



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

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*Promoting Equality and Justice for all People*

October 27, 2023

CHRO ex rel. Victoria (Kohler) Fichter v. Hazelton Gourmet CHRO No. 2230310 Fed No. 16a202200328.

**FINAL DECISION RE: HEARING IN DAMAGES**

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision Re: Hearing in Damages 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:

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Jon P. FitzGerald, Presiding Human Rights Referee

Commission on Human Rights and Opportunities ex rel. Victoria (Kohler) Fichtner, v. Complainant	: Office of Public Hearings : : : : CHRO No. 2230310 : Fed No. 16a202200328 : : : October 27, 2023
Hazelton Gourmet, Respondent	

OFFICE OF  
PUBLIC HEARINGS - CHRO  
DATE 10/27/23  
TIME 8:30 AM  
RECEIVED BY KDM

**FINAL DECISION – HEARING IN DAMAGES  
AFTER THE ENTRY OF AN ORDER OF DEFAULT**

**I  
PRELIMINARY STATEMENT**

The complainant filed her affidavit of illegal discriminatory practice with the commission on human rights and opportunities (commission) on December 13, 2021. On June 22, 2023, the complainant's motion to amend her affidavit was granted, which amended the affidavit to change her name from her maiden name of Victoria Kohler to her married name of Victoria Fichtner. In her affidavit as amended (complaint), Ms. Fichtner alleged that Hazelton Gourmet, her former employer, violated General Statutes § 46a-60 (b) (1) and the federal Americans with Disabilities Act, 42 U.S.C. § 12101 et seq as enforced through General Statutes § 46a-58 (a) when it denied her a reasonable accommodation and terminated her employment on the basis of her mental disability.

On July 28, 2022, the commission's executive director entered an order of default against the respondent for failing to file an answer under oath.

On August 29, 2023, a hearing was held to determine the relief necessary to eliminate the discriminatory practice and make the complainant whole. The commission and Ms. Fichtner appeared. No one appeared on behalf of Hazelton Gourmet. The record closed on October 24, 2023, the due date for the filing of post-hearing briefs.

For the reasons stated herein, Hazelton Gourmet is found by a preponderance of the evidence to have discriminated against Victoria Kohler Fichtner. 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; Victoria Fichtner, of Milford, Connecticut; and Hazelton Gourmet of 98 Turnpike Square, Milford, Connecticut.

## III FINDINGS OF FACT

References to testimony in the transcript are designated as "Tr." followed by the page number.

"Failure to answer any allegation or part of an allegation shall be deemed an admission of such allegation or part thereof 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. Ms. Fichtner is a person with mental disabilities including anxiety, depression, PTSD, and borderline personality disorder. Complaint, ¶ 5; Tr. 11.
2. Ms. Fichtner receives social security disability benefits because of her disabilities. Complaint, ¶ 6; Tr. 11-12.
3. Because of her mental health issues, Ms. Fichtner is unable to work full time. Complaint, ¶ 7; Tr. 11.

4. Ms. Fichter has struggled her entire life with keeping employment. Tr. 14, 25.
5. Hazelton Gourmet hired Ms. Fichter on or about August 2, 2021 as an office assistant. Complaint, ¶ 4; Tr. 9.
6. Mark Roberts was the owner of Hazelton Gourmet. Tr. 10.
7. Ms. Fichtner's duties included receiving receipts, scanning them, and entering them into an excel spreadsheet. Tr. 10-11
8. After she began working at Hazelton Gourmet, Ms. Fichtner disclosed her disabilities to her manager, Ms. Allard. Complaint, ¶ 8; Tr. 12.
9. Ms. Fichter and Ms. Allard were Facebook acquaintances. Tr. 9.
10. Ms. Fichtner explained to Ms. Allard that she could only work part-time because of her disabilities. Complaint, ¶ 8; Tr. 9-10.
11. Other managers at Hazelton Gourmet were aware of Ms. Fichtner's disabilities. Tr. 12.
12. Ms. Fichtner was paid \$16.00 per hour. Tr. 11.
13. The work environment at Hazelton Gourmet's was toxic and for all employees. The company experienced heavy turnover of staff due to employees being fired and quitting. Mr. Roberts had installed cameras throughout the store. He would harass his managers and other employees through a messaging platform. Complaint, ¶ 9; Tr. 13-15.
14. During her approximately three month of employment, Ms. Fichtner had approximately six different managers. Employees came and went. Terminations and resignations were a daily occurrence. Tr. 14.

