



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

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Promoting Equality and Justice for all People

March 22, 2023

CHRO ex rel. Juana Martinez-Perez v. Diaper Dan CHRO No. 2230323 Fed No. 16a202200344.

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/or counsel, and certified mail to respondent.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

Juana Martinez-Perez
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**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and : CHRO No. 2230323
Opportunities ex rel. Juana :
Martinez-Perez, Complainant :
v. :
Diaper Dan, Inc. : March 21, 2023

OFFICE OF
PUBLIC HEARINGS -CHRO
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REVISED FINAL DECISION FOLLOWING A HEARING IN DAMAGES
AFTER THE ENTRY OF AN ORDER OF DEFAULT¹

I
PRELIMINARY STATEMENT

Juana Martinez-Perez filed her affidavit of illegal discriminatory practice (complaint) with the commission on December 22, 2021. In her complaint, she alleged that the respondent, Diaper Dan, Inc. (Diaper Dan), her former employer, violated General Statutes § 46a-60 (b) (1), (4), and (8) and Title VII as enforced by General Statute § 46a-58 (a). According to Ms. Martinez-Perez, between May 15, 2021 and August 4, 2021, she was given difficult assignments, retaliated against, harassed, sexually harassed, and terminated. She alleged that her sex and previous opposition to Diaper Dan's discriminatory practices were factors in its actions.

The executive director defaulted Diaper Dan on July 28, 2022 for its failure to file an answer to the complaint. The commission then transferred the complaint to the office of public hearings to conduct a hearing in damages.

¹ Pursuant to General Statutes § 4-181a (c), this decision is being modified to correct a clerical error (the docket number).

The hearing in damages was held on January 11, 2023. Ms. Martinez Perez appeared and testified. Post-hearing briefs were due on March 7, 2023, at which time the record closed.

For the reasons stated herein, Diaper Dan, Inc is found to have discriminated against Juana Martinez-Perez. Relief is ordered as set forth herein.

II PARTIES

The parties to this action are the commission on human rights and opportunities, 450 Columbus Blvd., Hartford, Connecticut; Juana Martinez-Perez, c/o Solomon Center for Health Law and Policy, Yale Law School, 127 Wall Street, New Haven, CT; and Diaper Dan Inc., 24 Gilbert Street, West Haven, Connecticut.

III FINDINGS OF FACT

References to testimony in the transcript are designated as "Tr." followed by the page number. The commission's exhibits are designed by "CHRO" followed by the exhibit number. Ms. Martinez-Perez's exhibits are designed by "C" followed by the exhibit number.

"Failure to answer any allegation or part of an allegation shall be deemed an admission of such allegation without the need for further proof." Regs., Conn. State Agencies § 46a-54-86a (b).

Based upon the pleadings, exhibits, and an assessment of the credibility of the witness, the following facts relevant to this decision are found:

1. Diaper Dan is a laundry service for restaurants. It washes tablecloths, napkins, bibs, and aprons. Tr. 19.
2. Ms. Martinez-Perez worked for Diaper Dan from 2009 to 2013. In 2013, she left Diaper Dan because of the birth of her child. She returned in 2018. Tr. 15.
3. Both men and women worked at the Diaper Dan. Men would do the washing and women would do the separating and loading of the wash. Tr. 20-21.
4. Ms. Martinez-Perez folded and packed laundry. She worked near laundry machines when they were in operation. Tr. 21; CHRO 1.
5. Ms. Martinez-Perez enjoyed working at Diaper Dan during the 2009 to 2013 period. No one bothered her and it was not stressful. Tr. 19.
6. When Ms. Martinez-Perez returned in 2018 her supervisor was a male named Cano. Tr. 21.
7. Cano had also worked at Diaper Dan during 2009 and 2013, but did not behave inappropriately. Tr. 25.
8. When Ms. Martinez-Perez returned in 2018, Cano had been promoted and his behavior had changed. Tr. 25-26.
9. Cano frequently inappropriately touched the female workers. He told them that if the women allowed him to touch them everything would be nice. Tr. 22-23.
10. A female worker who allowed Cano to touch her buttocks was relocated to do easier work, which left Ms. Martinez-Perez to do the folding and packing on her own. Tr. 22.

