

August 14, 2019

CHRO ex rel. Robinson Morales-Martinez v. Smart Home Preservation CHRO No. 1730254 Fed No. 16a201700285.

**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 via email to the commission, complainant and respondent's attorney.

Very Truly yours,

Kimberly D. Morris  
Secretary II

cc.

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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. Robinson Morales-Martinez, Complainant

CHRO Case No. 1730254

v.

Smart Choice Home Preservation, Respondent

August 14, 2019

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

I  
**Procedural Background**

On November 7, 2016, the complainant, Robinson Morales-Martinez (complainant), whose address is 33 Birch Street, Waterbury, Connecticut, filed an employment discrimination complaint (complaint) with the Connecticut Commission on Human Rights and Opportunities (commission) alleging that his employer, Smart Choice Home Preservation, (respondent), discriminated against him on the basis of his religion (Christianity), ancestry (Hispanic), and national origin (Dominican Republic) in violation of General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4),<sup>1</sup> and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, as enforced through General Statutes § 46a-58 (a). The complaint alleges that the complainant's employment with the respondent was abruptly terminated because of his protected status and in retaliation for his previous opposition to discrimination. The respondent's business address is 100 Lawrence Street, Nanuet, New York.

After several attempts to cause notice of the complainant to be served on the respondent by electronic mail and certified mail, the complaint was served on the respondent by State Marshall on December 22, 2016 (CHRO Ex. 2). The respondent failed to answer the complaint. On March 28, 2017, 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, and a copy was sent to the respondent by certified mail on the same date (CHRO Ex. 3). On or about April 4, 2017, the notice of the request for a default order was returned to the commission unclaimed (CHRO 3). On June 5, 2017, the commission's executive director entered a default order against the respondent for failing to answer the complaint (CHRO Ex. 4). The default order indicates that a copy of the order was mailed to the respondent on the same date (CHRO Ex. 4). On September 14, 2017, the Office of Public Hearings sent a notice of hearing on damages to the respondent by electronic mail and certified mail (CHRO Ex. 6). A copy of the June 5, 2017, default order was enclosed with the notice of the hearing. The notice sent to the respondent by certified mail was returned as undeliverable, unable to forward (CHRO Ex. 5).

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<sup>1</sup> Effective October 1, 2017, General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4) were recodified as §§ 46a-60 (b) (1) and 46a-60 (b) (4). When the complaint was filed, the statutory citations were §§ 46a-60 (a) (1) and 46a-60 (a) (4). 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 complaint's filing. *Angelsea Productions, Inc., v. Commission on Human Rights & Opportunities*, 236 Conn. 681, 683, n. 1 (1996).

On January 11, 2018, 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. On March 26, 2018, the commission filed a post-hearing memorandum regarding damages. Attached to the memorandum are two proposed new exhibits, proposed CHRO Exs. 11 and 12, which are hereby admitted in evidence.

The entry of a default order operates as a confession by the respondent to the truth of the material facts alleged in the complaint without the need for further proof. Regs., § 46a-54-86a (b); see, *Skyler Ltd. Partnership v. S.P. Douthett & Co.*, 18 Conn. 245, 253, cert. denied, 212 Conn. 802 (1989); *Murray v. Taylor*, 65 Conn. App. 300, 334-335, cert. denied, 258 Conn. 928 (2001). 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).

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).

As a result of the default, and based upon the pleadings, I conclude that the complainant was unlawfully terminated from his employment because of his religion, ancestry, and national origin and in retaliation for complaining about discriminatory employment practices in violation of General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4), 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).

## II Findings of Fact

After conducting a duly scheduled and noticed hearing, and based upon a review of the complaint, exhibits, and transcript, and an assessment of the credibility of the witness, the following relevant facts are found.<sup>2</sup>

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. 6-12, CHRO Exs. 1-5).
2. The entry of the default order established the respondent's liability for violations of General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4) and, through § 46a-58 (a), of Title VII. The material factual allegations contained in the affidavit of complaint are deemed established as a result of the default.
3. Additional facts are established based on the complainant's testimony at the hearing on damages as well as documentary evidence provided by the complainant.

