

State of Connecticut

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September 15, 2014

Saeed Mohammed
2625 Park Ave.
Bridgeport, CT 06604

Norwalk Economic Opportunity Now, Inc.
98 South Main Street
Norwalk, CT 06854

Yvonne Duncan, Esq.
CHRO
25 Sigourney St., 7th fl.
Hartford, CT 06106


RE: CHRO ex rel. Saeed Mohammed v. Norwalk Economic Opportunity Now Inc. CHRO No. 1420210; Fed. No. 16a201400347.

FINAL DECISION RE: HEARING IN DAMAGES

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 by certified mail, return receipt requested to the complainant and the respondent. The return post office receipt shall be proof of such service.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 0492 (S. Mohammed)

Certified No. 7014 0150 0001 0774 0508 (Norwalk Economic Opportunity Now, Inc.)

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and
Opportunities ex rel. Saeed Mohammed,
Complainant

CHRO No.1420210

v.

Norwalk Economic Opportunity Now, Inc.,
Respondent

September 15, 2014

**RULING
HEARING IN DAMAGES**

I.

PRELIMINARY STATEMENT AND PROCEDURE

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On December 30, 2013, Saeed Mohammed (complainant), whose address is 2625 Park Avenue, Apt 3G, Bridgeport, Connecticut, 06604, filed a complaint with the Connecticut Commission on Human Rights and Opportunities (Commission). Complainant alleged that the Respondent, Norwalk Economic Opportunity Now (NEON) (respondent), discriminated against him due to his sex (male) and religion (Muslim). Complainant alleged that the respondent violated General Statutes §46a-60(a)(1), General Statutes §46a-58(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, as amended and enforced under C.G.S.46a-58(a).

The complainant filed an Affidavit of Illegal Discriminatory Practice (complaint) with the Commission on December 30, 2013. The respondent was served with notice of the

complaint via email on January 2, 2014. The Commission sent a letter via certified mail on February 7, 2014 to the respondent requesting an answer to the allegations in the complaint. On March 17, 2014, the Commission again sent the respondent, by certified mail, a notice which confirmed the non-receipt of an answer and requested its response to the complaint or be subject to default. On April 1, 2014, the Acting Regional Manager, Paul Gaynor, submitted a written request to the Executive Director, Tanya Hughes, to enter an Order of Default against the respondent in light of its failure to answer the complaint. Thereafter, Executive Director Tanya Hughes entered a Default Order against the respondent on April 16, 2014. Pursuant to said Default Order, a notice of Hearing in Damages was issued to the parties by the Office of Public Hearings (OPH). The notice, sent via certified mail was delivered to the respondent's address of record.

The Default Hearing was held on June 11, 2014. The Commission and complainant appeared at the hearing. There was no representative of the respondent present. The Commission, through the complainant, offered testimony at the hearing and tendered documents into evidence which were admitted by the undersigned.

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. (TR 4)
3. Complainant's religion is Islam and his gender is male. (TR 4)
4. The complainant was employed as a night manager of a halfway house in Norwalk operated by the Respondent, NEON for 37 years. (TR. 5)
5. Complainant's pay was \$20.54 per hour, by NEON. (TR 8)
6. On August 1, 2013, the respondent's hours were reduced by 5 hours ultimately; NEON closed for business him on October 28, 2013, which was complainant's last day of employment. (TR 5-6, CHRO 12)
7. The complainant worked third shift at the Norwalk halfway house as the night manager, from 11:00 pm to 7:00am. (TR 6)
8. There were two other halfway way houses operated by respondent, one in Norwalk and one in Waterbury. (TR 10)
9. For the last six months of the complainant's employment, his supervisor was Mr. William Tomlin a, Caucasian, Christian male. (TR 7)

10. For the prior 18 years, Mr. Scott Harris was the Director at NEON and the complainant's supervisor. (TR 7)
11. Sometime between August and September of 2013, complainant's hours were reduced. (TR 9)
12. Complainant was told it was an across the board reduction (TR 9)
13. Two women at other halfway houses owned by respondent did not have their hours cut. (TR 11)
14. Complainant's pay was reduced by \$410.80 per month as a result of his reduced work schedule. (CHRO EX 13, 14))
15. Immediately preceding the closure of the halfway, all the residents of the half-way homes were taken by the Department of Corrections (TR 17-18)
16. Complainant attempted to find work at other halfway houses and with the Department of Corrections (DOC). (TR 19)
17. Complaint also applied for a few Chaplin's positons with the DOC. (TR 19)
18. Prior to August 1, 2014, complainant was working 40 hours a week making \$20.54 per hour. (TR 8, 9, CHRO Ex 13,14)
19. Sometime between the first pay period in August 2014 and the second pay period in September 2014 the complainant's hours were reduced to 35 hours a week. (CHRO Ex 13,14)