11. Cano would walk in front of the female employees, pull his pants down, and 'moon' them. Tr. 37.
12. Cano approached Ms. Martinez-Perez twice and offered her \$200 for sex. He told her that she would pay for refusing Tr. 28.
13. The first time Cano propositioned Ms. Martinez-Perez was in November 2020. She refused. She was afraid that he would use force. She felt daily fear. Tr. 28-30.
14. The second time Cano propositioned Ms. Martinez-Perez was in March 2021. She again refused. She was afraid that Cano would get her fired and she needed the job to provide for her children. Tr. 30-31, 36.
15. Ms. Martinez-Perez's co-workers were not present when Cano propositioned her. Tr. 30.
16. After Ms. Martinez-Perez refused his sexual advances, Cano began harassing her. Daily, he would yell and scream at her, swear at her, call her lazy and stupid, and give her difficult assignments. Tr. 24, 33-36, 41.
17. Cano would stare at Ms. Martinez-Perez, looking her up and down as if he wanted to touch her. Tr. 23.
18. Cano gave Ms. Martinez-Perez more work duties than he assigned to her co-workers. Tr. 39.
19. After Ms. Martinez-Perez refused his sexual advances, Cano told her several times to reach under the laundry machines while they were running to retrieve fallen pieces of laundry. He knew this was dangerous because of the possibility of injury. Ms. Martinez-Perez consistently refused. Tr. 33, 35.

20. Previous workers who had reached under the laundry machine to retrieve fallen cloths had been injured. Diaper Dan's owner had told workers not to reach under the machines. Tr. 35.
21. After Ms. Martinez-Perez refused his sexual advances, Cano made her work between two very hot machines. Tr. 33.
22. With permission, Ms. Martinez-Perez brought her son to work one day because she did not have a sitter. Cano intentionally nearly drove a cart into the child. Tr. 37-38.
23. Cano's constant yelling, screaming, and swearing at Ms. Martinez-Perez made her feel intimidated and humiliated. Tr. 33-34.
24. Cano's propositions of money for sex made Ms. Martinez-Perez feel afraid and insulted. Tr. 32.
25. Cano's repeatedly yelled, swore, and ridiculed Ms. Martinez-Perez. He assigned her more work than he assigned others. These behaviors were done in the presence of her co-workers. Tr. 34, 38-39.
26. Cano's mistreatment of Ms. Martinez-Perez because of her rejection of his sexual advances was so obvious and frequent that her co-workers asked Cano why he treated her so badly. Tr. 38-39.
27. Canto threatened workers who complained about his treatment of them that any workers who were immigrants would be deported. Tr. 37.
28. Cano's treatment of Ms. Martinez-Perez made her feel sad and isolated. Tr. 41.
29. At times, Ms. Martinez-Perez would go into the bathroom to cry. Tr. 39.

30. Ms. Martinez-Perez felt very stressful and anxious. She lost sleep. She had headaches. She was worried about what would happen the next day. She felt she had to be constantly on alert at work to avoid Cano. Tr. 25, 40. She felt humiliated by Cano's treatment of her. Tr. 27.
31. Cano's yelling at her made Ms. Martinez-Perez feel particularly bad because while growing up her family considered yelling to be offensive behavior. Tr. 34-35.
32. In August 2021, Ms. Martinez-Perez asked Cano for time off to take her daughter to a medical appointment. He ignored her. She went to the owner's office but he was out. She left and took her daughter to the medical appointment. After the appointment she went to the supermarket and ran into a co-worker. The co-worker informed Ms. Martinez-Perez that she was being suspended for three days for failing to notify anyone that she was leaving. Tr. 41-42.
33. Ms. Martinez-Perez tried to explain to the owner what had happened but he refused to listen. Tr. 43.
34. After the suspension, Ms. Martinez-Perez decided not to return to Diaper Dan because she felt she had been unfairly suspended for not asking for time off when, in fact, she had asked for permission to leave. Tr. 43.
35. At the time Ms. Martinez-Perez was rehired in 2018, Diaper Dan employed eighteen people. Tr. 20.
36. As a result of the pandemic, at the time Ms. Martinez-Perez left her employment, Diaper Dan employed ten people. Tr. 20.