15. During her employment Ms. Fichtner developed a tic in her eye. Tr. 15.
16. On or about October 22, 2021, Ms. Fichtner spoke to Mr. Roberts. She explained that she was experiencing exacerbated symptoms related to her disabilities. She requested a reduction in her work schedule from twenty hours per week to twelve hours per week. Complaint, ¶ 10; Tr. 16.
17. Mr. Roberts approved Ms. Fichtner's proposed schedule reduction. Complaint, ¶ 11; Tr. 16-17.
18. The reduction in her working hours made it easier for Ms. Fichtner to get to the extra doctor appointments she had because of the tic. Tr. 23.
19. On or about November 2, 2021, Karyn Wade, Hazelton Gourmet's new human resource manager, confronted Ms. Fichtner and accused her of having left early the previous day. Complaint, ¶ 12; Tr. 17-18.
20. Ms. Fichtner explained to Ms. Wade that as a reasonable accommodation to her disabilities she had a part time schedule. Complaint, ¶ 13; Tr. 18.
21. Ms. Wade told Ms. Fichtner that the company did not hire part-time employees. Complaint, ¶ 14; Tr. 18.
22. The discussion between Ms. Wade and Ms. Fichtner regarding Ms. Fichtner's disabilities and accommodations occurred in front of other employees. Complaint, ¶ 15; Tr. 17-18.
23. The public discussion between Ms. Wade and Ms. Fichtner of her disabilities embarrassed Ms. Fichtner. Complaint, ¶ 15. Ms. Fichtner felt like a child being scolded. She felt scared, anxious, uncomfortable, and shameful. Tr. 18-19.

24. Later that day, Ms. Wade called Ms. Fichtner into her office and notified that her employment had been terminated. Complaint, ¶ 16; Tr. 18, 20.
25. Hazelton Gourmet went out of business and closed a couple of months after Ms. Fichtner was terminated. Tr. 22, 28-30.
26. Her termination made Ms. Fichtner feel awful, horrible, and shameful. She had been trying to work to get off disability. She had enjoyed working with her co-workers. Tr. 21. Ms. Fichtner feels shame and guilt over being terminated and having a mental illness. Tr. 32.
27. Ms. Fichtner obtained new employment approximately one year after her termination. She works two hours a day as a lunch aide in an elementary school and earns \$15.00 per hour. Tr. 23-24.
28. As a result of her termination, she is fearful about disclosing her disabilities to any potential employer. Tr. 24-25, 32-33.
29. Hazelton Gourmet was very careless with employee files. Tr. 27.
30. Ms. Fichtner continues to be fearful that Hazelton Gourmet will retaliate against her by disclosing her personal data. She is concerned about physical retaliation to herself and her family. Tr. 27-28.
31. Ms. Fichtner did not receive unemployment compensation from the State of Connecticut. Tr. 24.

**IV  
DEFAULT  
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 (a). 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 (f).

## **VI DAMAGES**

### **A Statutes**

The relief a complainant can be awarded is generally found in General Statutes § 46a-86. This section 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.
- (b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer shall (1) issue an order to eliminate the discriminatory employment practice complained of and to make the complainant whole, including restoration to membership in any respondent labor organization, and (2) may (A) determine the amount of damages suffered by the complainant, including the actual costs incurred by the complainant as a result of the discriminatory employment practice, and (B) 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. Liability for back pay shall

not accrue from a date more than two years prior to the filing or issuance of the complaint. Interim 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 shall be deducted from the amount of back pay to which such person is otherwise entitled. The amount of any deduction for interim unemployment compensation or welfare assistance shall be paid by the respondent to the commission which shall transfer such amount to the appropriate state or local agency. . .

- (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. . . .

**B**  
**Standard**

**1**  
**Economic / back pay**

It is axiomatic that a plaintiff has a duty to make reasonable efforts to mitigate damages. . . . An employer seeking to reduce or avoid a back pay award bears the burden of demonstrating that a plaintiff has failed to satisfy the duty to mitigate. . . . The employer must therefore demonstrate that suitable work existed, and that the employee did not make reasonable efforts to obtain it. . . .

Whether a plaintiff made a reasonable effort to mitigate her damages under the circumstances of a particular case is a question of fact.

(Internal citations omitted; internal quotation marks omitted.) *Rossova v. Charter Communications, LLC*, 211 Conn. App. 676, 703-704, 273 A.3d 696 (2022).



**Compensatory / emotional distress damages**

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, 694, 855 A.2d 212 (2004). “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*, 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), 347 Conn 58 (2023); *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 (7<sup>th</sup> 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*, Superior Court, judicial district of New Haven, Docket CV 94 4031061s, CV 95 4031060s, 2011 WL 3211150, \*4 (June 6, 2011).

### **3 Interest**

The presiding officer is authorized to award pre-judgment and post-judgment interest on a back pay award. *Thames Talent Ltd. v Commission on Human Rights and Opportunities*, 265 Conn. 127 (2003).

