

Commission on Human Rights and	:
Opportunities ex rel.	:
LaToya Bentley-Meunier,	:
Complainant	: CHRO No. 1140322
	:
v.	:
	:
DEKK Group dba Dunkin Donuts,	:
Respondent	: April 11, 2012

FINAL DECISION AFTER HEARING IN DAMAGES

I. Procedural History

On March 28th 2011, Ms. LaToya Bentley-Meunier Complainant, (Complainant) whose address is 22B Marshall Street, North Grosvenordale, Connecticut, 06255, filed a complaint with the Connecticut Commission on Human Rights and Opportunities. (CHRO) Complainant alleged that the Respondent, DEKK, d/b/a Dunkin Donuts, (DD) whose address is 440 Riverside Drive, Thompson, CT 06277, discriminated against her due to her race (African-American) and color, when it failed to hire her on September 23, 2010. Complainant alleged that the respondent violated General Statutes §46a-60(a)(1), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, as amended and enforced under C.G.S.46a-58(a).

On April 15th 2011 a CHRO Regional Manager, James M. Flynn, sent notice to the respondent that a complaint was filed against it and attached a copy of the complaint to the notice letter. (C.Ex. 1). The notice also contained a clear warning indicating that a “**DEFAULT**” (emphasis added) may be entered against DD for failure to answer the

complaint. The respondent's manager, Luis Valejo, received the complaint and notice on April 20, 2011. (C. Ex. 4) Despite receiving the CHRO's notice of the complaint, respondent failed to answer or contact the CHRO in anyway. (C Exs.2-6) The CHRO filed a Motion for Default for failure of the respondent to answer the complaint on November 18, 2011. (C.Ex.7) The undersigned was designated as the presiding referee and a notice of a hearing in damages was sent to the parties on February 28, 2010 (C.Ex.9)

The hearing in damages took place on April 11, 2012. In addition to the undersigned, Attorney David Kent from the CHRO, the complainant, and her mother, Mrs. Helen Bentley were in attendance. The respondent did not attend the hearing, or acknowledge the proceeding.

II. Findings of Fact

In any hearing in damages upon default, the hearing is limited to the relief necessary to eliminate the discriminatory practice and make the complainant whole. After conducting the scheduled and noticed hearing and based upon the complaint, exhibits offered and introduced into the record, and testimony taken, the following relevant facts are found:

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.
2. The complainant is a member of one or more protected classes.

3. The Respondent employs more than fifteen (15) people.
4. Complainant responded to a sign in the respondent's window saying now hiring.
5. On or about September 23, 2010 complainant submitted an application for employment with respondent.
6. On or about September 30, 2010¹ complainant interviewed with the store manager for respondent, Luis Valejo and the Assistant Manager Lacey Ciper.
7. Complainant had previous experience working at a Dunkin Donuts, a Honey Dew coffee house and a Cumberland Farms where she prepared coffee.
8. Complainant was most recently employed as a nurse's assistant in a convalescent home.
9. Due to her asthmatic condition, complainant left the convalescent home when she was unable to lift patients as part of her duties.
10. The position with the respondent paid minimum wage, \$8.25 an hour.
11. The position was a part-time position averaging 15 hours per week.
12. When complainant interviewed for the job at Dunkin Donuts she wore a professional looking skirt, blouse and shoes.

¹ There is a conflict between the complainant (C ¶ 3) and testimony (Tr.15) provided at the hearing regarding the actual interview date. The date contained in the complaint, October 1, 2010 is used as it was submitted closer in time to the discriminatory act and September 23, 2010 was given as the date complainant saw the help wanted advertisement.

13. During the interview complainant was asked if she had transportation and she responded that she did have a car.
14. The Assistant Manager indicated that the respondent would prefer the applicant to have a car, but it was not an absolute necessity.
15. Complainant was also asked if she had any children², she replied she did not.
16. Complainant was informed that she would be contacted on the following day regarding her potential employment.
17. On September 30, 2010 another candidate, a white female, was also interviewed and hired immediately following her interview instead of complainant.
18. The other candidate, known to the complainant, was observed wearing a stained tee-shirt and jeans to the interview.
19. The other candidate did not have her own transportation.
20. The other candidate previously worked at a Dunkin Donuts in another location.
21. The complainant stated that the competing candidate walked off her job at the other Dunkin Donuts location after a fight with her manager.

