



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

450 Columbus Blvd, Suite 2, Hartford, CT 06103
Telephone: 860-418-8770; Fax: 860-418-8780
E-mail: officeofpublichearings@ct.gov

Promoting Equality and Justice for all People

August 5, 2022

CHRO ex rel. Alex Chaplin v. Club Camel, Inc., CHRO No. 1610351.


FINAL DECISION FOLLOWING REMAND

Dear Complainant/Respondent/Commission:

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

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

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

Alex Chaplin
business-one@comcast.net

Michael E. Roberts, Esq.
michael.e.roberts@ct.gov

Mario R. Borelli, Esq.
mborelli@ltnlaw.com

Jon P. FitzGerald, 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. Alex Chaplin, Complainant

CHRO No. 1610351

OFFICE OF
PUBLIC HEARINGS - CHRO
DATE 10:20 AM
TIME 8/5/22
RECEIVED BY [Signature]

v.

Club Camel Inc., Respondent

August 5, 2022

Final decision following remand

I
PRELIMINARY STATEMENT

On January 22, 2016, Alex Chaplin filed his affidavit of illegal discriminatory practice with the Commission on Human Rights and Opportunities (commission). He alleged that Club Fitness dba Gold's Gym violated General Statutes § 46a-64 (a) by maintaining a separate workout section only for women. On May 28, 2019, Mr. Chaplin amended his affidavit to correct the name of the respondent to Club Camel Inc. Bloomfield dba Club Fitness (Club Camel). Following a decision on the merits, the then-presiding human rights referee (referee)¹ issued a final decision on October 17, 2019 in which she found that the separate women's-only space did not violate § 46a-64 and dismissed the complaint.

The commission appealed the decision of the referee. The trial court dismissed the appeal.² Our Supreme Court reversed the decision of the referee and trial court. Our Supreme Court held that Club Camel's gym was a place of public accommodation and

¹ The human rights referee who heard this case on the merits has since retired.

² *Commission on Human Rights & Opportunities v Edge Fitness*, Superior Court, judicial district of New Britain, Docket No. HHB-CV-19-6056021 (July 23, 2020) (70 Conn L. Rptr. 232) (2020 WL 5607779).

that it denied Mr. Chaplin full and equal accommodation of its facility on the basis of his sex. Further, because § 46a-64 (b) (1) did not have a specific exemption permitting a single-sex workout section, Club Camel's practice of maintaining women's-only workout sections within an otherwise public gym violated the statute. Our Supreme Court remanded the case for further proceedings consistent with its opinion.³

On July 18, 2022, the parties filed supplemental briefs as to the relief to be awarded pursuant to General Statutes § 46a-86, at which time the record closed.

II PARTIES

The parties to this action are the Commission on Human Rights and Opportunities, 450 Columbus Boulevard, Hartford, Connecticut; Alex Chaplin, whose address at the time of the hearing was Windsor, Connecticut; and Club Camel Inc., c/o Attorney Mario Borelli of Leone, Throw, Teller & Nagle, 33 Connecticut Blvd., East Hartford, Connecticut.

III FINDINGS OF FACT

Based upon a review of the pleadings, exhibits, and transcript, the following facts relevant to this decision are found. References to the transcript are designated as "Tr."⁴ followed by the page number. References to the commission's exhibits are designated as CHRO followed by an exhibit number. References to Club Camel's exhibits are designated as R followed by an exhibit number.

1. At the time of the hearing, Mr. Chaplin had been a member of Club Camel or its predecessor for approximately 8 years. Tr. 95.

³ *Commission on Human Rights & Opportunities v Edge Fitness, LLC*, 342 Conn. 25, 268 A.3d 630 (2022).

⁴ Transcript references are to the hearing held on October 10, 2018.