**C**  
**Analysis**

**1**  
**Back pay**

Ms. Fichtner is awarded back pay at the rate of \$16 per hour for twelve hours per week for twenty-four weeks for a total of \$4608. Back pay is limited to twenty-four weeks as Ms. Fichtner testified that Hazelton Gourmet went out of business and closed a couple of months after she was terminated.

**2**  
**Emotional distress**

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. During her employment, Ms. Fichtner found Hazelton Gourmet to be a toxic environment. That environment, however, was apparently directed at all employees, not just at her. There is no indication that she was singled out to be recorded by cameras or harassed by Mr. Roberts. Terminations and resignations were frequent, again unrelated to Ms. Fichtner's disability.

Ms. Fichtner's termination itself, though, was a different matter. Ms. Wade terminated Ms. Fichtner shortly after Ms. Fichtner explained that her reduced hours were an accommodation for her disability and had been approved by Mr. Roberts. The termination has left Ms. Fichtner upset, hurt, and feeling horrible and shameful about having a disability. She had enjoyed working with her coworkers and had been trying to get off disability. As a result of her terminations, she remains fearful about telling potential

employers that she is disabled because of concerns about not being hired or of being terminated.

Ms. Fichtner also testified to being concerned about having her personal data disclosed and physical retaliation. These concerns, though, are not understandable. There was nothing specific in any interactions between Ms. Fichter and Mr. Roberts that would appear to support a fear of retaliation. All employee records, not just Ms. Fichtner's were treated carelessly. Further, had she not been terminated for her disability, Ms. Fitchner would have been terminated anyway with the rest of the staff when Hazelton Gourmet closed a few months later.

The second factor to consider is whether Hazelton Gourmet's discriminatory conduct occurred in public. Ms. Wade's conversation with Ms. Fichtner was in public when Ms. Fichtner told Ms. Wade that she had received a reduced schedule as an accommodation for her disability was in the presence of other employees.

The third factor is consideration of whether the discriminatory acts were egregious and done with the intention and effect of producing the maximum pain, embarrassment, and humiliation. Here, Ms. Wade terminated Ms. Fichtner's employment within hours of learning that Ms. Fichtner had an accommodation of reduced hours for her disabilities. Terminating someone's employment because of a mental disability is clearly an egregious act intended to embarrass and humiliate.

## **VI CONCLUSIONS OF LAW**

1. As a result of the entry of a default order against Hazelton Gourmet 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. Fichtner whole.

2. The commission and Ms. Fichtner established by a preponderance of the evidence that Hazelton Gourmet violated General Statutes § 46a-60 (b) (1) when it denied her a reasonable accommodation and terminated her employment on the basis of her mental disability.
3. The commission and Ms. Ms. Fichtner established by a preponderance of the evidence that Hazelton Gourmet violated General Statutes § 46a-58 (a) when, in violation of the ADA, it denied her a reasonable accommodation and terminated her employment on the basis of her mental disability.
4. The commission and Ms. Fichtner presented sufficient evidence for an award for back pay.
5. The commission and Ms. Fichtner presented sufficient evidence for an award for compensatory emotional distress damages pursuant to General Statutes § 46a-86 (c) as a result of Hazelton Gourmet's violation of § 46a-58 and the ADA.

## VII ORDER

1. Hazelton Gourmet is ordered to pay Victoria Fichtner \$15,000 in compensatory emotional distress damages. Payment shall be made on or before November 30, 2023.
2. Hazelton Gourmet is ordered to pay Victoria Fichtner back pay in the amount of \$4608. Payment is to be made on or before November 30, 2023.

3. Prejudgment interest is awarded on the back pay award in the amount of \$967.<sup>1</sup>
4. Post-judgment interest shall accrue at the compounded rate of 10% per annum on any balance of backpay and emotional distress outstanding on and after December 1, 2023.
5. Pursuant to General Statutes § 46a-60 (b) (4), Hazelton Gourmet and Mr. Roberts shall not engage in or allow any of its employees to engage in any discriminatory conduct against Victoria Fichtner because she has opposed its discriminatory employment practices, filed this complaint, or testified in this proceeding.
6. Should Hazelton Gourmet or Mr. Roberts ever be contacted by prospective employers seeking references concerning Victoria Fichtner, Hazelton Gourmet and Mr. Roberts 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 Victoria Fichtner, Hazelton Gourmet and Mr. Roberts shall require written authorization from Ms. Fichtner before such information is provided, unless required by law to provide such information.
7. Hazelton Gourmet 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.

*/s/ Jon P. FitzGerald*  
\_\_\_\_\_  
Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

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<sup>1</sup> Interest is calculated as follows:

November 21, 2021 to November 20, 2022	$\$4608 \times 10\% =$	\$460
4608 + \$460 = \$5068		
November 21, 2022 to November 20, 2023	$\$5068 \times 10\% =$	\$507
TOTAL		\$967.00