² This question is not permissible under § 46a-60(a)(9), which states in relevant part that it shall be a violation of law, “[f]or an employer, by the employer or the employer’s agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to request or require information from an employee, person seeking employment or member relating to the individual’s child-bearing age or plans, pregnancy, function of the individual’s reproductive system, use of birth control methods... .”

22. On October 1, 2010, Complainant confirmed by telephone that she had not been selected for the position.
23. Complainant called the respondents to speak with the manager; however the manager refused to come to the phone.
24. On or about October 1, 2010, after the phone call, complainant went in-person to see the respondent's manager.
25. When complainant asked why she was not hired, the manager replied, "Because your appearance was not good." (C.¶ 16)
26. The manager then went on to say, "I'm sorry I didn't mean that." Id.
27. The manager's statement regarding the complaint's appearance was said in front of the assistant manager and others at the front counter.
28. Complainant had friends working at the front counter.
29. Complainant inquired further about the second position at the respondent's other location.
30. Complainant was not offered the second position.
31. Immediately following the complainant's discussion with the respondent she became upset, embarrassed, and humiliated as a result of his statements.
32. The complainant had not previously experienced discrimination prior to this job interview.

33. After the failed interview, complainant testified that she became very depressed.
34. Complainant did not get out of bed, neglected her hygiene, binged on food and cried continually for several weeks.
35. Complainant experienced a large weight gain.
36. Complainant had a severe onset of asthma due to her emotional upset.
37. Complainant suffered from chronic asthma and has been treated for that condition since she was a child.
38. Complainant contacted her physician, Dr. Walter Goula on or about October 2nd, 2010 with regard to her asthma attack.
39. Dr. Goula treated complainant asthma with prednisone.
40. Approximately a week later complainant had still not recovered from her despondency and she contacted her physician, Dr. Goula again regarding her depression.
41. The physician prescribed two different anti-depressants before settling on the last prescription.
42. Complainant conducted reasonable job searches on the internet and applied to several positions without any success.

43. Complainant did not apply in person at first because she was still too depressed to face being rejected in person and being discriminated against again.

44. Approximately three months later Complainant applied at a local Subway.

45. Complainant and two other applicants were given a trial employment for a total of 6 hours, two hours a day for three days.

46. Complainant made \$50.00 for her 6 hours of work.

47. At the end of the trial period complainant was not chosen for that position.

48. At the time of this hearing, the complainant is still unemployed and continues in her job search.

III. Standard

Upon the entry of a default order by the executive director or designee, the presiding officer is authorized to issue an order eliminating the discriminatory practice complained of and making the complainant whole. General Statutes § 46a-83(i); Regs., Conn. State Agencies § 46a-54-95(d). Allegations in the complaint that are not answered by the respondent are deemed admitted without the need for further proof. Regs., Conn. State Agencies § 46a-54-94(b).

IV. Damages

According to General Statutes § 46a-84 (f), If the respondent fails to file a written answer prior to the hearing 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. *Commission on Human Rights and Opportunities, ex rel. Jennifer Taranto*, CHRO No. 0420316 (June 30,2006).

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. 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.*, CHRO No. 9810387 at 17 (citations omitted).

A. Back Pay

The complainant, unfortunately, has little documentary evidence of what she would be entitled to for back pay as she was never actually hired. Therefore, I must rely on her testimony, that this was a minimum wage position and she would have been scheduled for approximately three shifts per week averaging 15 hours.³ Complainant also testified that she would have received fifteen dollars

³ Complainant testified that she would have worked between 10 and 20 hours per week (Tr. 29, Exs.8-9)

(\$15) to thirty dollars (\$30) per shift in tips. The testimony given by the complainant was credible, although it lacked precise calculations. “Lack of precision in the calculations, however, need not bar recovery of back pay, and ambiguities should be resolved in favor of the former employee.” *Id.*

The complainant seeks back pay damages totaling \$15,441.25 for the period from September 23, 2010 through April 11, 2012 (81 weeks). This figure includes \$123.75 per week as salary and \$22.50 per shift from tips.⁴ The salary for the position would have paid \$8.25 an hour, per the current minimum wage law. Therefore, it is more than reasonable to use this number as a salary figure. The stated average of 15 hours a week was partly determined on the basis of the current job holder’s schedule. This figure also has a credible foundation.