2. Mr. Chaplin utilized Club Camel's gyms in Windsor, East Hartford and Bloomfield, Connecticut. Tr. 96; Affidavit, ¶ 4.
3. Mr. Chaplin would use the free weights, machines and cardio equipment. Tr. 89.
4. When Mr. Chaplin first began utilizing the gym in Bloomfield, there was a general workout area available to both men and women. Later, Club Camel added a partitioned off section for women only Tr. 92.
5. The women's-only section had frosted glass walls. On the door was a sign that read "Exclusive Women's Center" and above the door was a sign the read "Ladies Club Exclusive Women's Fitness Center". Tr. 90, 92, 111; CHRO-2.
6. The general area was quite busy. At times Mr. Chaplin had to wait for the equipment that he wanted to use. Tr. 89.
7. The women's-only section made Mr. Chaplin feel discriminated against. He believed that the separate section was wrong. He felt as though he was a second-class citizen. Tr. 93.
8. Mr. Chaplin never attempted to enter the women's-only section. Tr. 104.
9. Mr. Chaplin never spoke or complained to any of Club Camel's employees regarding the women's-only section. Tr. 104.

IV APPLICABLE STATUTE

General Statute § 46a-86 provides in relevant part that:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall make written findings of fact and file with the commission and serve on the complainant and respondent an order requiring the respondent to cease and desist from

the discriminatory practice and to take such affirmative action as is necessary to achieve the purpose of this chapter.

* * *

(c) 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.

V RELEVANT CASE LAW

Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including § 46a-64. *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 694, 855 A.2d 212 (2004). "Damages that may be awarded under § 46a-86 (c) include damages for emotional distress." *Commission on Human Rights & Opportunities v. Sullivan Associates*, Superior Court, judicial district of New Haven, Docket Nos. CV-94-4031061s, CV-95-4031060s (April 28, 2011) (2011 WL 1992014, *2).

However, "[p]unitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of courts." *Commission on Human Rights & Opportunities v Cantillon*, Superior Court, judicial district of New Britain, Docket HHB-CV-17-6039406, n 9 (October 2, 2019) (2019 WL 5549576), *aff'd*, 207 Conn. App. 668 (2021), cert. granted, 340 Conn. 909 (2021); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986).

"Awarding of compensatory damages for emotional distress is not a science."

Commission on Human Rights & Opportunities v Cantillon, supra, 2019 WL 5549576, *5.

A complainant need not present expert medical testimony to establish his or her internal, emotional response to the harassment; his or her own testimony, or that of friends or family members, may suffice. *Busche v. Burke*, 649 F.2d 509, 519 n. 12 (7th Cir. 1981); see also, *Marable v. Walker*, supra. However, medical testimony may strengthen a case. *Id.* As the Supreme Court stated in *Carey v. Phipus*, "[a]lthough essentially subjective, genuine injury in this respect [mental suffering or emotional anguish] may be evidenced by one's conduct and observed by others." *Carey v. Phipus*, 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042 (1978).

In assessing damages for emotional distress the CHRO referees use a three-factor analysis which was enunciated in the case of *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433 (1985), and which is sometimes referred to as the "*Harrison* factors." This analysis of emotional distress damages also has superior court support. *Commission on Human Rights and Opportunities ex rel Peoples v. Belinsky*, Superior Court, judicial district of Stamford–Norwalk at Norwalk, Docket No. 88061209 (November 8, 1988, Riefberg, J.). Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. *Harrison*, supra. Second, is whether the discrimination occurred in front of other people. *Id.* For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. *Id.* The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant. *Id.* In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

Commission on Human Rights & Opportunities v Sullivan Associates, supra, 2011 WL 3211150, *4.

VI ANALYSIS

A

In its brief, the commission argued that Mr. Chaplin should receive an award of at least \$30,000 for his emotional distress. The commission cited to *Patino v Birken Mfg. Co.*,⁵ *MacCluskey v Univ. of Connecticut Health Ctr.*,⁶ and *Commission on Human Rights & Opportunities ex rel. Germaine Gilbert v. Judicial Department*,⁷ as justifications for its request. This tribunal, however, cannot award punitive damages. A \$30,000 award in this case would be punitive, not compensatory. The cases cited by the commission in its brief as justification for a \$30,000 award are not factually comparable to the facts of this case or to the de minimis emotional distress suffered by Mr. Chaplin.

