
September 6, 2018

CHRO ex rel. Ashley Hogan v. H & H Promotions, Inc. CHRO No. 1720211 Fed No. 16a201700319.

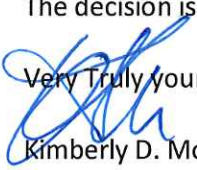
FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant and respondent's attorney.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

Ashley Hogan
Barnumashley55@gmail.com

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H & H Promotions, Inc.
55 Chapel Street
Bridgeport CT 06604
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Elissa T. Wright, Presiding Human Rights Referee

**State of Connecticut
Commission on Human Rights and Opportunities
Office of Public Hearings**

Commission on Human Rights and Opportunities
ex rel. Ashley Hogan, Complainant

CHRO Case No. 1720211

v.

H & H Promotions, LLC, Respondent

September 6, 2018

Final Decision
Hearing on Damages after the Entry of an Order of Default

I

Procedural Background

On November 8, 2016, the complainant, Ashley Hogan (complainant), whose address is 1873 Stratford Avenue, Bridgeport, Connecticut, filed an employment discrimination complaint (complaint) with the Connecticut Commission on Human Rights and Opportunities (commission) alleging that her employer, H & H Promotions, LLC (respondent), discriminated against her on the basis of her sex; that she was sexually harassed in the workplace, and that she was terminated in retaliation for complaining about the harassment in violation of General Statutes §§ 46a-60 (a) (1), 46a-60 (a) (4), and 46a-60 (a) (8),¹ and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, as enforced through General Statutes § 46a-58 (a). Respondent is a domestic limited liability company located at 55 Chapel Street, Bridgeport, Connecticut.

On November 23, 2016, the commission caused to be served notice of the complaint on the respondent by certified mail (Record Ex. 2). The respondent failed to answer the complaint. On January 24, 2017, Cheryl Sharp, deputy director of the commission, requested a default order from the commission's executive director, Tanya A. Hughes, because of the respondent's failure to answer the complaint (Record Ex. 3). On March 2, 2017, the commission sent a reminder letter to the respondent in which it advised the respondent that it would request the executive director to issue an order of default against it if it did not submit an answer to the complaint by March 24, 2017 (Record Ex. 4, p. 2). The letter was delivered to the respondent on March 6, 2017 (Record Ex. 4, p. 3). On April 17, 2017, pursuant to General Statutes § 46a-83 (l) and § 46a-83-54-46a of the Regulations of Connecticut State Agencies, the commission's executive director entered a default order against the respondent for failing to file an answer under oath (Record Ex. 5). The default order was mailed to the respondent and to the respondent's agent for service, via certified mail (Record Ex. 5, pp. 4-7). Both mailings were delivered on April 21, 2017 (Record Ex. 5, pp 8-11). On May 3, 2017, the Office of Public Hearings sent a notice of hearing on damages to the respondent

¹ Effective October 1, 2017, General Statutes §§ 46a-60 (a) (1), 46a-60 (a) (4), and 46a-60 (a) (8) were recodified as §§ 46a-60 (b) (1), 46a-60 (b) (4), and 46a-60 (b) (8). When the default order was issued, the statutory citations were §§ 46a-60 (a) (1), 46a-60 (a) (4), and 46a-60 (a) (8). As there were no substantive changes to these provisions, and to avoid confusion, the references herein will be to the citations in effect at the time of the complainant's filing. *Angelsea Productions, Inc., v. Commission on Human Rights & Opportunities*, 236 Conn. 681, 683, n. 1 (1996).

by certified mail (Record Ex. 8, pp. 2-4). The notice was delivered to the respondent on May 9, 2017 (Record Ex. pp. 6-7).

On July 20, 2017, a hearing on damages was held to determine the relief necessary to eliminate the discriminatory practice and make the complainant whole. General Statutes § 46a-83a (l); §§ 46a-54-46a (e) and 46a-54-78a (b) (5) of the Regulations of Connecticut State Agencies. The complainant and the commission appeared to prosecute the action. The respondent did not appear. The record closed on November 27, 2017, the due date for the filing of post-hearing briefs.