However, the complainant’s calculation of damages includes potential tips. The figure was based on the average of tips received per shift for the current employees. Tips tend to be awarded on a subjective basis and very dependent on the number of customers in a given shift. This calculation is more speculative, nevertheless it is reasonable that some amount of tip money would be earned. An award for tips will be based on the lower end of the spectrum of complainant’s request at a rate of \$15 per shift.

The complainant had a duty to use reasonable efforts to find other employment to mitigate back pay damages. *Reed v. A.W. Lawrence & Co.*, 95

⁴ Complainant testified that the average of tips potentially received ranged from \$15 to \$30 per hour. (Tr. 29 Exs. 3-4)

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). “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). As in *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough*, CHRO No. 0470316, “the respondent, by virtue of its default, has obviously not met its burden in this case.” The same is true in this case as well. Moreover, complainant testified that she diligently searched the internet and applied to various positions. (Tr. 25) The complainant’s testimony was sufficient to show reasonable mitigation efforts.

The complainant earned Fifty dollars (\$50) from Subway during an on the job interview process with two other applicants. (Tr. 26) She did not ultimately get the position at Subway nevertheless; this sum will be subtracted from her back pay award.

B. Pre- judgment and Post-judgment Interest

The complainant also seeks an award of pre-judgment and post-judgment interest at a rate of ten percent compounded per annum. Pre-judgment and 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 person should not be deprived of the true value of the money. *Thames Talent v. Commission*, supra 265 Conn. 144-45. Therefore, as part of the award the respondent shall pay pre-judgment and post-judgment at the rate of 10% compounded per annum.

C. Emotional Distress

This tribunal has the authority to award the remedies available under § 46a-86(c) which include emotional distress damages for violations of § 46a-58 (a).

Commission Human Rights & Opportunities v. Board of Education of the Town of Cheshire, 270 Conn. 665 (2004) The statutory section upon which the commission's authority to adjudicate a "...claim of racial discrimination rests is § 46a-58 (a).

Section 46a-58 (a) provides in relevant part: "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of ... race. This is broad and inclusive language, and strongly suggests a reference to the broad and inclusive panoply of rights, privileges and immunities, derived from a broad and inclusive set of sources, namely, any federal or state laws, or either or both constitutions. (Internal quotations omitted) *Commission Human Rights & Opportunities v. Board of Education of the Town of Cheshire*, 270 Conn. 665 (2004)

The Cheshire court then turned “... to the language of § 46a-86 (c), which relates to the damages that a complainant may suffer. We conclude that the language of that statute strongly suggests that compensatory personal damages may be awarded upon a finding of a discriminatory practice in violation of § 46a-58 (a). The pertinent language of § 46a-86 (c) provides: “In addition to any other action taken hereunder, upon a finding of a discriminatory practice prohibited by §46a-58 ... the presiding officer [of the commission] shall determine the damage suffered by the complainant” Thus, the language of § 46a-86(c) specifically refers back to § 46a-58 as one of the statutory bases for an award of “damage suffered by the complainant”; and the broad and inclusive language of §46a-58 (a), with its references to such a broad range of constitutional rights, suggests that an award of compensatory damages for a violation thereof need not necessarily be confined to easily quantifiable monetary losses. *Id*

In this instance the complaint alleges a breach of federal law under Title VII. “General Statutes § 46a-58 (a) has expressly converted a violation of federal anti-discrimination laws into a violation of Connecticut antidiscrimination laws.” *Trimachi v. Connecticut Workers Compensation Committee*, 2000 WL 872451 (Conn. Super June 14, 2000) (No. CV 970403037S). The Tribunal’s analysis on this issue has been thorough and consistent since the decision in *Trimachi* in 2000, and in the Connecticut Supreme Court decision in *Cheshire* in 2004.