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

4. The complainant was employed by the respondent as a field manager/maintenance beginning on July 15, 2015 (Tr. 13).
5. The complainant's rate of pay was \$13.25 per hour regular pay, and \$19.87 per hour for overtime hours worked (Tr. 14, 15; CHRO Ex 6).
6. On average, the complainant worked between 60 and 70 hours per week for the respondent (Tr. 15)
7. The complainant's national origin is the Dominican Republic; his ancestry is Hispanic; and his religion is Christianity (Tr. 19, 27).
8. The respondent's owners are Jewish (Tr. 19).
9. From the time of the complainant's hire until in or about June of 2016, the respondent permitted the complainant to have Sundays off from work so that he could attend church, and allowed him to make up the Sunday hours by working on Saturdays (Tr. 19-20).
10. In or about June of 2016, the respondent prohibited the complainant from working on Saturdays, so that the owners, who are Jewish, could observe their Sabbath on Saturdays (Tr. 19-24).
11. In order to make up the hours he lost by no longer working on Saturdays, the complainant would have had to work on Sundays, which would have prevented him from observing his Sabbath (Tr. 19-21).
12. Beginning in or about June of 2016, and continuing thereafter, the respondent regularly cancelled the complainant's shifts, so that he was no longer working overtime (Tr. 22; CHRO Ex. 6).
13. On or about August 30, 2016, the respondent instructed the complainant and four of his co-workers to report to the respondent's New York headquarters for an inspection of their assigned company vans (Tr. 25-26).
14. Shortly after the complainant arrived at the New York office, the respondent discharged the complainant and four of his co-workers and informed them that transportation would be provided to return them to Connecticut (Tr. 25-26).
15. The respondent did not provide the complainant with any explanation for his termination (Tr. 25-26).
16. The complainant and his four co-workers were the only field managers terminated by the respondent on August 31, 2016. The complainant and his four co-workers share the same Dominican national origin, Hispanic ancestry, and Christian faith (Complaint ¶ 18). The respondent did not terminate the employment of any of its non-Dominican field managers (Tr. 26-27).
17. The complainant felt that he had been singled out for termination essentially because of his religion (Tr. 27).
18. The complainant felt devastated upon learning of his abrupt termination (Tr. 25)
19. The last day on which the complainant performed work for the respondent was August 30, 2016 (Tr. 28). The complainant was paid through August 30, 2016 (Tr. 28).
20. The complainant received \$8,421 in unemployment insurance benefits during the 2016 tax year (CHRO Ex. 8), and \$4,891 in unemployment insurance benefits during the 2017 tax year (CHRO Ex. 11), for a total of \$13,312.
21. Based on the information from the complainant's Form W-2 2016 wage statement, the complainant earned a total of \$29,669.59 from the respondent during the calendar year 2016 until his termination on August 31, 2016, a period of thirty-four weeks, and an average salary of \$847 per week (CHRO Ex. 7).
22. Based on information from the complainant's Form W-2 2015 wage statement, the complainant earned a total of \$24,625.14 from the respondent during the twenty-four-week period from the start of his employment on July 15, 2015 through the end of the calendar year, and an average salary of \$1,026 per week (CHRO Ex. 7).

23. During the entire period of his employment with the respondent, the complainant worked a total of 58 weeks and earned a total salary of \$54,294.73, for an average weekly wage of \$936.12 ( $\$54,294.73 \div 58 = \$936.12$ )
24. During the bi-weekly pay period beginning on July 29, 2016 and ending on August 11, 2016, the complainant worked a total of 1,464 hours for the respondent, including 80 regular hours and 20.37 overtime hours, and earned a weekly wage of \$732.45 ( $\$1,464.85 \div 2 = \$732.45$ ) (CHRO Ex. 6).
25. The complainant experienced significant stress due to the financial instability caused by his August 31, 2016, termination, and had difficulty eating and sleeping for several months following his termination (Tr. 29).
26. The respondent had never disciplined the complainant before his termination (Tr. 25-26).
27. The manner of the complainant's termination by the respondent, with no warning, took a financial toll on the complainant (Tr. 28-29).
28. Because of his termination, the complainant was unable to pay his rent or child support, and had difficulty even paying for food (Tr. 28).
29. The complainant experienced significant stress due to the financial instability caused by his August 31, 2016, termination, and had difficulty eating and sleeping for several months after his termination (Tr. 29).
30. Following his termination, the complainant lost his residence because he could not afford to pay the rent (Tr. 29). After he lost his residence, the complainant began living with his girlfriend (Tr. 30).
31. Because of his termination, the complainant was unable to pay child support, and was worried he would be sent to jail (Tr. 30).
32. The complainant filed a claim for unemployment insurance benefits following the termination of his employment with the respondent. However, he had to wait several months to collect it because the respondent contested his claim (Tr. 31-32).
33. The complainant felt terrified when the respondent contested his claim for unemployment insurance benefits and felt as though he had "hit rock bottom." (Tr. 32)
34. During the period of his unemployment, the complainant searched for employment using the internet, and utilized the job-search assistance services offered by the Connecticut Department of Labor (DOL) on a daily basis (Tr. 25). The DOL provided the complainant with assistance in receiving training to obtain a commercial driver's license (Tr. 36). The complainant obtained his commercial driver's license in February of 2017 (Tr. 36).
35. The complainant applied for some 199 jobs using the website Indeed.com between August 31, 2016, and April 1, 2017, when he obtained employment with Star Distributors, Inc. (Tr. 37-40 CHRO Ex. 9).
36. The complainant did not continue his job search after he obtained employment with Star Distributors on April 1, 2017 (Tr. 39-40).
37. The complainant remained unemployed for a period of about thirty weeks from August 31, 2016 until April 1, 2017, when he began working as a commercial truck driver for Star Distributors, Inc., in West Haven, Connecticut (Tr. 39).
38. The complainant works 40 hours per week working for Star Distributors, and earns \$19.00 per hour (Tr. 39; CHRO Ex. 10). Star Distributors does not provide the complainant with overtime hours (Tr. 41).
39. In the 2017 calendar year, the complainant earned \$30,740.56 in wages from Star Distributors, Inc., during the thirty-nine-week period from April 1, 2017, when his employment with Star Distributors commenced, through the end of the year, for an average salary of \$788 per week (CHRO Ex. 12).