In a hearing on damages upon default, the hearing is limited to determining the relief necessary to eliminate the discriminatory practice and make the complainant whole. General Statutes § 46a-83 (l); Regulations of Connecticut State Agencies § 46a-54-88a (b). The default admits the material facts that constitute the cause of action and, in the present matter, conclusively determines the liability of the respondent for violations the complainant's right to a work environment free of sex discrimination under General Statutes § §46a-60a et seq. See, *Skyler Ltd. Partnership v. S.P. Douthett & Co.*, 18 Conn. 245, 253, cert. denied, 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); *Commission on Human Rights & Opportunities ex rel. Punzalan v. Zheng Trust LLC dba Koto Japanese Restaurant*, 2014 WL 5791595, *3, CHRO No. 1140112 (October 28, 2014). The entry of a default also operates as a confession by the respondent to the truth of the material facts alleged in the complaint. See *Murray v. Taylor*, 65 Conn. App. 300, 334-335, cert. denied, 258 Conn. 928 (2001).

As a result of the default, and based upon the pleadings, I conclude that the complainant was discriminated against on the basis of her sex, sexually harassed at work, and terminated from her employment in retaliation for complaining about the harassment in violation of General Statutes §§ 46a-60 (a) (1, 46a- 60 (a) (4), and 46a-60 (a) (8), 46a-58 (a) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, as enforced through General Statutes § 46a-58 (a). The respondent entity acted at all times through the action of its Chief Executive Officer Ryan Robinson (Robinson).

II

Findings of Fact

The material factual allegations contained in the affidavit of complaint are herewith deemed established as a result of the default. Additional facts are deemed to be established as a result of the complainant's testimony at the hearing on damages and the commission's and record exhibits admitted into evidence. These additional findings will be limited to those that add relevant detail to material facts having been pleaded in the complaint.

The relevant allegations of the complainant's discrimination claims, legally incorporated and accepted for the purpose of establishing liability, can be briefly summarized as follows. The respondent employs more than fifteen employees. The complainant, a female, began her employment with the respondent as a recruiter on September 23, 2016. The complainant's compensation was based on a commission and an hourly wage. On October 5, 2016, a male with the first name of Brandon sexually harassed the complainant. Brandon's unwanted sexual advances toward the complainant included touching the complainant's face, asking her for hugs, and telling the complainant that he wanted to make love to her. The following day, on October 6, 2016, the complainant reported the sexual harassment incident to Ryan

Robinson (Robinson), the respondent's CEO. On October 13, 2016, Robinson terminated the complainant's employment.

Additional Findings of Fact from the July 20, 2017 Public Hearing

After conducting a duly scheduled and noticed hearing, and based upon a review of the complaint, exhibits, and transcripts, and an assessment of the credibility of the witness, the following additional relevant facts are found.²

1. All procedural notices and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the matter and render a decision (Tr. 5, 10-13; Record Exs. 2-5, 8).
2. No documentary evidence was offered for the purpose of proving lost wages, including base salary and commissions earned at the time of complainant's discharge, in the form of paystubs, wage statements, W-2 forms, tax forms, or any other raw data, to document the complainant's losses.
3. The complainant testified without contradiction, and it is found, that the complainant earned \$10.10 per hour, worked thirty hours per week for the respondent (Tr. 30), and earned a base salary of \$303 per week.
4. The complainant testified without contradiction, and it is found, that in addition to her base salary, she also received a commission of \$50 for each new employee that she recruited to work for the respondent (Tr. 43).
5. Prior to the termination of the complainant's employment on October 13, 2016, her productivity in recruiting people to work for the respondent declined (Tr. 22-25), but no time frame for the decline was given over the course of the three weeks of her employment with the respondent.
6. The complainant worked with a co-employee, Brandon Pratt (Pratt), whom the complainant had hired for the position (Tr.18).
7. At the time of the incidents in question, the complainant was engaged to be married to Michael Barnum (Barnum), who is the father of the complainant's three children, a daughter and two sons, and with whom she had been having a relationship since 2011 (Tr. 42). At the time of the public hearing, the complainant's daughter was six years old, and her sons were ages five and two (Tr. 41-42).
8. Sometime on October 6, 2016, the day after the sexual harassment incident at work, Pratt "bumped into" the complainant's fiancé, Barnum, at a bus terminal and told Barnum that he (Pratt) and the complainant were going to "be together forever." Pratt also told Barnum "This is my girl. She's not your girl anymore." (Tr. 40). Pratt told Barnum that because he (Pratt) was African-American and Barnum was Caucasian, Pratt and the complainant belong together because of their common race (Tr. 41-42).
9. Also on October 6, 2016, Barnum confronted the complainant regarding the statements Pratt had made to Barnum at the bus station earlier that day. Barnum and the complainant became engaged in a heated argument over Pratt's statements to Barnum. As a result of this

² References to testimony in the transcript are designated as "Tr.", followed by the page number. The record exhibits are designated as 'Record Ex.', followed by the exhibit number. The commission's exhibits are designated as "CHRO Ex.", followed by the exhibit number.