In *Patino* was a hostile work environment case. Mr. Patino was harassed by his co-workers for several years. The harassing, derogatory statements occurred several times a week and sometimes even several times a day. The harassment continued despite Mr. Patino's complaints to management. Mr. Patino was "devasted and 'overwhelmed by anger and by frustration and the humiliation' resulting from the harassment. He testified that the demeaning treatment made him so upset that his body would shake, his work product suffered, and it became difficult for him to sleep." *Patino v Birken Mfg. Co.*, 304 Conn 679, 683-684 (2012). In addressing the jury award of \$94,500, Our Supreme Court concluded that "given the sustained nature of the discrimination

⁵ 304 Conn. 679, 41 A.3d 1013 (2012).

⁶ United States District Court, Docket No. 3:13-cv-1408 (MPS) (D. Conn. February 21, 2017) (2017 WL 684440).

⁷ CHRO No. 1240254 (2018 WL 10419063); Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6048927 (October 15, 2019) (2019 WL 5681409), remanded 343 Conn. 90 (2022).

described by the plaintiff, the severity of the hostility he experienced, and the continued failure of the defendant to remedy the situation, the trial court did not abuse its discretion when it concluded that the award was not excessive or shocking when compared to verdicts awarded under similar circumstances.” *Id.*, 707-708.

The cases *Patino* cited as supporting a \$94,500 award are also clearly not similar to the circumstances in Mr. Chaplin’s case:

- *Gonzales v Bratton*⁸ (\$250,000) was an employment discrimination case. The plaintiff’s complaint of sexual harassment led to retaliation and her constructive discharge. The standard for determining the emotional distress award was that of the intentional infliction of emotional distress,⁹ a very different standard than that used by this tribunal in assessing emotional distress damages. The plaintiff was subjected to a nearly year-long harassment campaign that included baseless disciplinary charges resulting in suspensions without pay, continual and unusual shift changes, and arrest and detention for a minor traffic violation. The plaintiff suffered not only the mortifications of unrelenting petty harassment but fear for her personal safety and the safety of the public.
- *Oliver v Cole Gift Centers, Inc.*¹⁰ (\$100,000) was an employment discrimination case. After informing her employers that she was pregnant, the plaintiff was subjected to repeated criticism of her job performance and then fired after

⁸ 147 F. Supp. 2d 180 (S.D.N.Y. 2001).

⁹ “The tort has four elements: (1) extreme and outrageous conduct; (2) intent to cause severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress.” *Gonzales v Bratton*, *supra*, 147 F. Supp. 2d 194.

¹⁰ 85 F. Supp. 2d 109 (D. Conn. 2000).

complaining about the criticisms. The plaintiff suffered emotional and mental distress and pecuniary losses due to the loss of her medical insurance benefits.

- *Ikram v Waterbury Bd. Of Educ.*¹¹ (\$100,000) was a 42 U.S.C. § 1983 claim. The plaintiff's employer retaliated against her for exercising her First Amendment right to freedom of speech. She suffered mental and emotional injury for over one year and experienced physical manifestations of her distress.
- *Annis v Westchester*¹² (\$100,000) was a 42 U.S.C. § 1983 equal protection claim. The plaintiff's employer discriminated against her for years because of her gender. The adverse actions included discriminatory work assignments and unfair removal from a promotion list. The plaintiff felt angry, humiliated and very upset after being called a "f__ing cunt". The repeated harassment left her humiliated and feeling degraded. She received counseling for her emotional distress.
- *Rush v Scott Specialty Gases, Inc.*¹³ (\$100,000) was an employment discrimination case. The plaintiff's employer discriminated against her in training and promotion and created a hostile work environment. She suffered emotional distress for the four years she worked for the defendant. At the time of the trial, she was continuing to suffer emotional distress. Her expert testified that the plaintiff suffered mild to moderate depression. Witnesses testified that her personality was altered, she ceased her social activities, and spent much of her free time at home sleeping.

¹¹ United States District Court, Docket No. 3:95CV2478 (AHN) (D. Conn. September 9, 1997) (1997 WL 597111).

¹² 939 F.Supp. 1115 (S.D.N.Y. 1996).

