

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

December 10, 2015

CHRO No. 1120261 - Commission on Human Rights and Opportunities ex rel. Patricia Lopez,
Complainant, v. Subway Stratford, LLC d/b/a Stratford Pitstop, LLC, Respondent

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Decision on Hearing in Damages Pursuant To An Order of Default
Entered by the Executive Director

On January 20, 2011, Patricia Lopez ("complainant") filed an affidavit of illegal discriminatory practice complaint with the Commission on Human Rights and Opportunities ("commission"). In her complaint, the complainant alleged Subway Stratford, LLC d/b/a Stratford Pitstop, LLC ("respondent"), 1240 Stratford Avenue, Stratford, CT, discriminated against her in violation of General Statutes § 46a-60(a)(1), and 46a-58(a), enforcing the substantive provisions of Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991.

Thereafter, on May 19, 2015, Tanya Hughes, Executive Director issued a default order that stated, in pertinent part, that "[t]he default is hereby being entered fifteen (15) days after the request for the default was made, in accordance with Section(s) 46a-54-46(a) and 46a-54-57a(c) of the Regulations of Connecticut State Agencies. The respondent did not answer the complaint under oath."¹

The default order was sent to the office of public hearings ("OPH") on June 3, 2015. On June 19, 2015, the undersigned issued a Notice of Hearing and Damages Pursuant to an Order of Default Entered by the Executive Director. The notice scheduled a default hearing for November 24, 2015 in the Office of Public Hearing. The notice stated, in pertinent part, that "[t]he sole purpose of the hearing is to determine the relief necessary to eliminate the discriminatory practice(s) alleged in the complaint and to make the complainant whole. The hearing will not address the issue of liability."

All procedural, notice, and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the case regarding damages.

The hearing was held as scheduled. The complainant, commission counsel Carolyn Anderson, and the principals/members of Subway Stratford LLC, Muhammed Hanif, and Rafiq Hamid, appeared without counsel and were heard.

During the hearing, the commission and complainant's counsel asked that a number of exhibits be entered into the record – designated C/CHRO 1 through 10 and Complainant's 1 through 14, respectively. (See copies of exhibit indexes, attached to this ruling.) Collectively, these exhibits

¹ According to exhibit CHRO 8, entered into the record during the hearing in default, on November 24, 2015, the actual reason that the commission entered a default order was because the respondent failed to attend a Fact Finding/Mandatory Mediation conference after notice and without good cause.

established that the procedural, notice and jurisdictional requirements had been met. None of these exhibits, however, provided any proof of damages.

During the hearing in damages, the undersigned instructed complainant's counsel to submit a post-hearing brief that "explains what the actual damages you're seeking are.... There needs to be evidence that supports it.... It would be good if I actually had evidence of what she was paid, that would be useful." Transcript p. 22.

After the hearing, on December 3, 2015, complainant's counsel filed a Memorandum of Law, which did not contain a specific prayer for relief. Neither the commission nor the respondent filed a post-hearing brief.

The complainant's testimony and memorandum of law, including the attachments thereto (Complainant's Exhibits 15 through 23; see attached Addendum to Exhibits List), did not clearly establish what damages the complainant is entitled to as a result of the default. She testified that her salary was \$700 weekly. Although the complainant provided a copy of the first page of her IRS 1040 for 2010, which showed an adjusted gross income of \$34,393, the complainant did not include any copy of any Form W-2s issued to her by the respondent to confirm her actual earnings.

The complainant's testimony indicated that she received income from some jobs since her employment with the respondent ended in December 2010 (see Transcript p. 18) in addition to the earnings she noted in her memorandum (for 2012 - Saugatuck Energy - \$28,065.07; for 2014 - Peter Cadoux Architects - \$25,900), but did not specify those additional earnings in her request for damages.

The memorandum did request the following back pay - \$16,214 for 2011; \$6,328 for 2012; \$23,411 for 2013; \$8,493 for 2014. There was no back pay amount listed for 2015.

Furthermore, for 2012, the total amount of income received by the complainant, including unemployment collected, totaled approximately \$38,100. This exceeded the \$34,393 amount she is claiming as the annual amount earned working for the respondent in 2010.

The complainant attached to her memorandum a Form UC-1099G for unemployment received in 2011, in the amount of \$18,179 and a Form UC-1099G for unemployment received in 2012 for \$10,038.

The complainant established that she sought a mortgage modification in January 2013 and testified that this was connected to her losing her employment with the respondent.

The complainant submitted a bill her attorney for 12 hours of legal service at \$250 for a total of \$3,000.

The complainant offered testimony intended to establish the emotional impacts she suffered after her employment ended. She fell behind on bills, including her mortgage, it was difficult to support her children, and it was three weeks before Christmas. The complainant also testified that "I went to the emergency one time because the stress and all the situation was very hard

for me and I got a bill from the hospital as well ... The bill was like 1,000 because it was an emergency room I was one day." Hearing Transcript, pp. 20-21.

