of that same date on August 31, 2010 at 10:00 a.m. at the Office of the Commission at 21 Grand Street, Hartford, CT (see CHRO Ex. 5 and 6).

On July 22, 2010 the undersigned was assigned as presiding referee in substitution for referee Jerome Levine. (See CHRO Ex. 8).

On August 31, 2010 the undersigned conducted the hearing in damages in accordance with notice provided to the parties. The commission was again represented by Attorney David Kent and the complainant was represented by Attorney Michelle Holmes. The respondent despite having been provided notice of the date, time and place of the hearing, neither appeared nor filed any pleading seeking a postponement or alternative relief to the order of default.

Complainant's Position

On or about July 2006 the complainant commenced his employment with the respondent. The complainant's job involved painting and remodeling apartments owned by the respondent and to act as a handyman along with doing any other jobs given to him. The complainant was paid ten (\$10.00) dollars per hour based on a 40 hour work week. In addition to his \$400.00 per week the complainant was provided an apartment to live rent free that included utilities. The complainant's job kept him on call all the time.

On or about early May 2007 the complainant while working on a pool project on the respondent's property fell backwards injuring his back, neck and shoulders. As a consequence of these injuries the complainant sought medical treatment at the emergency room.

The respondent upon being told by the complainant of his injuries and his being seen at the emergency room got mad and terminated his employment. Upon termination the complainant was immediately forced to vacate his apartment causing him to lose all his possessions. The complainant having no place to move to or the means to secure an apartment was forced to live in a homeless

shelter for approximately 1 year until his applications for Section 8³ housing assistance and social security disability benefits⁴ were approved.

The complainant as a further consequence of being illegally terminated and being without resources lost his van and resorted to using a bicycle for transportation.

While living in the homeless shelter the complainant soon developed depression which required him to seek treatment at the psychiatric clinic at Waterbury Hospital. The complainant's mental health condition deteriorated to the point that he was taking 3 medications; one to relax; one to help him sleep; and a third as a consequence of his hearing voices.

In addition to the claims relating to his physical disability and his illegal termination the complainant claims he was discriminated against as a consequence of his age, color and national origin in the assignment of work assignments with his younger non-basis co-workers.

³ The Section 8 program is a federally operated rent supplement program under the Department of Housing and Urban Development and administered by municipal housing authorities and designed to assist qualified low income persons pay their rental obligations. See, *United States Housing Act of 1937, Section 8 as amended*; 42 USCA section 1437f; *Commission on Human Rights and Opportunities ex rel. Colon v. Sullivan*, Conn. Super. CVBR1006541, Oct. 7, 2005, n.7, 2005 WL 2855540.

⁴ "Social Security [disability] pays benefits to people who cannot work because they have a medical condition that is expected to last at least one year or results in death. Federal law requires this very strict definition. While some programs give money to people with partial disability, Social Security does not." See www.socialsecurity.gov who can get Social Security benefits.

The complainant claims his lost wages are \$43,884 and seeks emotional distress damages in the amount of \$150,000 and attorneys' fees.

Findings of Fact⁵

1. All procedural notices and jurisdictional pre-requisites have been satisfied and this matter is properly before me to hear and render a decision.
2. The complainant on or about July 26, 2006, began working for the respondent (TR 32; ¶ 6 of complaint).
3. The respondent was aware of the complainant's inability to read or write English (¶'s 16 and 17 of the complaint).
4. The complainant's job duties included painting, remodeling apartments, acting as a handyman and porter along with various other jobs assigned to him (TR 33).
5. The complainant's work was always favorably recognized by the respondent (¶ 7 of the complaint).
6. The complainant's pay was ten (\$10) per hour based on a forty hour work week. Additionally, the complainant was provided apartment B-2 at 780 Willow Street, Waterbury, CT rent free and with no obligation for the payment of utilities (TR 33, 35).

⁵ References to an exhibit are by party designation, number and page. The commission's exhibits are denoted as "CHRO Ex." followed by the exhibit number and page. The complainant's exhibits are denoted as "Compl. Ex." followed by the exhibit number and page. References to testimony are to transcript page "TR" where testimony is found.