### III Discussion and Conclusions

The respondent failed to file a written answer and an order of default was properly entered. General Statutes § 46a-83 (l) expressly authorizes the executive director to enter a default order against a respondent "... after notice, fails to answer a complaint ...." Also, § 46a-54-46a (a) of the Regulations of Connecticut State Agencies provides the executive director with authority to enter an order of default against a respondent who, after notice, fails to answer a complaint.

"[The] 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. *Murray v. Taylor*, 65 Conn. App. 334, 335 (2001), cert. denied, 258 Conn. 928; see, *Kaye v. Housman*, 184 Conn. App. 808, 815 (2018).

In this case, the entry of the default order established the respondent's liability for violations of General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4) and, through § 46a-58 (a), of Title VII when it terminated the complainant from his employment on the basis of his religion, ancestry, national origin and in retaliation for complaining about discriminatory practices. Liability having been determined as a function of the default, all that remains is the assessment of damages based on the evidence presented.

### IV Damages

General Statutes § 46a-83 (l) expressly authorizes the presiding 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). The phrase "make whole relief" refers to compensation awarded to a party for loss sustained.

The complainant bears the burden at the hearing on damages of proving that the amount of damages claimed is derived from the injuries suffered and is properly supported by the evidence. *Murray v. Taylor*, supra; *Kaye v. Housman*, supra, 817; *Carothers v. Butkin Precision Mfg. Co.*, 37 Conn. App. 208, 209 (1995); *Commission on Human Rights & Opportunities ex rel. Mohammed v. Norwalk Economic Opportunity NOW, Inc.*, 2014 WL 77776677, 3; *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).

In fashioning specific orders of "make whole relief" in employment discrimination cases, human rights referees are authorized to make back pay awards after deducting "[i]nterim earnings, including unemployment compensation and welfare assistance or amounts which could have been earned with reasonable diligence on the part of the person to whom back pay is awarded ...." General Statutes § 46a-86 (b). The statutory mandate of § 46a-86 (b) that requires deductions from damage awards follows an established legal doctrine which obligates injured victims to use reasonable efforts to limit or mitigate their losses, and prohibits them from recovering damages for any harm that they could have avoided or minimized with reasonable effort. *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights*

*& Opportunities*, 237 Conn. 209, 229 (1996); *Commission on Human Rights & Opportunities, ex rel., Downes v. zUniversity.com, Inc.*, 2003 WL 25592787 \* 2 (CHRO No. 0120366) (September 12, 2003).

The complainant in an employment discrimination case such as this has a duty to mitigate his economic damages by using reasonable diligence to find other suitable employment. "The doctrine, which is two-pronged, obligates injured victims to take reasonable steps to limit, or mitigate their losses, and prohibits them from recovering damages for any harm that they could have avoided or minimized with reasonable effort. See Restatement (Second) of Torts, § 918 (1)." *Commission on Human Rights & Opportunities ex rel. Urban v. United Pet Supply, Inc.*, 2012 WL 3877973, \*5 (CHRO No. 0830309) (August 2, 2012); *Commission on Human Rights & Opportunities ex rel. Pullicino v. Pelham Sloane, Inc.*, 2012 WL 2060840, \*6 (CHRO No. 0920214) (May 10, 2012).