37. On August 29, 2021, Ms. Martinez-Perez began working at Kevin's Seaford. Tr. 18; C 2.
38. Ms. Martinez-Perez continues to have headaches when she thinks about her experiences at Diaper Dan. Tr. 40.
39. Ms. Martinez-Perez continues to be afraid that she might encounter similar harassing behavior at a new workplace. Tr. 40, 45.
40. Ms. Martinez-Perez continues to frequently think about the harassment she experienced. She feels sad and stressed. Tr. 44-45.
41. Ms. Martinez-Perez continues to be nervous and fearful. She is jumpy if anyone comes up behind her. Tr. 45.
42. Ms. Martinez-Perez feels sad and humiliated about having to discuss what happened. Tr. 26.
43. Having to relive the experiences makes Ms. Martinez-Perez feel ugly. Tr 27.
44. If she encountered Cano today, Ms. Martinez-Perez would feel still fear that he would yell at her or hurt her. Tr. 27-28.

IV APPLICABLE STATUTES AND REGULATIONS

A respondent must file an answer under oath to a complaint. General Statutes § 46a-83 (a); Regs., Conn. State Agencies § 46a-54-43a. If a respondent fails to file an answer, the executive director or designee is authorized to enter an order of default. General Statutes § 46a-83 (f); Regs., Conn. State Agencies § 46a-54-46a. Upon the entry of the order of default, the presiding human rights referee shall "enter, after notice and

hearing, an order eliminating the discriminatory practice complained of and making the complainant whole." § 46a-83 (l).

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.

Section 46a-58 (a) provides in part that:

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 religion, national origin, alienage, color, race, sex

Title VII at 42 U.S.C. § 2000e (b) provides in part that:

The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as

defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

Title VII at 42 U.S.C. § 2000e-2 (a) further provides that:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

V STANDARD

Ms. Martinez-Perez seeks an award of emotional distress damages. By violating Title VII, Diaper Dan violated § 46a-58 through which the commission enforces Title VII. Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including §§ 46a-58 and 46a-64. *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 686, 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*, Docket Nos. CV-94-4031061s, CV954031060s, 2011 WL 1992014, *2 (Superior Court, judicial district of New Haven, April 28, 2011). "Punitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of

courts." *Commission on Human Rights & Opportunities v Cantillon*, Docket HHB-CV-17-6039406, n 9, 2019 WL 5549576 (Superior Court, judicial district of New Britain, October 2, 2019); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986).

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, Docket Nos. CV-94-4031061s, CV-95-4031060s, 2011 WL 3211150, *4 (Superior Court, judicial district of New Haven, June 6, 2011).

VI
ANALYSIS

A

1
Economic / Back pay

Back pay is not awarded. Ms. Martinez-Perez testified that she decided not to return to Diaper Dan after the suspension because she felt the suspension itself was unfair. She did not testify that she decided not to return because of Cano's harassment.

2
Compensatory

Three factors are considered in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86. The most important factor is the subjective internal reaction experienced by a complainant and whether that reaction was intense, prolonged, and understandable. Ms. Martinez-Perez's reaction to Cano's discriminatory behavior was intense, prolonged, and understandable. She was afraid that he would respond with the use of force to her rejection of his sexual advances. His threats to have her fired made her afraid about losing her job and how she would support her children. She was fearful about his threats to contact federal authorities. She felt insulted, intimidated, humiliated, stressful, anxious, and isolated. She lost sleep. She would go to bed and be worried about what Cano would do the next day. She had to be constantly on alert at work to avoid Cano. His behavior toward her caused her to go into the bathroom to cry.

In addition to Cano's verbal abuse, Ms. Martinez-Perez had a reasonable fear for the physical safety of both herself and her family. Cano wanted her to reach under a

laundry machine to retrieve fallen towels when he knew that previous employees had been injured for doing that and knew that the owner had previously told employees not to reach under the machines because of the safety hazard. In addition, Cano had apparently tried, or given the strong impression of trying, to run over Ms. Martinez-Perez's son with a cart.

Ms. Martinez-Perez continues to feel sad, stressed, and humiliated when she discusses what happened or thinks about it. Having to relive the experiences continues to make her feel ugly. She is still afraid what Cano would do to her if she encountered him today. She continues to have headaches when she thinks about her experiences at Diaper Dan. She is fearful that she might encounter similar behavior at any new workplace. During the hearing she was visibly upset and tearful.

B

The second factor to consider is whether Diaper Dan's discriminatory conduct occurred in public. Cano's two sexual propositions of Ms. Martinez-Perez were not public. However, his repeated, constant yelling, swearing, and ridiculing of her and his assigning her more work to her than to her co-workers were done in the presence of her co-workers. His mistreatment of her was so obvious and frequent that her co-workers asked Cano why he treated Ms. Martinez-Perez so badly.