7. The complainant's job required him to be on call on weekday, weekends and nights however he was paid only for forty (40) hours (TR 34).
8. The complainant while employed by the respondent was given at times the least desirable assignments and was treated more harshly than his younger non-basis co-workers (¶'s 16 and 17 of the complaint).
9. The apartments in the building where the complainant was provided an apartment were being rented for \$400 - \$500 per month (TR 35).
10. The complainant on or about the beginning of May 2007 while working for the respondent was injured while working on a pool being constructed. Specifically, the complainant fell as a result of being tired, the fatigue causing him to fall and hit his back and shoulder. These injuries eventually required surgery. Prior to this fall and sustaining injuries to his back and shoulder the complainant never had any problems with his back and shoulder (TR 36; ¶ 11 of complaint).
11. The respondent upon being told of the complainant's injuries and the need to go to the hospital got mad and terminated the complainant (TR 38, 50, 51; ¶'s 12 and 13 of the complaint).
12. The respondent required the complainant to vacate his apartment after being told he was terminated.⁶ He was provided no time to look for suitable housing, or to pack up his belongings. All of the complainant's personal belongings had to be left behind at the apartment (TR 38, 41, 56).

⁶ No claim for damages was made for the loss of the apartment and utilities.

13. The complainant after being terminated applied for and received state unemployment compensation for six (6) months. The unemployment compensation benefit provided to the complainant was \$44.00 per week after federal taxes of \$5.00 and state taxes of \$2.00 were withheld⁷ (TR 39).
14. The complainant on April 16, 2008, as a consequence of the injuries sustained while working on the respondent's pool, applied for and was granted social security disability benefits on September 1, 2009. The monthly benefit was \$675.00 (TR 40, see also exhibit to complainant's brief).
15. The complainant on November 1, 2009 along with receiving his monthly social security disability benefit, received \$3,422.00 identified as an underpayment (complainant's brief).
16. The complainant as a consequence of the respondent terminating his employment and forcing him to remove himself from the apartment and live in a shelter, developed depression requiring him to take three medications. This condition commenced while he was living at the shelter (TR 42, 43).
17. The complainant's depression requires that he take three (3) medications. One medication to relax, another helps him sleep and the third is due to his hearing voices (TR 43).

⁷ It should be noted that the complainant testified that he received "around \$92.00.00 per week in unemployment benefits this testimony differs with a Connecticut Department of Labor payment history attached to the complainant's post hearing brief.

18. The complainant prior to going to work for the respondent had no mental health issues requiring medical attention (TR 45).
19. The complainant at the time of his termination from the respondent owned a van. This van was lost as a consequence of his termination and being without resources forcing the complainant to use a bicycle for transportation (TR 45, 46).
20. The complainant while living at the shelter was required to be hospitalized for 24 hours (TR 44).
21. As a consequence of the injuries to his back sustained while working on the pool project for the respondent the complainant has had to go to the emergency room a minimum of five times (¶ 13 of the complaint).
22. The complainant as a consequence of the injuries he suffered in early May 2007 had to undergo two surgical procedures (TR 46-48).
23. On January 29, 2010 the office of public hearings faxed to David Merenstein a copy of the reasonable cause finding consisting of 14 pages (CHRO Ex. 1).
24. Licedia Souchet employed by Attorney Michelle Holmes contacted David Merenstein, of Sy Management (respondent) on or about February 16, 2010 regarding scheduling issues in this matter. After numerous efforts to reach him via telephone and fax had failed, Mr. Merenstein told Ms. Souchet that Jose Crispin's matter wasn't important to him and that he had several other things to worry about and he didn't care for this file (TR 58-60, Compl. Ex. 2).

25. The respondent was sent and received all rulings and orders of this tribunal up to and including the entry of default on May 24, 2010 (TR 12-26, CHRO Ex. 4, 5, 6, 7).

26. The Notice of Default and continuance of the hearing in damages to August 31, 2010 was confirmed delivered on May 27, 2010 via the United States Postal Services Track and Confirm website (CHRO Ex. 7).

27. The complainant has brought no other legal proceedings against regarding the allegations contained in the pending complaint (TR 49).

Discussion

General Statutes § 46a-84(f) provides “If the respondent fails to file a written answer ... within the time limits established by regulation ... the presiding officer ... may enter an order of default and order such relief as is necessary to eliminate the discriminatory practice and make the complainant whole.” Section 46a-54-86a of the Regulation of Connecticut State Agencies requires the respondent to file its answer to the complaint not later than fifteen days after it receives the hearing notice. Additionally § 46a-54-88a of the Regulations of Connecticut State Agencies authorizes the presiding officer to enter an order of default against a respondent who fails to file a written answer as provided for in § 46a-54-86a or fails to appear at a lawfully noticed conference or hearing. In the instant matter the respondent failed to file a written answer and failed to appear at both a properly noticed hearing conference on February 16, 2010 and a properly noticed settlement conference on April 6, 2010.

