STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights
And Opportunities ex rel. Jane Doe,
Complainant

CHRO No. 0510199
Fed No. 16aa500266

v.

Claywell Electric,
Respondent

December 9, 2008

FINAL DECISION
HEARING IN DAMAGES

I.

The Parties

The pro se complainant is Jane Doe, a Connecticut resident, with an assigned address c/o the commission on human rights and opportunities (commission), 21 Grand Street, Hartford, Connecticut 06106. Jane Doe is a pseudonym allowed by me pursuant to authority bestowed by General Statutes § 19a-581 et seq. and further pursuant to my orders dated May 22, 2008 and July 25, 2008. The commission was represented by Alix Simonetti, commission attorney. The respondent is Claywell Electric whose business address is 308 Hopmeadow Street, Weatogue (Simsbury), Connecticut 06089. The respondent was not represented by counsel.

II.

Procedural History

The complainant filed her employment discrimination complaint with the commission on November 22, 2004 and amended it on June 26, 2008 so as to achieve pseudonym status pursuant to my aforementioned orders. The complaint alleged discrimination on the basis of gender and sexual harassment leading to constructive termination in violation of General Statutes §§46a-58a, 46a-60 (a) (1), 46a-60 (a) (8), and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. After a full and thorough investigation of the complaint, the commission investigator issued a reasonable cause finding and the case was certified to public hearing on September 18, 2007.

On September 24, 2007, Chief Human Rights Referee Donna Maria Wilkerson issued a notice of contested case proceeding and hearing conference. Human Rights Referee Thomas C. Austin, Jr. was assigned as the presiding referee and the hearing conference was scheduled for October 24, 2007. Commission counsel Alix Simonetti participated and a scheduling order was issued. The respondent did not appear at the hearing conference and did not file an answer. On December 14, 2007, the commission filed a motion for default, properly noticed, and default was entered January 2, 2008 by the presiding referee, who also ordered a hearing in damages to be held on February 28, 2008.

On February 8, 2008, the case was re-assigned to human rights referee J. Allen Kerr, Jr., who in response to subsequent motions, continued the hearing in damages to April 14, 2008 upon which date the hearing convened, the complainant presented testimony and entered exhibits into evidence. The defendant did not appear.

Upon entering a default, the presiding officer shall conduct a hearing which will be limited to determining the relief necessary to eliminate the discriminatory practice and make the complainant whole. Regulations of Connecticut State Agencies § 46a-54-88a. The default admits the material facts that constitute a cause of action and conclusively determines the liability of a defendant. See *Skyler Limited Partnership v. S.P. Douthett & Company, Inc..,* 212 Conn. 802 (1989). 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). The entry of a default also operates as a confession by the defendant to the truth of the material facts alleged in the complaint. *Murray v. Taylor,* 65 Conn. App. 300, cert. denied, 258 Conn. 928 (2001).

As a result of the default, and based upon the pleadings, I conclude that the complainant was discriminated against on the basis of her sex, sexually harassed, retaliated against and terminated from her employment on the basis of her sex in violation of General Statutes §§ 46a-60 (a) (1), 46a-60 (a) (8), 46a-58 (a) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of

1991. The respondent entity acted at all times through the action its owner, Kurt Claywell (Claywell).

III.

Findings of Fact

Complainant and commission's exhibits will be referenced as "C/CHRO" followed by the number. Transcript pages will be referenced as "Tr." followed by the page number.

The detailed factual allegations contained in the complaint affidavit dated November 22, 2004 and June 26, 2008 are herewith deemed established as a result of the default. Additional facts are deemed to be established as a result of the complainant's testimony at the hearing in damages and complainant's exhibits admitted into evidence. These facts (findings) will be limited to those addressing the measure of damages to be awarded, all the essential and necessary elements of liability having been established in the affidavit of illegal discriminatory practice (affidavit).