¹³ 930 F. Supp. 194 (E.D.Pa. 1996) rev'd in part and remanded 113 F.3d 476 (3d Cir. 1997).

- *Olsen v Nassau*¹⁴ involved claims by female employees that the county police department discriminated against them in terms and conditions of their employment and retaliated against them in violation of 42 U.S.C. § 1983, Title VII, state law, and their First Amendment rights. As a result of the discriminatory conduct, the plaintiffs experienced disillusionment with their jobs; stress; anxiety; negative-impact on family life; physical manifestations of the distress such as chest pains, fatigue and sleeplessness, migraines, and shingles; and received therapy and medication.

The emotional distress experienced by Mr. Chaplin in his fact situation was not as severe or prolonged as the emotional distress experienced by the plaintiffs in *Patino* and the cases cited therein.

In addition to citing to *Patino*, the commission cited *MacCluskey v University of Connecticut Health Center*, supra, (\$125,000) and *Commission on Human Rights and Opportunities ex rel. Germaine Gilbert v. Judicial Department*, supra, (\$50,000) in support of its \$30,000 request. These cases also do not support the punitive award of \$30,000.

- *MacCluskey* was an employment discrimination claim. The plaintiff had been repeatedly sexually harassed by another employee and the employer failed to take remedial action. The harasser grabbed her waist and put his hand up her shirt. She testified that she felt ashamed and embarrassed, was afraid to be home alone, and did not sleep for weeks. The harassment negatively affected her work. She no

¹⁴ 615 F. Supp 2d 35 (E.D.N.Y. 2009).

longer trusted people. The harassment also negatively affected her relationship with her children.

- *Gilbert* was an employment discrimination case. The plaintiff was repeatedly subjected to sexual harassment and touching by her supervisor. The severe harassment caused her to go to a co-worker's office and cry. The emotional distress manifested itself in physical changes. She gained a lot of weight, her grooming deteriorated, and she looked like a different person. She had trouble sleeping. She was on prescription medications and receiving therapy.

Again, the emotional distress experienced by Mr. Chaplin in his fact situation was not as severe or prolonged as the emotional distress experienced by the plaintiffs in *MacCluskey* and *Gilbert*.

The commission cites to one non-employment case, *Saunders v Mad Murphy's*¹⁵ which also does not support awarding Mr. Chaplin damages of \$30,000. Although Mr. Chaplin was restricted from access to part of the facility, he was able to utilize the equipment in the general area, even if at times he had to wait in line. This was unlike Mr. Saunders' experience. An employee told Mr. Saunders that because of his physical disability not only would he not be served and but he also had to leave the restaurant. The emotional distress that Mr. Chaplin testified experiencing was not as severe or as prolonged as that experienced by Mr. Saunders.

None of the cases cited by the commission or in *Patino* provide justification for an award to Mr. Chaplin of \$30,000.

¹⁵ Because *Saunders* had not been indexed and made available for public inspection and copying as of date of the issuance of this decision, it cannot be relied upon the agency as precedent. General Statutes § 4-180a.

B

Employment discrimination cases make poor comparators to Mr. Chaplin's public accommodation case. Better comparators are two public accommodations cases: *Corcoran v German Social Society Froshinn, Inc.*¹⁶ and *Commission on Human Rights & Opportunities ex rel. Rochelle Toepelt v Nailtique aka Nailtique, Inc.*¹⁷ Ms. Corcoran was denied membership in the defendant's club because women were not allowed to become members. The referee's decision awarding Ms. Corcoran \$250 for emotional distress damages would be upheld. In *Toepelt*, Ms. Dowell, on behalf of whom the action was commenced, was denied service at a beauty parlor because of her physical disability. The referee awarded her \$250. Like Mr. Chaplin, Ms. Dowell did not experience severe or long-term emotional distress and resumed her normal activities shortly after the discriminatory act occurred.

C

Three factors are considered by this tribunal in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86.¹⁸ The

¹⁶ Superior Court, judicial district of New London, Docket No. 562775 (2005) (2005 WL 154881); rev'd and remanded 99 Conn. App. 839 (2007); cert. denied, 282 Conn. 910 (2007); decision on remand, Superior Court, judicial District of New London, Docket No. CV-02-0562775 (February 21, 2008) (2008 WL 642659).