“The issue of awarding emotional distress damages in employment claims arising from Title VII violations [a breach of federal law] has been fully analyzed in prior decisions and rulings. See *Commission on Human Rights & Opportunities*

ex rel. John Crebase v. Proctor and Gamble Pharmaceuticals, Inc. CHRO No. 0330171, pp. 69-71 (July 12, 2006). Emotional distress damages pursuant to § 46a-86 (c) may be awarded for violations of § 46a-58 (a) as was ordered in *Crebase*, supra. Subsequently, this tribunal continued to decide, in the affirmative, the issue of awarding emotional distress damages for violations of Title VII employment claims that are covered under § 46a-58 (a). As a result, emotional distress damages have been awarded for violations of Title VII as enforced through § 46a-58 (a) in *Commission on Human Rights & Opportunities ex rel. Randall L. Saex v. Wireless Retail, Inc.*, CHRO NO. 0410175, July 26, 2006; *Commission on Human Rights & Opportunities ex rel. Rosa DiMicco v. Neil Roberts, Inc.*, CHRO No. 0420438, September 12, 2006; *Commission on Human Rights & Opportunities ex rel. Correa v. La Casona Restaurant*, CHRO No. 0710004, April 28, 2008; *Commission on Human Rights & Opportunities ex rel. Jane Doe v. Claywell Electronics*, CHRO No. 0510199, December 9, 2008; and *Commission on Human Rights & Opportunities ex rel. Jennifer Swindell v. Lighthouse Inn*, CHRO NO. 0840137, January 29, 2009.

Commission on Human Rights and Opportunities ex rel. Samuel Braffith, CHRO NO. 0540183 November 13, 2009.

Moreover, General Statute §46a-58(a) does not refer to a specific federal statute; the only requirement is that violation must be for discrimination. While not present in this case, there are other federal actions for discrimination such as section 101 of the Civil Rights Act of 1991, 42 USC §1981,⁵ and also 42 USC §1983 for discrimination actions under “the color of law” that seek to prevent discrimination that have been determined to fall under the protected cause of action shelter afforded by General

⁵ Section 1981 provides, in pertinent part, that “[a]ll persons within the jurisdiction of the United States shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens” 42 U.S.C. § 1981(a). This section thus outlaws discrimination with respect to the enjoyment of benefits, privileges, terms, and **conditions of** a contractual relationship, such as **employment**, (emphasis added) see, e.g., *Whidbee v. Garzarelli Food Specialties, Inc.*, 223 F.3d 62, 68-69 (2d Cir.2000), and is applicable to a plaintiff complaining of **discrimination** during an **employment** period of probation, see generally *Grillo v. New York City Transit Authority*, 291 F.3d 231, 233-35 (2d Cir.2002) (per curiam). *Patterson v. County of Oneida, N.Y.* 375 F.3d 206 (2004).

Statute §46a-58(a).⁶ Cheshire makes clear that the remedies available in General Statute §46a-86(c) are applicable to violations of General Statute §46a-58(a). The Cheshire Court's logic in acknowledging that the commission's jurisdiction included violations of other state statutes⁶ pertaining to the deprivation of any rights, privileges or immunities as secured by...the laws of...the United States on account of religion, national origin, alienage, color, race, sexual orientation, blindness or physical disability discrimination," General Statute §46a-58(a), is applicable to an analogous violation of any federal laws. Based on the plain meaning of the statute⁷, it is reasonable to conclude that the moment that a violation of qualifying federal law occurs, it simultaneously transforms to a violation of 46a-58(a). Therefore, emotional damages are available to complainant.

Emotional damages will be awarded if the complainant has met the necessary elements of an emotional distress claim. "Criteria to be considered in awarding emotional distress damages include: (1) the subjective internal emotional reaction of the complainant to the discriminatory experience, (2) whether the discrimination occurred in front of other people, (3) the degree of offensiveness of the discrimination, and (4) the impact on the complainant. *Harrison v. Greco*, supra, CHRO Case No. 7930433, pp. 7-8; *CHRO ex rel. Lynne Thomas v. Samuel Mills*, CHRO Case No. 9510408, p. 7

⁶ In *CHRO v. Board of Education of the Town of Cheshire*, 270 Conn. 665 (2004), the court included violations of general statutes covering discrimination in state education as acts of discrimination under General Statutes §46a-58.