In summary, it is established that the complainant worked for the respondent as a part time secretary from September 1, 2004 through September 22, 2004 when she was constructively discharged. She was to work a twelve hour week at a rate of pay of ten dollars per hour although she worked twenty hours per week for the first two weeks because of temporary circumstances. During her approximately three weeks of active employment the complainant endured a number of unwelcome advances from Claywell, both overtly and tangentially sexual in nature. On September 8, 2004, he lured the

complainant between the chair and the desk in his office whereupon he put his hands around the complainant's waist and slid them down and rubbed her thigh. The complainant objected and the incident ended when they were interrupted by respondent's bookkeeper, Barbara Mangesi (Barbara). A day later (September 15, 2004), annoyed that the complainant was not speaking to him, Claywell threw books at the complainant's feet as she was trying to pack them. On September 15, 2004 after the complainant had expressed her displeasure with Claywell for berating her unfairly, Claywell suggested that he bring in a bottle of liquor so that they might drink together and she (complainant) could then go home and have "sex with men." The complainant objected to this line of conversation but Claywell persisted. On September 20, 2004, Claywell rubbed his arm up against the complainant's chest and grabbed her breast as she attempted to access the copy machine. He told the complainant to loosen up and relax and again put his hands on the complainant in a controlling manner. Told to stop, he did so, but again started talking about alcohol and sex. On September 22, 2004, while the complainant was cleaning up old blue prints, Claywell commented about the complainant's "muscles" and "great body." Claywell touched the complainant on the arm and she left the premises in protest.

The complainant then decided she must leave the respondent's employ and after a library computer search, determined that Claywell had previously been charged with criminal sexual misconduct, and found guilty on two occasions. The complainant issued a letter of resignation on or about September 24, 2004 by certified mail, which was refused and unclaimed.

Thereafter, the complainant called Claywell to make arrangements to have her paychecks signed (which he had failed to do), and they agreed that she would come to the office with her husband so that this could be done. Upon their arrival, and after unsuccessful efforts to get the check signed, the Simsbury police arrived in response to a call from an employee of respondent (at Claywell's direction) that the complainant and her husband were trespassing.

Additional Findings of Fact from the April 17, 2008 public hearing

1. Relative to the September 8, 2004 physical touching sexual harassment incident, Claywell orchestrated the entire incident by luring the complainant to a position behind his desk, wherein he pushed his chair forward so as to effectively pin the complainant between his desk and his chair, at which point he commenced to fondle her (TR 17-20).
2. During her first week of employment with the respondent, the complainant was warned by Barbara that, "…a lot of people start work there and they don't last more than just a few days, and to just, you know, be careful" (TR 20, 21).
3. The incident of September 9, 2004 came about when Claywell, not believing it necessary for the complainant to do her job, sent her to a small upstairs room to pack books, where she was forced to sit on the floor in a six foot by three or four foot work space. Unhappy with her packing methods, he

commenced throwing heavy books at her, some of which hit her in her feet and legs (TR 22-25).

4. The September 20, 2004 copier incident, wherein Claywell brushed and grabbed the complainant's breast, occurred after he dumped a pile of papers into the complainant's arms, which were already full with documents she was copying and which effectively rendered her helpless to respond (TR 35-38).

5. In a second incident on September 20, 2004 after the complainant entered a closet to get copy paper, Claywell surprised her in the closet – blocking her exit – and commenced unwanted touching, forcing the complainant to forcefully push him aside to flee the closet and the premises (TR 38-48).

6. Claywell told the complainant that he did not respect women and that they were beneath him (TR 52).

7. After the complainant issued her letter of resignation she realized that her two paychecks were unsigned and she made arrangements with Claywell for her and her husband to stop by and get them signed. Despite Claywell's cheerful acceptance of these terms, Claywell had the police contacted with a trespassing complaint and the complainant and her husband were approached and interviewed by the police outside of the respondent's business office (TR 59-63).

8. The police forced Claywell to sign the checks (TR 64).

9. Despite Claywell's initiation of the police involvement it was he who was investigated and subsequently arrested, and a resultant criminal prosecution

of Claywell forced the complainant to cooperate with the authorities and live under a cloud of apprehension that the sexual charges (which were receiving substantial publicity) would ultimately result in the complainant's identity being revealed (TR 64-92).