- argument, Barnum broke off his engagement to the complainant and ended a five-year relationship with her (Tr. 41).
10. When the complainant complained to Robinson on October 6, 2016, about the October 5, 2016, incident involving Pratt's unwelcome sexual conduct toward, Robinson assured the complainant that he would speak to Pratt about the matter and would assign the complainant to work with someone other than Pratt (Tr. 21).
 11. The complainant testified that one other incident of harassment occurred at work after she complained to Robinson about the first incident. In the second incident, Pratt inappropriately touched her, embraced her, and tried to apologize to her (Tr. 20).
 12. The complainant testified that Pratt repeatedly telephoned her outside of work, and sent her text messages. The complainant felt uncomfortable, "claustrophobic, depressed, [and] engaged" by Pratt's conduct (Tr. 20).
 13. Prior to the break-up of their relationship, Barnum provided one half of the cost of supporting the complainant's apartment, where she lived with her three children (Tr. 28).
 14. On October 13, 2016, the respondent terminated the complainant's employment (Tr. 21, 22, 24; Record Ex. 1, p.2). At the time of her termination, the complainant had worked for the respondent for three weeks, from September 23, 2016 to October 13, 2016 (Record Ex. 1, p.2).
 15. The decline in the complainant's productivity in recruiting new employees was the reason that Robinson gave for terminating the complainant's employment (Tr. 25, 42).
 16. The complainant attributed the decline in her recruitment level to "a ton of stuff [she had been through] throughout these past couple of weeks," including stress from the sexual harassment of the complainant by Pratt, and because Barnum, the complainant's fiancé, had broken off their engagement following his interaction with Pratt at the bus station on October 6, 2016 (Tr. 23, 25, 43).
 17. Following termination of her engagement to Barnum and termination of her employment with the respondent, the complainant was unable to afford the rent for the three-bedroom apartment, where she then resided with her three children (Tr. 26). The complainant no longer resides with her children, who live with their aunt (Tr. 26). The complainant lives with her father (Tr. 25).
 18. The complainant's youngest son is autistic and experienced great difficulty with the separation from his mother (Tr. 27). The complainant's children cry frequently and tell the complainant that they miss her (Tr. 28-29). The complainant sees her children at the scheduled time from 9 a.m. to 10 p.m., five days a week (Tr. 27).
 19. The complainant feels "less of a mom," because she could not provide for her children (Tr. 27).
 20. The complainant testified that she suffers from post-partum depression and has been under the care of a mental health clinician since February 6, 2015 (Tr. 46-47).
 21. Prior to the termination of her engagement to Barnum, the termination of her employment with the respondent, and the subsequent separation from her children, the complainant received treatment from a mental health clinician once every two weeks (Tr. 29, 46). After the breakup of her engagement to marry Barnum, the complainant increased the frequency of this treatment. After the separation from her children, the complainant's treatment further increased to twice a week, for two hours per session (Tr. 29-30, 47-48).
 22. The complainant was unemployed for approximately forty weeks, from October 13, 2016, until on or about July 24, 2017 (Tr. 21, 31-32).

23. The complainant did not have any income during the period of her unemployment (Tr. 31). She did not collect unemployment compensation benefits because she had not worked the required six months or more. Id.
24. On October 27, 2016, the complainant enrolled in the Work Services Program of the Kennedy Center and worked with two different employment specialists. Between April and June of 2017, she met four times with her current employment specialist (CHRO Ex. 7).
25. The complainant met with a job coach at the Kennedy Center once every two weeks during the period of her unemployment (Tr. 34-36), and applied for about five jobs per week (Tr. 36), including for positions at Walmart, Stop & Shop, CVS, Walgreens, KFC, Burger King, American Steakhouse, Marshalls, and Target (Tr. 32-33).
26. The complainant did not secure employment until July of 2017, when she was hired to work as a third-shift manager at Walmart (Tr. 31, 32, 36). At the public hearing on July 20, 2017, the complainant testified that she was scheduled to begin training for her new job the following week. Id. In her new job, the complainant earns \$10.10 per hour, and a total of \$231.71 in gross salary per two-week pay period (Record Ex. 9).