C

The third factor for consideration was also met. Diaper Dan, acting through its supervisor Cano, committed the discriminatory acts with the intention of causing Ms. Martinez-Perez pain, embarrassment, and humiliation. Cano's actions of offering Ms.

Martinez-Perez money for sex, saying "fuck you" to her when she refused to get the table cloths out from under the running laundry machine, repeatedly calling her lazy and stupid, threatening that immigrant workers complaining about their treatment would be deported, and pulling his pants down and 'mooning' Ms. Martinez-Perez and her co-workers are all actions clearly intending to cause pain, embarrassment, and humiliation.

VII CONCLUSIONS OF LAW

1. As a result of the entry of a default order against Diaper Dan for its failure to answer the complaint, a hearing in damages was held to determine the relief necessary to eliminate the discriminatory practice and to make Ms. Martinez-Perez whole.
2. The commission and Ms. Martinez-Perez established by a preponderance of the evidence that Diaper Dan, Inc. violated General Statutes § 46a-60 (b) (1), (4) and (8) when it harassed her, sexually harassed her, gave her more difficult assignments than given to her co-workers, and retaliated against her because of her sex and previous opposition to its discriminatory conduct.
3. The commission and Ms. Martinez-Perez established by a preponderance of the evidence that Diaper Dan, Inc. violated General Statutes § 46a-58 (a) when, in violation of Title VII, it harassed her, sexually harassed her, gave her more difficult assignments than given to her co-workers, and retaliated against her because of her sex and previous opposition to its discriminatory conduct.
4. The commission and Ms. Martinez-Perez presented sufficient evidence for an award of compensatory emotional distress damages pursuant to General Statutes § 46a-86 (c) as a result of Diaper Dan, Inc's violation of § 46a-58 and Title VII.

5. Ms. Martinez-Perez presented sufficient evidence for an award of attorney fees.

VIII
ORDER

1. Diaper Dan, Inc. is ordered to pay Juana Martinez-Perez \$100,000 in compensatory emotional distress damages. Payment shall be made on or before June 30, 2023.
2. Diaper Dan, Inc. is ordered to pay Juana Martinez-Perez's attorney fees in the amount of \$10,930. Payment is to be made on or before June 30, 2023 to HAVEN Medical-Legal Partnership.
3. Post-judgment interest shall accrue at the compounded rate of 10% per annum on any balance outstanding on and after July 1, 2023.
4. Pursuant to General Statutes § 46a-60 (b) (4), Diaper Dan, Inc. shall not engage in or allow any of its employees to engage in any discriminatory conduct against Juana Martinez-Perez because she has opposed its discriminatory employment practices, filed this complaint, or testified in this proceeding.
5. Should Diaper Dan, Inc. ever be contacted by prospective employers seeking references concerning Juana Martinez-Perez, Diaper Dan, Inc. shall provide only the dates of said employment, the last position held and rate(s) of pay. In the event additional information is requested in connection with any inquiry regarding Juana Martinez-Perez, Diaper Dan, Inc. shall require written authorization from Ms. Martinez-Perez before such information is provided, unless required by law to provide such information.

6. Diaper Dan, Inc. 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 law.
7. Pursuant to General Statutes § 46a-54 (13), on or before June 30, 2023 and Diaper Dan, Inc. shall post the commission's posters concerning equal employment in conspicuous locations visible to all employees and applicants for employment.
8. On or before June 30, 2023, Diaper Dan, Inc. shall submit proof to the commission that in compliance with General Statutes § 46a-54 (15) it has posting in a prominent and accessible locations information concerning the illegality of sexual harassment and remedies available to victim of sexual harassment and that it has provided the requisite sexual harassment training to its employees.
9. Diaper Dan, Inc. shall, within one year of the date of this final decision, undertake training(s) in both state and federal anti-discrimination laws to its supervisory and management employees located in Connecticut. Prior to the training(s), Diaper Dan, Inc. will provide the commission with the name and contact information of the trainer(s), as well as a copy of the agenda/curriculum within a reasonable time prior to the commencement of said training(s). The commission shall be afforded the opportunity to review and comment upon the agenda/curriculum prior to the training(s). The commission's comments, suggestions, and/or additions (if any) to the

agenda/curriculum shall be incorporated into the training(s). Diaper Dan, Inc. shall submit proof to the commission that said training(s) did occur. The proof shall include an attendance sheet signed by the attending supervisory and management employees as well as by the trainer(s).



Hon. Jon P. FitzGerald
Presiding Human Rights Referee