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 respondent has not only failed to appear, it has also failed to respond to the allegations brought by the complainant and are deemed admitted without the need of further proof (see § 46a-54-88a(b) of the Regulations of Connecticut State Agencies). Liability has been determined pursuant to the order of default and damages shall be awarded.

Damages

Liability having been determined there remains the assessment of damages based on the evidence presented. In the present matter, the complainant is requesting damages for his lost wages, emotional distress and attorney's fees. 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).

Lost Wages

“Back pay, the most common form of relief, is specifically authorized by General Statutes § 46a-86 (b). Back pay awards, which ordinarily run out from the date of

termination to the date of judgment, compensate for earnings lost because of the employer's discriminatory actions." *Commission on Human Rights ex rel. Jennifer Taranto v. Big Enough, Inc.* #0420316 (June 30, 2006) 2006 WL 4753476.

As has been found the complainant commenced his employment with respondent on or about July 26, 2006 earning \$400.00 per week plus an apartment and utilities. The respondent on May 13, 2007 terminated the complainant and he now requests an award for back pay from the date of his termination until the date he was approved for social security disability benefits (September 1, 2009). The complainant in his post hearing brief calculates his lost wages as follows; 2007, \$12,000.00; 2008, \$20,800.00; and in 2009, \$12,800.00 totaling 45,000.00. From this the complainant deducted his unemployment benefits he received which totaled \$1,716.00. This figure (\$1,716.00) was found by multiplying the net weekly benefit of \$44.00 per week by the number of weeks the complainant received benefits (39 weeks). After deducting the amounts attributable to unemployment benefits the claimed amount of lost wages is \$43,884.00.

Typically at this point the calculations provided by the complainant along with his testimony would be sufficient to make an award for the sum requested. However in the printout provided relating to social security benefits, it's shown that the complainant in November 2009 received \$3,422.00 plus his monthly disability

benefit of \$674.00. This sum must be accounted for and used to mitigate the complainant's damages. As such this amount will be deducted from the \$43,884.00 calculation of lost wages resulting in actual lost wages of \$40,462.00.

“In an employment discrimination case such as this, the complainant has a duty to mitigate [his] damages by using reasonable diligence to find other suitable employment. *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); see also General Statutes § 46a-86 (b), which requires this tribunal to deduct from any back pay award “amounts which could have been earned with reasonable diligence.” To satisfy her duty, the complainant need not go into another line of work, accept a demotion, or take a demeaning position. *Dailey v. Societe Generale*, 108 F.3d 451, 456 (2nd Cir 1997).

Notwithstanding the complainant's duty to mitigate, it is the respondent who bears the evidentiary burden of demonstrating that the complainant has failed to satisfy this duty. *Dailey v. Societe Generale*, supra, 108 F.3d 456. 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). The respondent, by virtue of its default, has obviously not met its burden in this case.” *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough*, CHRO No. 0470316 (June 30, 2006) 2006 WL.”

I therefore find the complainant has satisfied his obligation and duty to mitigate his damages.

Emotional Distress

The complainant in addition to lost wages also seeks emotional distress damages in the amount of \$150,000.00

“An award of emotional distress damages is authorized by § 46a-86 © for a violation of § 46a-58 (a) through a violation of federal law, Title VII. See *Commission on Human Rights and Opportunities ex rel. Crebase v. Procter & Gamble Pharmaceuticals*, CHRO No. 0330171, pp. 69-70 (July 12, 2006). Section 46a-58 (a) provides, it shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, and other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or to the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability.” *Commission on Human Rights and Opportunities ex rel Correa v. La Casona Restaurant*, CHRO No. 071004 (April 28, 2008) 2008 WL 7211987.”