III

Discussion and Conclusion

The respondent failed to file a written answer and an order of default was entered. General Statutes § 46a-83 (l) expressly authorizes the presiding Human Rights Referee “to enter, after notice and hearing, an order eliminating the discriminatory practice complained of and making the complainant whole. Pursuant to General Statutes §§ 46a-83 (l) and 46a-86, and §§ 46a-54-46a (e) and 46a-54-88a (b) of the regulations, the undersigned is authorized to award such relief. *State of Connecticut v. Commission on Human Rights & Opportunities*, 211 Conn. 464, 478 (1989).

Liability having been determined as a function of the default, all that remains is the assessment of damages based on the evidence presented. In the present matter, the complainant is requesting damages for lost wages and emotional distress.

IV

Damages

A

Lost Wages

Back pay relief is specifically authorized by General Statutes § 46a-86 (b). In the prayer for relief, the commission and the complainant are requesting lost wages of \$503 per week, based on the complainant’s base salary of \$303 per week plus an estimated \$200 in earned commissions per week, from her final pay period through the date of her new employment with Walmart. The commission and the complainant also are requesting diminished earnings in the amount of \$273 per week from the date of her employment with Walmart through the date of this decision.

It is unfortunate that no paystubs, earnings statements, W-2 forms, tax forms, or documentation verifying the amount of the complainant’s total compensation package, including base salary and actual commissions earned, were offered in evidence, either at the public hearing or with the commission’s post hearing brief, to document the claim for lost wages. Nevertheless, the complainant proffered uncontradicted testimony that she earned \$10.10 per hour and worked thirty hours per week, for a base salary of \$303 per week during the three weeks of her employ with the respondent. Her testimony, which

was consistent on this point, is sufficiently credible to provide a legal basis to support the claim for damages for lost earnings based on that portion of her compensation package attributable to her base salary of \$303 per week.

Back pay awards may include commissions as long as the complainant can prove, rather than merely speculate, that she would have earned the commissions absent the discriminatory act. *Commission on Human Rights & Opportunities ex rel. Malizia v. Thames Talent, Ltd.*, 2000 WL 35575650, *16 (June 30, 2000), appeal dismissed sub nom. *Talent v. Commission on Human Rights & Opportunities*, Superior Court, Docket No. CV 00504806S (April 27, 2001) (2001 WL 1132654), aff'd sub nom. *Thames Talent, Ltd. v. Commission on Human Rights & Opportunities*, 265 Conn. 127, 137 (2003). Not only were no earnings statements or other documentary evidence of the complainant's earnings from commissions submitted in evidence, but the complainant's testimony on the number of employees she recruited each week to work for the respondent was inconsistent and unconvincing. At one point, she testified that when she first started working for the respondent, on a good day she would recruit an average of four to five people per week, and received commissions of \$200 to \$250 per week (Tr. 45). In conflicting testimony, she testified that toward the end of her employ, the level dropped to around five to seven new recruits a day, from a previous high of recruiting between ten and twenty new employees a day (Tr. 23, 25). In view of the complainant's inconsistent testimony, and the absence of any documentary evidence in the form of wage statements, or other similar items, to allow a meaningful calculation of the complainant's actual loss in commissions she would have earned, the complainant and the commission did not provide sufficient credible evidence or a legal basis to support the claim for lost wages of \$200 per week in the form of commissions.

The complainant enrolled with the Work Services Program of the Kennedy Center, where she worked with two different employment specialists, or job coaches, starting on October 27, 2016, shortly after the termination of her employment and continuing until she secured employment with Walmart as a part-time manager in July of 2017. She applied for approximately five positions a week. The complainant testified that she had difficulty securing employment because of problems surrounding her background check and mental health condition (Tr. 36-37). I find that the complainant made a reasonable effort under the circumstances to mitigate damages and to find comparable work. As a result of the termination of her employment with the respondent, I am prepared to award lost wages for the loss of income from her base salary of \$303 per week for a period of 40 weeks, from the date of her termination until she secured employment with Walmart starting on or about July 24, 2017, and therefore set the award for such lost wages at twelve thousand, one hundred twenty dollars (\$12,120) (\$303 per week for 40 weeks).