20. The complainant's last day of work was October 28 2013. (CHRO Ex 12)
21. The respondent NEON closed its doors on October 28, 2013, and filed for bankruptcy on June 10, 2013 (TR 40, CHRO Ex 12)
22. The termination letter stated that the termination "was not related in any" regard to the quality of your employment, but due to loss of several funding sources. (CHRO 12)

III.

LAW

The respondent failed to file a written answer and an order for default was entered. " General Statutes § 46a-83(i) expressly permits the executive director or her designee to enter a default order against a respondent: "(1) who, after notice, fails to answer a complaint ..." Also, Section 46a-54-64 of the Regulations provides the Executive Director with authority to enter an order of default against a respondent that fails to answer a complaint upon request by the Commission and after 10 days from the mailing of the request to the parties.

"Upon entering a default, the presiding officer shall conduct a hearing which will be limited to determining the relief necessary to eliminate the discriminatory practice and make the complainant whole. Section 46a-54-88a of the Regulations of Connecticut State Agencies. The default admits the material facts that constitute a cause of action and conclusively determines the liability of a defendant. See, Sklyler Ltd. Partnership v. S.P. Douthett & Co., 18 Conn. 802 (1989). A Hearing in Damages was held on June 8,

2014. 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 and Opportunities ex rel. Wayne Rawls, Complainant v. Dev's on Bank Street, LLC, Respondent 2006 WL 4753465 (CT.Civ.Rts.). The entry of a default also operates as a confession by the defendant to the truth of the material facts alleged in the complaint. *Murray v. Taylor*, 65 Conn. App. 300, cert. denied, 258 Conn. 928 (2001).

IV.

DAMAGES

The complainant has requested a back pay award of \$1,232.40, plus post judgment interest, as well as garden variety emotional distress damages of \$5,000. The reason for complainant's termination was the closure NEON. The damages calculations only pertain to the lost wages for a reduction in work hours. The complainant seeks 12 weeks of back pay based on a reduction of hours, from 40 to 35 per, which began somewhere in August or September of 2013. The evidence presented to substantiate complainant's reduced hours are three pay stubs, contained in CHRO Exhibits 13 and 14. The paperwork provided illustrates that complaint's hours were reduced prior to the second pay period in September. Based on the pay stubs that were contained in CHRO Exhibits 13 and 14, he has submitted evidence of at least 7 weeks of reduced hours.

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 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."

Emotional damages pursuant to General Statute § 46a-58a 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. CHRO ex rel. *Lynne Thomas v. Samuel Mills*, CHRO Case No. 9510408, p. 7 (August 5, 1998)" *Commission on Human Rights and Opportunities ex rel. Douglas Peoples v. Estate of Eva Belinsky*, 1988 WL 492460 *5 (Conn. Super.) There is no evidence that complainant's reduction of hours occurred in front of other people. The reduction of 5 hours per week for 7 weeks is, objectively, not an extreme action when measured against the imminent closing of NEON due to lack of funds. Complainant testified that he had stomachaches, anxiety and stress regarding financial issues. It is hard to separate how much of his discomfort was due to the reduction in hours as opposed to NEON itself closing.

The complainant also seeks an award of post-judgment interest. In addition, complainant would be entitled to pre-judgment interest as well, both 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.

V.
ORDER OF RELIEF

1. Back pay \$103 dollars a week x 7 weeks totaling \$721 dollars.
2. 7 weeks of pre-judgment interest at 10% totaling \$72.30 per week.
3. The respondent shall pay to the complainant statutory post-judgment interest at the rate of 10% per annum from the date of this decision.
4. Emotional distress damages in the amount of \$1,000.00

The total amount of damages is \$1,793.30 plus 10% post judgment interest.

It is so ordered this 15th day of September 2014.


Michele C. Mount,
Presiding Human Rights Referee

cc.

Saeed Mohammed – via certified mail no.7014 0150 0001 0774 0492
Norwalk Economic Opportunity Now – via certified mail no. 7014 0150 0001 0774 0508
Yvonne Duncan, Esq. – via email only