⁷ See General Statute §1-2z "**Plain Meaning Rule** The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

(August 5, 1998)” *Commission on Human Rights and Opportunities ex rel. Douglas Peoples v. Estate of Eva Belinsky*, 1988 WL 492460 *5 (Conn. Super.)

The test for emotional distress damages involves a subjective and objective analysis. The subjective component is measured by the complainant’s feelings and reaction to the discriminatory act. The complainant testified that she suffered from intense feelings of humiliation, embarrassment, and shame. Further, she stated that her confidence was completely undermined as result of the respondent’s behavior. Complainant also testified that she lived in a predominately white area and that she never encountered a problem with discrimination before. (Tr. 18-19)⁸ This experience was crushing for her because she changed her perception of herself in relation to environment. She testified that she was constantly worrying if other prospective employers were judging her based on her skin color. (Tr. 19) The complainant’s testimony that she was devastated as a result of the manager’s treatment was compelling, understandable and credible.

Complainant testified that the manager’s statement was heard by the assistant manager, Lacy Ciper who was also a personal acquaintance of the complainant, as well as being within hearing range of those standing at the front counter. Complainant testified that that the manager said, “I wasn’t basically good enough and it was my appearance.” (Tr. 17) It was also testified to that the manager also said, “I shouldn’t

⁸According to Sperling’s best places as of 2011 North Grosvenordale CT with has a population of 4,869, 98.29% of people are white, 0.47% are black, 0.16% are Asian, 0.25% are Native American, and 0.83% claim 'Other'.

have said that.” “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. 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).

The statements made to Ms. Bentley--Meunier would be offensive to anyone. Given the testimony by the complaint that she was appropriately dressed and groomed, that she had, at minimum, equal qualifications if not more experience, and had a car, it is very reasonable to conclude that the underlying tone of the manager’s statement was motivated by prejudice and discriminatory intent. The fact that this demeaning comment was stated in front of other employees, some of who were friends of the complainant, and within hearing range of a predominantly white clientele, made the statement more reprehensible. Moreover, complainant had been a regular customer of the respondent at that location and was acquainted with most of the employees and other customers.

The complaint testified that after the events of the day she took to her bed for weeks and was unable to function. She suffered an acute asthma attack requiring a prescription by a physician and further medication for the deep depression that was catalyzed by the events. Mrs. Bentley testified that defendant’s hygiene and eating habits were negatively affected, first not eating, then binging. At one point Mrs. Bentley was so concerned for her daughter’s depressed mental state that she had family stay with her daughter through-out the day while complainant’s husband was at work. The

testimony regarding the impact of the event on the complainant was emotionally compelling and sincere.

The complaint consulted a physician and was prescribed medication for her asthma and depression. Her physician continued to monitor her medication and strongly suggested that she get further counseling. Complainant testified that she would be following through on that suggestion and that she is still under her physician's care.

The complainant's testimony established facts that meet the threshold elements for an award of emotional damages. The facts and testimony of the complainant establish that she was emotionally devastated and unable to care about the most basic aspects of personal hygiene. She slept almost continually, unable to get out of bed. There was significant corroborating testimony given by the complainant's mother. Based on surveys of previous decisions by this tribunal, the type of harm suffered by the complainant and the credibility of the complainant this tribunal awards emotional distress damages.

Therefore, the following remedies are so ordered.

V. 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 **\$17,619.90** for back pay.

Calculated as follows:

- a. 81 weeks of salary averaging \$123.75 = 14,193.65 plus
- b. 81 weeks of tips averaging \$45 per week = \$3,645
- c. minus \$50 dollars earned from Subway.

The 80 weeks covers the time period beginning on October 1, 2010 through April 11, 21012,

4. The respondent shall **pay** to the complainant **\$7500** in emotional distress **damages**.

5. The respondent shall **pay** to the complainant statutory pre-judgment interest at a rate of 10% compounded per annum from September 23, 20 until the date of this decision.

6. The respondent shall **pay** to the complainant statutory post-judgment interest at a rate of 10% per annum from date of this decision.

7. The respondent shall post the commission's anti-**discrimination** poster in a conspicuous location visible to all employees.