The commission and the complainant also seek an award of lost wages for the diminution in the complainant's earnings based on her wages at Walmart. In her new job at Walmart, the complainant earned the same hourly wage of \$10.10 per hour that she had earned as her base salary during her employment with the respondent. The record shows that in her new job at Walmart, for the two-week pay period from September 11, 2017 to September 24, 2017, the complainant earned \$10.10 per hour, and \$231.70 in gross pay for a total of 21.95 hours of work during the two-week period (Record Ex. 9). The diminution in the total amount of the weekly wages the complainant earned at Walmart, compared to her weekly earnings from her base salary with the respondent, was due not to a difference in the hourly wage rate, but to a reduction in the number of hours she worked per week. The respondent is not responsible for the complainant's decision to work only ten and one-half hours per week in her new job, instead of thirty hours per week as she had worked for the respondent. Since her diminished earnings were the result of a reduction in the number of hours worked, and not to a reduction in her hourly wage

rate, I find no legal basis for awarding the complainant lost wages based on a diminution in her weekly salary.

In sum, based on the evidence, the complainant is awarded \$12,120 in lost wages for her base salary as a result of the termination of her employment on October 13, 2016, until she secured new employment at Walmart on or about July 24, 2017.

B

Emotional Distress

General Statutes § 46a-86 (c) specifically authorizes: "In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant."

The inclusion of a claim under General Statutes § 46a-58 (a) in the complaint affidavit allows me to convert federal claims (as were made here) into claims under Connecticut law, and to award damages for emotional distress pursuant to General Statutes § 46a-86 (c).³ See *Commission on Human Rights & Opportunities v. Board of Education of the Town of Cheshire*, 270 Conn. 665, 686 (2004); *Trimachi v. Connecticut Workers Compensation Committee*, Superior Court, Docket No. CV 97403037S (June 14, 2000) (2000 WL 872451); *Commission on Human Rights & Opportunities ex rel. Vazquez v. Conti*, 2011 WL 2662229, CHRO No 1050064 (June 27, 2011).

Awards of damages for emotional distress pursuant to our anti-discrimination statutes must be limited to compensatory, as opposed to punitive, amounts. *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350,366 (1986).

"In an action at law, the rule is that the entry of a default operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint, which are essential to entitle the plaintiff to some of the relief requested. It is not the equivalent of an admission of all of the facts pleaded. The limit of its effect is to preclude the defaulted defendant from making any further defense and to permit the entry of a judgment against him on the theory that he has admitted such of the facts alleged in the complaint as are essential to such a judgment. It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive." (Citations omitted; internal quotation marks omitted.) *Murray v. Taylor*, supra, 65 Conn. App. 334-335. Where, as in the present case, the liability of a defaulted respondent is established, the complainant's "burden at the hearing in damages is limited to proving that the amount of damages claimed is derived from the injuries suffered and is properly supported by the evidence." (Citation omitted.) *Id.*, 335. The complainant must provide evidence that the

³ The commission has no direct jurisdiction to enforce violations of federal law. Deprivations of rights secured or protected by federal antidiscrimination law constitute violations of General Statutes § 46a-58 (a), however, and the commission treats such deprivations as purely state law violations. *City of Shelton v. Collins*, 2014 WL 1032765 (D. Conn. March 14, 2014), *aff'd sub nom., City of Shelton v. Hughes*, 578 Fed. Appx. 53 (2d Cir. 2014).

respondent's unlawful conduct proximately caused her emotional distress injuries. *Id.*; *Commission on Human Rights & Opportunities ex. rel. Punzalan v. Zheng Trust, LLC, dba Koto Japanese Restaurant*, supra, 2014 WL 5791S, *5.

Damages for emotional distress must be supported by competent evidence of genuine injury, but medical evidence is not necessary. *Commission on Human Rights & Opportunities ex. rel. Taranto v. Big Enough, Inc.*, 2006 WL 4753475, *13, CHRO No. 0420316 (June 30, 2006). The complainant's testimony may be sufficient so long as she offers specific facts as to the nature of her claimed emotional distress and as to the causal connection to the employer's alleged violation. *Murray v. Taylor*, supra; *Commission on Human Rights & Opportunities ex. rel. Punzalan v. Zheng Trust, LLC, dba Koto Japanese Restaurant*, supra.