In the prayer for relief, the commission requests lost wages from July 15, 2016, to April 17, 2018, which is the date of the filing of the commission's post-hearing memorandum, in the amount of \$60,613.38, after deducting offsets for unemployment insurance benefits and post-termination wages earned.

Following the finding of the respondent's liability for employment discrimination against the complainant by virtue of the default, an award of back pay is appropriate, provided the complainant has fulfilled his duty to mitigate damages. General Statutes § 46a-86 (b). It is self-evident from complainant's success in quickly securing replacement employment at Star Distributors, Inc. that he exercised the requisite due diligence to mitigate the economic damages resulting from his termination by the respondent.

In calculating the portion of a damages award attributable to lost wages as a consequence of the respondent's employment discrimination against the complainant, I have relied on the demonstrative evidence admitted at the public hearing consisting of the complainant's form W-2 wage and tax statements for 2015 and 2016 from the respondent; two bi-weekly direct deposit payment vouchers provided by the respondent; the form W-2 wage and tax statements for 2017 provided by Star Distributors, Inc.; and two Form 1099G tax statements reflecting the complainant's unemployment insurance benefit payment history from the Connecticut Department of Labor for the 2016 and 2017 tax years, and the complainant's testimony to the extent it is substantiated by the documentary evidence.<sup>3</sup>

The complainant obtained new employment with Star Distributors, Inc., commencing on or about April 1, 2017, and he remained employed with Star Distributors at the time of the public hearing. During the 2017 calendar year, the complainant earned wages in the total amount of \$29,801.31 at his replacement job with Star Distributors (CHRO Exs. 12, 13), and an average wage of \$788.22 per week during the thirty-nine week period from April 1, 2017 through the end of the year (CHRO Ex. 8).

During the tenure of his employment with the respondent, the complainant earned an average weekly salary of \$936 per week. Had the respondent not terminated him, the complainant's projected non-

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<sup>3</sup> My decision in awarding damages for back pay is based largely on the documentary evidence admitted at the hearing. The commission argues in its post-hearing brief that a back pay award should commence in or about June of 2016, when the complainant testified that his work hours were reduced when the respondent prohibited the complainant from working on Saturdays. However, documentation of a reduction in scheduled work hours during the final few months of his employ with the respondent is lacking because the pay stub for the biweekly pay period from March 25, 2016 to April 7, 2016, to which a later pay stub for the biweekly pay period from July 29, 2016 to August 11, 2016, is compared, is illegible (Tr. 22-24; CHRO Ex 6).

termination earnings would have been \$936 per week until he obtained a comparable or higher paying job. *Commission on Human Rights & Opportunities ex rel. Brelig v. F & L Inc., d/b/a Luciano's Boathouse Restaurant*, 2000 WL 35575654, \*4, CHRO Case No. 9540683 (February 2, 2000). The earnings gap between the complainant's average weekly salary from the respondent (\$936) and his average weekly salary from his replacement job at Star Distributors (\$788) is \$148 per week.

I am prepared to assess damages from lost wages in the amount of \$28,080, at the rate of \$936 per week for the thirty-week period from the termination of his employment with the respondent on August 31, 2016, until the complainant secured replacement employment on April 1, 2017, before offsets. Following the termination of his employment with the respondent on August 31, 2016, during the 2016 and 2017 tax years, the complainant also received unemployment insurance benefits in the total amount of \$13,312. For the period until the complainant obtained replacement employment, the respondent shall pay the complainant as back pay through April 1, 2017, the sum of \$14,768 (\$28,080 - \$13,312).