The memorandum asserted that the complainant received a bill in the amount of \$1,000 from St. Raphael Hospital due to the stress that she suffered when she was terminated. The complainant did not include any evidence to support this claim. The complainant did not place into evidence any bill from the hospital for services provided to the complainant since December 2010. Instead Exhibit 21, a small claims writ and notice of suit, dated January 18, 2011, states that it is a claim for \$650.00 for "HOSPITAL SERVICES PROVIDED TO PATRICIA ON 7/6/07."

Findings of Fact

In light of the state of the record, it is difficult to determine what constitutes a reasonable damage award in this matter. The undersigned makes the following findings of fact –

1. The commission took the legal steps necessary to bring this complaint to a hearing in damages.
2. The complainant's earnings from working for the respondent in 2010 equaled \$34,393.
3. If she had continued to work for the respondent from 2011-2014 and earned \$34,393 each of the 4 years, she would have earned a total of \$137,572.
4. From 2011-2014, she appears to have earned a total of \$93,593.
5. The difference in these totals is \$44,033.
6. The complainant failed to provide evidence of all of her earnings after December 2010.
7. The complainant failed to provide evidence that she incurred any medical bills after December 2010 because she lost her job with the respondent.
8. The complainant received a bill for legal fees in the amount of \$3,000.
9. There is evidence that the complainant received unemployment benefits in 2011 in connection with the loss of her job with the respondent in the amount of \$18,179.
10. The complainant provided marginal evidence to support her emotional distress claim.

ORDER OF RELIEF

In accordance with the authority granted to the undersigned pursuant to subsections (a) and (b) of section 46a-86 to award damages for a violation of section 46a-60, I order that, based on the evidence before me –

The respondent, Subway Stratford, LLC d/b/a Stratford Pitstop, LLC, pays the complainant back pay in the amount of \$44,033. The respondent shall pay post-judgment interest on the back pay award at the rate of 10% per annum, compounded annually.


The respondent shall pay the complainant \$3,000 for attorney's fees incurred.

The respondent shall pay the complainant \$500 based on the evidence of emotional distress.

The respondent shall pay the commission on human rights the amount of \$18,179, and the commission shall transfer this amount to the State of Connecticut Labor Department as repayment of unemployment compensation paid to the complainant.

The respondent shall cease and desist from the practices complained of concerning the complainant and all employees who may or will in the future become similarly situated.

So ordered this 10th day of December 2015.



Alvin R. Wilson, Jr.
Presiding Human Rights Referee

COMMISSION'S EXHIBIT LIST

Default Hearing

Date: November 24, 2015

CHRO Case No.: 1120261 Patricia Lopez v. Subway Stratford, LLC d/b/a Stratford Pitstop, LLC/ PetroMart

Human Rights Attorney II: Carolyn F. Anderson

Presiding Hearing Referee: Hon. Alvin R. Wilson, Jr.

EXHIBITS

C/CHRO 1- Copy of Complainant's CHRO Complaint filed against the Affidavit filed with the CHRO's Southwest Regional Office on 1/20/2011.

C/CHRO 2- 1/31/11 Copy of Notice to the Respondent of the CHRO Complaint filed against them by Complainant on 1/31/11. Notice sent to Tahir Mahmood, Owner, Stratford Subway, LLC 1240 Stratford Avenue, Stratford, CT 06615- (Notice was not returned to the Commission as undelivered).

C/CHRO 3- 3/22/11 Copy of Respondent's Answer to the CHRO Complaint, submitted under oath by Nasir Gohar, Respondent's Representative.

C/CHRO 4-3/22/11 Copy of Respondent's Answer to the CHRO Schedule "A" Questions, submitted under oath by Nasir Gohar, Respondent's Representative.

C/CHRO 5-1/22/11 Copy of CHRO's Notice of Fact Finding Subject To Mandatory Mediation & Penalty For Failure To Attend-Sent USPS Certified Mail No. 91 7199 9991 7030 0187 2555 To Mr. Rafiq Hameed, Respondent's Agent, Stratford Pit Stop, LLC, 1240 Stratford Avenue, Stratford, CT 06615.

C/CHRO 6-1/28/11 Copy of USPS Tracking and Confirmation of delivery of CHRO's Notice of Fact Finding Subject To Mandatory Mediation & Penalty For Failure To Attend-Sent U.S.P.S. Certified Mail No. 91 7199 9991 7030 0187 2555 To Mr. Rafiq Hameed, Respondent's Agent, Stratford Pit Stop, LLC, 1240 Stratford Avenue, Stratford, CT 06615. USPS Tracking Confirmation: 9171999991703001872555 showing delivery on January 28, 2015. Regular mail delivery to the business address was not returned as unclaimed or with any other notation by the USPS.