“In order to determine the amount of emotional distress damages, the following criteria are considered. “First, the most important factor of such damages is the subjective internal emotional reaction of the [complainant] to the discriminatory experience which [she] has undergone ... and whether the reaction was intense, prolonged and understandable.... Second, is whether the discrimination occurred in front of other people.... For this we must consider if the discriminatory action was in public and in the view of earshot of other persons

which would cause a more intense feeling of humiliation and embarrassment. The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant.... In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.... It is important to also consider further factors that exacerbate the emotional distress suffered by the [complainant].... These further factors are consequences arising from the discrimination.” (Citations omitted; internal quotation marks omitted.” *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzill*, CHRO No. 9859195, pp. 9-10 (January 14, 2000) citing *Commission on Human Rights and Opportunities ex rel. Donna Harrison v. John Greco*, CHRO 7930433 (June 3, 1985); also see *Commission on Human Rights and Opportunities ex rel. Douglas Peoples v. Estate of Eva Belinsky*, Superior court, judicial district of Stamford-Norwalk at Norwalk, Docket No. CVNO880601209 (Nov. 8, 1988); *Commission on Human Rights and Opportunities ex rel. Crebase v. Procter & Gamble Pharmaceuticals*, supra, CHRO No. 0330171.” *Id* at 15.

On May 13, 2007, as a result of having suffered significant bodily injuries which eventually lead to two surgeries, coupled with the fact that he was black, from Puerto Rico and 55 years old, the complainant was fired from his job. While the complainant testified the respondent at the time of termination told him that he was being terminated for stealing, there was never an answer filed. As a consequence of the default having been entered liability has been established.

“When discriminatory actions occur in front of other people, the victim may be further humiliated and thus deserving of a higher award for emotional distress. Indeed, this was a critical factor justifying relatively large awards in cases such as *Commission ex rel. Thomas v. Mills*, supra, CHRO No. 9510408 and *Commission on Human Rights and Opportunities ex rel. Cohen v. Menillo*, CHRO No. 9420047 (June 21, 1995). Conversely, the absence of a public display of discrimination weighs against a substantial award. *Commission ex rel. Peoples v. Belinsky*, supra, 1988 WL 492460 (the absence of such public display led to an award \$1500 lower than the \$5,000 requested); *Commission on Human Rights and Opportunities ex McNeal-Morris v. Gnat*, CHRO No. 9950108 (January 4, 2000).” *Commission on Human Rights ex rel Taranto v. Big Enough Inc.*, CHRO No. 0420316 (June 30, 2006) 2006 WL 4753476.

The record of this matter contains no evidence that anyone other than the complainant was present when the respondent terminated his employment and required that he immediately vacate his apartment. This termination was preceded by the respondent getting mad after being told by the complainant that he had been injured on the job and that his injuries required him to seek medical attention at the emergency room.

The record further offers no evidence that anyone was present when the complainant was discriminated against in his job assignments. While the lack of

witnesses to the statements and actions of the respondent could justify the awarding a lower amount for emotional distress such is not the case when the two remaining components (subjective internal emotional reaction and the degree of offensiveness of the discrimination and its impact on the complainant) are reviewed.

In considering the internal emotional reaction on the complainant, the several pages of testimony of the complainant on this, speaks volumes. The complainant, as a result of the illegal discriminatory conduct of the respondent developed depression to a degree that he sought help and continues to be seen at the psychiatric clinic at Waterbury Hospital. Furthermore, the complainant's depression at one point required that he be admitted to the hospital for 24 hours. As a further consequence of his depression the complainant was and continues to be on three medications, one that relaxes him; one that helps him sleep; and one because he hears voices.

The complainant's mental state post termination needs to be compared to that prior to his termination. At that point he was not seeing any mental health professional and had never seen a mental health professional. In fact the complainant was very clear that his mental health issues commenced when he was fired by the respondent.

As to the impact on the complainant this too is as devastating as the mental health issues the complainant developed and continues to deal with. Aside from losing his job, he lost his home as well. Furthermore, as a consequence of having no where to go he lost his personal possessions and was forced to seek housing in a shelter. The complainant lived at this shelter for approximately one year. During this time he lost his van, the consequence being he then resorted to using a bicycle for transportation.

To his credit the complainant sought both Section 8 assistance for his housing and social security disability due to his inability to work. Both were eventually approved. The consequences suffered by the complainant were at a minimum severe. Of the cases that I have heard involving emotional distress none were so profound in the repercussions as those inflicted on this complainant.

In the final analysis medical testimony would have been preferable on the issue of emotional distress and impact on the complainant that the respondent's actions caused. However, "a complainant need not present medical testimony, and in fact, [his] own testimony may suffice." *Commission on Human Rights and Opportunities ex rel. doe v. Claywell Electric*, CHRO No. 0510199 (December 9, 2008) 2008 WL 5455390.

The respondent's actions most certainly warrant damages for the emotional distress suffered by the complainant. In light of the foregoing I find an emotional distress award of \$80,000.00 to be fair and reasonable.