I also am prepared to assess damages from lost wages in the amount of \$10,804, which reflects the earnings gap of \$148 per week between the complainant's average weekly salary from the respondent and his average weekly salary at his replacement job during the seventy-three week period from April 1, 2017 and August 31, 2018, the two-year anniversary of his discriminatory termination by the respondent ( $\$148 \times 73 = \$10,804$ ). Because the discriminating respondent should not benefit from the windfall of not paying the salary differential when the complainant obtains replacement employment but at a lower salary; see, *Johnson v. Spencer Press of Maine, Inc.*, 364 F. 3r 368, 381 (1<sup>st</sup> Cir. 2004); the complainant is entitled to the difference between what he would have earned with the respondent and what he in fact earned in his replacement job for a some period of time. Notwithstanding the fact that the respondent's failure to appear at the hearing precluded its rebuttal of any and all aspects of evidence of mitigation, the respondent's uncontested liability does not relieve the tribunal of the responsibility to take evidence of the complainant's mitigation efforts into account. *Commission on Human Rights & Opportunities ex rel. Urban v. United Pet Supply, Inc.*, supra, 2012 WL 3877973, \*5 - 6; *Commission on Human Rights & Opportunities ex rel. Pullicino v. Pelham Sloane, Inc.*, supra, 2012 WL 2060840, \*6; see General Statutes § 46a-85 (b). Although the commission's back pay request encompasses the entire post-termination period, the commission has provided no evidence that the complainant used reasonable diligence to mitigate the economic damages from his underemployment with Star Distributors following his unlawful termination by the respondent. For this reason, the back pay period for which the respondent shall be liable is limited to a period of two years from the unlawful termination of his employment with the respondent. The total back pay award therefore is \$25,572 ( $\$14,768 + \$10,804 = \$25,572$ ).

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).<sup>4</sup> 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). Damages for garden-variety 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 he offers specific facts as to the nature of his claimed emotional distress and as to the causal connection to the employer's alleged violation. *Murray v. Taylor*, supra, 65 Conn. App. 335; *Commission on Human Rights & Opportunities ex rel. Punzalan v. Zheng Trust, LLC, dba Koto Japanese Restaurant*, supra, 2014 WL 5791595, \* 3.

In the prayer for relief, the commission is requesting compensatory damages for emotional distress of \$80,000 to compensate the complainant for the negative emotions that he experienced as the intrinsic result of the respondent's discriminatory conduct.

In determining what would be fair and reasonable compensation for garden-variety emotional distress, criteria to be considered are (1) 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).

It is established by virtue of the default that the respondent engaged in discrimination based on religion, national origin, and ancestry and in retaliation for complainant about discriminatory practices in violation of General Statutes §§ 46a-60 (a) (1) and 46a-60 (a) (4) of Title VII through § 46a-58 (a). The manner of the complainant's dismissal was troubling, embarrassing, and humiliating. On August 30, 2016, the respondent instructed the complainant and four of his co-workers to drive their company vans to the respondent's New York headquarters the following day, ostensibly for an inspection of the company vehicles. Upon his arrival and without any warning or any reason given, the respondent abruptly discharged the complainant and summoned transportation to take him home to Connecticut. The formal termination of the complainant's employment occurred in the presence of four co-workers, who also were summarily discharged in the same way. The complainant and his co-workers practiced the same religion and shared the same ancestry and national origin.

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<sup>4</sup> 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) 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).

The complainant's reaction to the abrupt termination of his employment directly affected his emotional well-being. His emotional reactions included anger, fear, and disappointment. He had never been disciplined for poor performance or any reason during his employ. He experienced headaches and still thinks about his termination twice a month. The complainant's testimony demonstrates that the manner of his termination and the respondent's conduct in summarily discharging him caused him to experience emotional and financial stress. Initially he had some difficulty paying some of his bills and incurred two late-payment charges totaling some \$900. The complainant did not seek medical counseling or treatment for emotional distress.

From the time of the complainant's hire on July 15, 2015, until in or about June of 2016, the respondent had adjusted the complainant's work schedule and allowed him to decline work on Sundays, so that he could observe his Sabbath, and to work on Saturdays instead. Sometime in or about June of 2016, the respondent prohibited the complainant from working on Saturdays, so that in order to make up the hours that he had until then worked on Saturdays, he would be required to work on Sundays. At the heart of this case is the respondent's unilateral refusal to honor the religious practice of the complainant's Sabbath any longer, after having allowed him to decline work on Sundays for nearly a year to accommodate the complainant's religious practices. *E.E.O.C v. Abercrombie & Fitch Stores*, 135 S. Ct. 2028 (2015).

Applying the above criteria, and based on the evidence presented, I conclude that an award of \$45,000 for the emotional harm the complainant experienced as a result of the respondent's discriminatory practice is reasonable and appropriate.

#### **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 \$25,572 in back pay damages.
4. The respondent shall pay to the complainant \$45,000 in emotional distress damages.
5. Pursuant to General Statutes § 46a-86 (b), the respondent shall pay \$13,312 to the Commission on Human Rights and Opportunities representing the amount of unemployment insurance benefits paid to the complainant. The commission shall then transfer such amount to the appropriate state agency.
6. 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 August 31, 2016, until the date of this decision.

7. 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 14<sup>th</sup> day of August 2019.



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Hon. Elissa T. Wright  
Presiding Human Rights Referee

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