C/CHRO 7-1/22/11 Copy of Letter sent by CHRO Investigator Debra Drexler to the residence of Mr. Muhammed Hanif, Member of Respondent, 148 Grannis Rd., Orange, CT 06477, dated 1/22/15, with enclosures (1) CHRO's Notice of Fact Finding Subject To Mandatory Mediation & Penalty For Failure To Attend; and (2) General Notice of Fact Finding Conference & Witness Interviews. USPS Tracking Confirmation: 9171999991703001872248 showing delivery on February 5, 2015. Regular mail delivery to the business address was not returned as unclaimed or with any other notation by the USPS. USPS Tracking Confirmation: 9171999991703001872248 showing delivery on February 5, 2015. Regular mail delivery to the business address was not returned as unclaimed or with any other notation by the USPS.

C/CHRO 8- 4/28/15 Request for Default Order and Notice of Hearing on Damages made by CHRO Southwest Regional Manager, Paul Gaynor-due to Respondent's Failure to attend a Fact Finding/Mandatory Mediation conference after notice and without good cause. Notice Sent to Respondent's Member, Muhammed Hanif, Stratford Pit Stop, LLC, 1240 Stratford Avenue, Stratford, CT 06615, USPS Certified Mail No. 9171999991703001872811. Copy also sent USPS Certified Mail No. 9171999991703001872804 to the home address of Muhammed Hanif, 148 Grannis Rd., Orange, CT 06477. Copy sent to Rafiq Hameed-Stratford Subway, d/b/a Stratford Pitstop, LLC, 1240 Stratford Avenue, Stratford, CT 06615, USPS Certified Mail No. 9171999991703001872798. Copy also sent to the home address of Rafiq Hameed, 1676 Dewey Street, Stratford, CT 06615.

C/CHRO 9- 5/19/15 Copy of Entry of Default Order granted by Tanya A. Hughes, (Notice Sent to Rafiq Hameed-Stratford Subway, d/b/a Stratford Pitstop, LLC, 1240 Stratford Avenue, Stratford, CT 06615, Muhammed Hanif, Member of Respondent, Stratford Pitstop, LLC, 1240 Stratford Avenue, Stratford, CT 06615 and to Muhammed Hanif, 148 Grannis Rd., Orange, CT 06477.

C/CHRO 10- 6/19/15 Notice of Hearing on Damages Sent by the Office of Public Hearings to Respondent's Member, Muhammed Hanif, Stratford Pit Stop, LLC, 1240 Stratford Avenue, Stratford, CT 06615, USPS Certified Mail No.70140150000107743820-(Copy of signed Green Card as received by Muhammed Hanif on 6/25/15). Copy sent to Rafiq Hameed-Stratford Subway, d/b/a Stratford Pitstop, LLC, 1240 Stratford Avenue, Stratford, CT 06615, USPS Certified Mail No. 70140150000107743813-(Returned to Sender as Not Deliverable 7/4/15) (See attached copies of Certified Mail Green Cards and envelopes stamped by the USPS).

**CHRO NO.: 1520361 PATRICIA LOPEZ V. SUBWAY STRATFORD,
D/B/A STRATFORD PITSTOP LLC/ PETRO MART**

EXHIBITS INDEX

1. 1/20/2011 Affidavit of Discrimination
2. 1/28/2011 CHRO Notice of Complaint
Certified Mail # 91 7108 2133 3937 3480 3164
3. 3/10/2011 Letter from CHRO. Commission has not received an answer
Certified Mail # 91-7199 9991 7030 0185 6903
4. 3/22/2011 Respondent's Answer
5. 4/5/2011 Complainant's Rebuttal
6. 5/2/2013 Notice of Mandatory Mediation
Regular and Certified Mail 91 7199 9991 7030 0186 6179
7. 10/26/2012 Release to Sue letter
8. 6/23/2013 Amended Complaint

9. Secretary of State – Incorporation Record

Stratford Pit Stop, LLC
Subway Stratford, LLC

10. 1/22/15 Notice of Fact Finding Conference scheduled for February 11, 2015 @
10:00am
Regular and Certified Mail 91 7199 9991 7030 0187 2262
Regular and Certified Mail 91 7199 9991 7030 0187 2255

11. 5/9/2014 Withdrawal of Appearance Respondent's Attorney
12. 4/28/2015 Request for Default Order and Notice of Hearing in Damages
13. 5/19/2015 Entry of Default
14. 6/19/2015 Notice of Hearing In Damages

STATE OF CONNECTICUT

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

PATRICIA LOPEZ

CHRO NO.: 1120261

Complainant,

EEOC NO.: 16a-2011-00456

v.

SUBWAY STRATFORD, et al

Respondent,

DECEMBER 1, 2015

ADDENDUM TO EXHIBITS LIST

- 15 2010 Tax Return
- 16 2011 Unemployment Compensation
- 17 2012 Saugatuck Energy – Earnings
- 18 2012 Unemployment Compensation
- 19 2013 Tax Return
- 20 Exhibit 20(a),(b),(c) – Proof of Mortgage Increase and Modification
- 21 Small Claims Suit – St. Raphael Hospital
- 22 Satisfaction of Judgment
- 23 Credit Letter showing St. Raphael Bill.