Pre-judgment Interest

The commission seeks an award of pre-judgment interest on damages awarded for lost wages.

“An award of pre-judgment interest is an appropriate means of fully restoring the complainant to the economic position she would have been in but for her termination. *Gierlinger v. Gleason*, 160 F. 3d 858, 873 (2nd Cir. 1998); *Thames Talent, Ltd. v. Commission on Human Rights and Opportunities*, 265 Conn. 127, 143-44 (2003); *Silhouette Optical v. Commission*, supra, 10 Conn. L. Rptr. No. 19, 599. A meaningful award must include the interest that the complainant would have earned had [he] not been deprived of [his] salary. By the same token, the respondent should not be permitted to enjoy the interest earned on the money it retained because of its unlawful act. *Donovan v. Sovereign Security, Ltd.*, 726 F.2d 55, 58 (2nd Cir. 1984). As stated by the Second Circuit Court of Appeals, it is “ordinarily an abuse of discretion not to include pre-judgment interest on a back pay award.” *Saulpaugh v. Monroe*, supra, 4 F.3d 145.

This tribunal, like state and federal courts, has the discretion to choose a pre-judgment interest calculation best designed to make the complainant whole. *Silhouette Optical v. Commission*, supra, 10 Conn. L. Rptr., 599 ... Moreover, the interest should be compounded, with interest accruing in one year intervals bearing annual interest thereafter. *Saulpaugh v. Monroe*, supra, 4 F.3d 145; *Silhouette Optical*, supra.” *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough, Inc.*, supra at p. 15 2006 WL 4753476.

The commission requests a pre-judgment interest rate of 10% per annum. Under § 37-3(a) a court may award pre-judgment interest up to 10% per year “for the detention of money after it becomes payable.” This 10% rate of interest is “not a fixed rate, but the maximum rate of interest that the court can, in its discretion, award.” *Nolan v. City of Milford*, 86 Conn. App. 817 (2005).

Using the discretion that the statute affords me and mindful of the economic times and the low interest rates that have been offered from 2007 to the present I will make as part of my award pre-judgment interest on the complainant’s lost wages at a rate of 5%. This pre-judgment interest equals \$1,885.00.

Post-judgment Interest

The commission on behalf of the complainant also seeks an award of post-judgment interest at a rate of ten percent per year. 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 employee should not be deprived of the true value of the money while the employer makes use of that money prior to payment. *Thames Talent v. Commission*, supra 265 Conn. 144-45. I therefore as part of may award order the respondent to pay post-judgment at the rate of 10% per annum.

Attorneys' Fees

The complainant included in his post-hearing brief a request for attorney's fees accompanied by a itemization of time spent on this matter by Attorney Michelle Holmes along with an affidavit by Attorney John Williams. Attorney Holmes' itemization reflects an hourly rate of \$300.00 with total hours spent on this matter being 38.4. This results in a fee request of \$11,480.00.

Attorney Williams' affidavit attests to the fact that Attorney Holmes' hourly rate is below the hourly rates (\$350.00 - \$500.00) that attorneys charge in representing individuals before the commission. He further attests that he is familiar with Attorney Holmes skills as a lawyer and holds her in high regard.

Having reviewed the itemization of hours spent along with rate requested, I find the request to be fair and reasonable and do make as a part of my award the sum of \$11,410.00 for attorneys' fees.

Order

1. The respondent shall cease and desist from any further discriminatory practices.
2. The respondent shall not retaliate against the complainant.
3. The respondent shall pay to the complainant \$40,462 for back pay plus pre-judgment interest at the rate of 5% equaling \$1885.00.

4. The respondent shall pay to the complainant \$80,000.00 in emotional distress damages.
5. The respondent shall pay to the complainant statutory post-judgment interest at a rate of 10% per annum from date of this decision.
6. The respondent shall post the commission's anti-discrimination poster in a conspicuous location visible to all employees.
7. The respondent shall pay to the complainant the sum of \$11,410.00 representing attorneys' fees.
8. The respondent shall pay to the commission \$1,716.00 which was paid to the complainant for unemployment compensation and the commission shall then transfer \$1,716.00 to the appropriate agency.

It is so ordered this 10th day of February 2011.

Thomas C. Austin, Jr.
Presiding Human Rights Referee

cc.

Jose Crispin
David Merenstine
Michelle Holmes, Esq.
David Kent, Esq.