In the prayer for relief, the commission and the complainant are requesting compensatory damages for emotional distress in the amount of \$125,000 to compensate the complainant for the pain and suffering she experienced as a result of the respondent's discriminatory conduct and her unlawful termination.

As a threshold matter, there must be a showing that the respondent's discrimination based on sex, a hostile work environment, and retaliatory firing caused the complainant to suffer emotional harm. Three sources of emotional distress are evident.

The complainant experienced emotional distress as a result of the sexual harassment by Pratt in the workplace. The credible testimony of the complainant established that Pratt's unwelcomed sexual advances made her feel uncomfortable, claustrophobic, depressed, [and] engaged." She attributed the decline in her recruitment level to "a ton of stuff [she had been through] throughout these past couple of weeks," including stress from the sexual harassment by Pratt.

The respondent's unlawful termination of the complainant's employment on October 13, 2016, was a second source of distress. The attendant loss of income from the loss of her employment contributed to her inability to pay the rent on the three-bedroom apartment where she lived with her children, and to the separation from her children when she could no longer afford the apartment rent.

The breakup of her engagement to Barnum on October 6, 2016, was a third source of the complainant's emotional distress. That source of distress is not plausibly traceable to any unlawful employment practice of the respondent for the following reasons. On October 5, 2016, Pratt sexually harassed the complainant at work. On October 6, 2016, Pratt and Barnum "bumped into" one another at a bus station. In their conversation, Pratt told Barnum that the complainant was his [Pratt's] "girl;" that the complainant was not Barnum's "girl anymore;" and that Pratt and the complainant belong together because of their common race. From the testimony, it is not clear what the association was between Barnum and Pratt. Also on October 6, 2016, Barnum confronted the complainant regarding his conversation with Pratt; the complainant and Barnum argued; and Barnum broke off his engagement to the complainant. The complainant testified that Pratt's confrontation with Barnum at the bus station on October 6th caused the breakup of her engagement to Barnum, the father of her three children (Tr. 22, 41). The facts establish that it was also on October 6th that the complainant reported the October 5th incident of harassment to the respondent, through Robinson. The complainant testified that when she reported the incident to Robinson, he assured her that he would speak to Pratt about the matter and would assign the complainant to work with someone other than Pratt. Barnum paid one-half of the rent for the apartment where complainant lived with her children. Following the breakup of the engagement, when Barnum ceased to pay one-half of the rent, the complainant could no longer afford the apartment. The financial stress from

the breakup of her engagement, and from the termination of her employment, resulted in loss of her apartment and the separation from her children.

Although the sequence of events on October 6, 2016, is not clear, on that day the complainant reported the October 5th incident of harassment to the respondent. That same day, Pratt had the conversation with Barnum at the bus station. That night, the complainant and Barnum argued, and Barnum broke off his engagement to the complainant (Tr. 41). At the time of the bus-station conversation between Pratt and Barnum on October 6th, at best, the respondent employer had just been told about the harassment of the complainant in the workplace that had occurred the previous day, October 5th. It is reasonable to surmise that the complainant reported the harassment incident to the respondent during the working hours of the day on October 6th, and before her argument with Barnum on the night of October 6th. In her sworn testimony at the public hearing, she testified, though, that she reported the incident to the respondent because of the outcome of her argument with Barnum on the night of October 6th.⁴ In either case, the complainant failed to provide any convincing evidence of a causal relationship, or even a correlation, between, on the one hand, effects of the October 6th Pratt-Barnum encounter on the status of the complainant's engagement to Barnum, and, on the other hand, the incident of harassment, which occurred October 5th and which she reported to the respondent sometime on October 6th. While the aftershock of the encounter between Pratt and Barnum contributed greatly to the complainant's distress, the respondent employer, who learned on October 6th of the workplace harassment involving Pratt, is not responsible either for the conversation between Pratt and Barnum on October 6th, or for Barnum's subsequent termination of the engagement that same day. These events did not derive from the respondent's discriminatory conduct.