¹⁷ Docket No. CHRO No. 0720118 (December 13, 2013) (2013 WL 8183402).

¹⁸ In addition to the *Harrison* factors used by this tribunal in determining emotional distress damages, Connecticut has at least two other standards for determining such damages: the negligent infliction of emotional distress and the intentional infliction of emotional distress.

It would not be surprising that the same fact situation could result in different damage awards or indeed even no award depending on the factors used for assessing emotional distress.

In the case of the negligent infliction of emotional distress, the factors are: "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Carroll v Allstate Ins. Co.*, 262 Conn. 433, 444 (2003).

In the case of intentional infliction of emotional distress, the factors are: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his

most important of these three is the subjective internal reaction experienced by a complainant and whether that reaction was intense, prolonged, and understandable. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. Mr. Chaplin's reaction to the women's-only section was not intense, prolonged, or particularly understandable. Unlike the plaintiffs in the cases cited by the commission and *Patino*, Mr. Chaplin was not specifically targeted for months or years of harassment. His testimony consisted of vague statements that he felt discriminated against, wronged, and being a second-class citizen. There was no testimony how these feelings impacted his life. He did not suffer any physical manifestations of any emotional distress. He did not testify to any anxiety, humiliation, or impact on relationships. He seemed more distressed about having to wait in line to use the equipment in the general area while equipment went unused in the women's-only section.

The second factor to consider is whether the discriminatory conduct occurred in front of other people. Consideration is given to whether the discriminatory act was in public and in the view or hearing of other people which would cause a more intense feeling of humiliation and embarrassment. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. Although the public signage stated that the section was a women's-only workout section, Mr. Chaplin never tried to enter the

conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe.... (Internal quotation marks omitted.)" *Carroll v Allstate Ins. Co.*, 262 Conn. 433, 442-443 (2003).

section, never had a conversation with any employee of Club Camel, and never testified to intense feelings of humiliation and embarrassment.

The third factor to consider is the degree of offensiveness of the discrimination and its impact on the complainant. Consideration is given to whether the act was done with the intention and effect of producing the maximum pain, embarrassment, and humiliation. *Commission on Human Rights & Opportunities v Sullivan Associates*, supra, 2011 WL 3211150, *4. There was no evidence that Club Camel established a women's-only section with the intent of embarrassing or humiliating Mr. Chaplin or anyone else. Nor did Mr. Chaplin testify to any feelings of embarrassment and humiliation.

Further, given that on appeal the trial court concluded that no discrimination had occurred and our Supreme Court indicated that the legislature could add fitness centers to the list of public accommodation exceptions in § 46a-64 (b) (1)¹⁹, the degree of offensiveness is minor.

VII CONCLUSIONS OF LAW

1. As a result of the decision by our Supreme Court, Club Camel Inc. is found to have violated General Statutes § 46a-64 by offering a workout section exclusively for women.
2. The commission and Mr. Chaplin presented sufficient evidence for the awarding of compensatory emotional distress damages.

¹⁹ "Thus, the sensitivity of the determination of where to limit antidiscrimination protections, along with evolving contemporary understandings of the terms 'gender' and 'sex', see footnote 2 of this opinion, renders this issue uniquely well suited for consideration in the first instance by the legislature, which is the policy-making branch of our government." *Commission on Human Rights and Opportunities v Edge Fitness, LLC*, 342 Conn. 25, 43 (2022).

VIII
ORDER

1. The respondent Club Camel Inc. is ordered to pay the complainant Alex Chaplin compensatory emotional distress damages in the amount of \$500.00. Club Camel Inc. shall make payment on or before September 30, 2022.
2. Post-judgment interest shall accrue at the annually compounded rate of 5% on any balance outstanding on or after October 1, 2022.
3. Club Camel Inc. is ordered to cease and desist from offering separate workout sections exclusively for women.



Hon. Jon P. FitzGerald
Presiding Human Rights Referee