The respondent is liable on damages for the emotional distress that the complainant experienced as a result of harassment in the workplace and the wrongful termination of her employment. The criteria to be considered when awarding damages for emotional distress are: (1) most importantly, the complainant's subjective internal emotional reaction to the respondent's actions; (2) the public nature of the respondent's actions; (3) the degree of offensiveness of those actions; and (3) the impact of those actions on the complainant; *Commission on Human Rights & Opportunities ex rel. Peoples v. Belinsky*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CVNo8806-1209 (November 8, 1988) (1988 WL 492460); *Commission on Human Rights & Opportunities ex rel. Taranto v. Big Enough, Inc.*, supra, 2006 WL 4753475, *30, CHRO No. 0420316 (June 30, 2006); *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433, 15 (June 3, 1985). Applying these criteria, the complainant experienced a strong subjective internal reaction to the experience, necessitating an increase in the

⁴ The complainant's testimony suggests that she reported the harassment incident of October 5th to the respondent on October 6th after, and because of, the argument she had with her fiancé in which he broke their engagement (Tr. 41). When asked to elaborate on the contact between Brandon Pratt and her then fiancé Barnum, she testified:

Complainant: Basically, he said he bumped into him at the bus terminal.

Referee: Your fiancé, Michael?

Complainant: Yes, Michael Barnum stated that Brandon Pratt bumped into him at the bus terminal and aggressively told him that me and Brandon Pratt was going to be together forever. This is my girl. She's not your girl anymore.

Referee: And when was that?

Complainant: That was the day – the day that I reported that incident, that night we had that argument, so that all happened all in that situation.

Referee: October 6th?

Complainant: Yes. That's why I reported it. It got a little bit too ---

frequency of her mental health treatment with a clinician. Testimony of healthcare professionals, or relatives, friends and work associates could have provided insight into the severity of the complainant's emotional state that would have strengthened her claim for damages. The complainant lost her job and the financial security that a job provides in supporting a family. Her relationship with her children, and her ability to provide a home for them, was disrupted. The incidents of sexual harassment and the complainant's retaliatory discharge did not occur in public, in front of other people. The discriminatory workplace harassment occurred over a one-week period at the most.

Given the importance of the complainant's right to a workplace free of sexual harassment, the importance of her ability when subjected to a hostile work environment to come forward without fear of retaliation, and the substantial impact on her emotional and mental health, I conclude, based on the evidence presented, that an award of \$30,000 for the emotional distress suffered by the complainant as a result of the respondent's discriminatory practice is reasonable, proportionate, and appropriate.

C

Prejudgment and Postjudgment Interest

The complainant also is requesting both prejudgment and postjudgment interest on any award. General Statutes §§ 46a-86 (b) and 37-3a authorize the human rights referee to award prejudgment and postjudgment interest on the back-pay award, within the discretion of the human rights referee. *Thames Talent Ltd. v. Commission on Human Rights & Opportunities*, supra, 265 Conn. 142-44; *Silhouette Optical Ltd. v. Commission on Human Rights & Opportunities*, Superior Court, judicial district of Hartford, Docket No. 92-5205 90 (January 27, 1994) (Maloney, J.), 2008 WL 7211987, 3-4. The award of interest is a proper component of an award for back pay under § 46a-86 (b) to compensate a person victimized by discrimination who has been deprived of the use of money. *Thames Talent Ltd. v. Commission*, supra, 143-44. As part of the award, the respondent shall pay prejudgment interest on the lost wages award at the rate of five percent per annum, compounded annually, from October 13, 2016. The respondent shall pay postjudgment interest on the lost wages award at the rate of five percent per annum, compounded annually, from the date of this decision.


ORDER OF RELIEF

Therefore, based on the foregoing the following remedies are hereby Ordered:

1. The respondent shall cease and desist from all acts of discrimination prohibited under federal and state law and shall provide a nondiscriminatory work environment pursuant to federal and state fair employment practices laws.
2. The respondent shall not retaliate against the complainant.
3. The respondent shall pay to the complainant \$12,120 for lost wages calculated as follows: 40 weeks of base salary at \$303 per week = \$12,120. The 40 weeks covers the lost wages that the complainant could have earned from the date of her termination on October 13, 2016 through July 24, 2017.
4. The respondent shall pay to the complainant \$30,000 in emotional distress damages.
5. The respondent shall pay to the complainant statutory prejudgment interest on the lost wages award calculated at the rate of five percent per annum, compounded annually from October 13, 2016, until the date of this decision.

6. The respondent shall pay to the complainant statutory postjudgment interest on the lost wages award at the rate of five percent per annum, compounded annually, from the date of this decision.

It is so ordered this 6th day of September 2018.



Hon. Elissa T. Wright
Presiding Human Rights Referee

cc.

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