10. The complainant was unwilling after her experience with Claywell to work in an environment that placed her in the presence of other men, despite having had both good and bad experiences working with men (TR 93-95).

11. The complainant's efforts to mitigate her damages with new employment were extremely and unreasonably limited in terms of the media employed in the search, in the narrow scope of work hours the complainant deemed acceptable and in the highly restricted geographical boundaries she set for prospective employers (TR 115-117).

IV.

Discussion

"In an action at law, the rule is that the entry of a 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 for 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. It does not follow that the plaintiff

is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive." (Internal quotation marks omitted.) *Murray v. Taylor,* supra, 65 Conn. App., 334, 335.

A.

Emotional Distress

As I have previously held in *Commission on Human Rights & Opportunities ex rel. DiMicco v. Neil Roberts, Inc.,* 2006 WL 4753466 (CHRO No. 0420438, September 12, 2006), the inclusion of a claim under General Statutes § 46a-58 (a) in the complaint affidavit of an employment discrimination case, 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). My finding in *DiMicco* (as in the case before me now) was made in reliance on *Commission on Human Rights & Opportunities ex rel. Tina Saddler v. Margaret Landry dba Superior Agency,* 2006 WL 4753474 (CHRO No. 0450057, May 23, 2006), which in turn was predicated on the findings made by the Connecticut Supreme Court in *Commission on Human Rights & Opportunities v. Board of Education of the Town of Cheshire,* 270 Conn. 665 (2004).

While the complainant offered no expert or corroborative testimony to support her claim for damages for emotional distress, a complainant need not present medical testimony, and, in fact, her own testimony may suffice. *Schanzer v. United Technologies Corp.,*

140 F. Sup. 2d 200 (D. Conn.2000). Medical testimony, however, can strengthen such a claim. *Busche v. Burkee*, 649 F. 2d 509 (7th Cir. 1981).

The relevant factors to consider in awarding damages for emotional distress include: 1) whether the discrimination occurred in front of others, 2) the degree of offensiveness of the discrimination and, 3) the subjective internal emotional reaction of the complainant. *Commission on Human Rights & Opportunities ex rel. Peoples v. Estate of Eva Belinsky,* 1988 WL 492460 (Conn. Super. November 8, 1988). Most of Claywell's acts of discrimination and harassment were not witnessed, although Barbara witnessed and in fact interrupted the September 8, 2004 incident. The most disturbing characteristic of Claywell's workplace actions (fully attributable to the respondent entity) is that they appear to have been designed to intimidate and humiliate. He would uniformly wait until the complainant was virtually defenseless before engaging in his groping, fondling and propositioning. The tactics included (previously recounted in part):

- pinning the complainant between his chair and his desk rendering her virtually immobile;
- confronting her while she was seated on the floor and confined to a space measuring perhaps no more than eighteen square feet and throwing books at her while so immobilized;
- dumping documents in her arms which were already full of documents to be copied and thus defenseless, and
- surprising and pinning the complainant in a closet as a prelude to an assault.

There was evidence that numerous other females had left the respondent's employ shortly after their hire, presumably (and in the complainant's belief) because of similar predatory activity. The complainant, when silent and clearly annoyed with Claywell, was sent to small rooms for "make work" projects where she was then confronted and harassed by him. It would not be an unwarranted stretch to conclude that the complainant was hired for the singular reason that she was deemed by Claywell to be a suitable target for sexual harassment, a seemingly strong component of the respondent's *raison des etres*.

Because of Claywell's success in isolating, surprising and disabling the complainant in advance of his groping and propositioning, he achieved maximum shock value, which greatly heightened the degree of offensiveness and the intensity of complainant's internal emotional reaction. These reactions could only have been exacerbated by Claywell's throwing heavy books at her feet and legs while she sat helpless on the floor – actions he clearly felt were warranted because of the complainant's "lowly" female status and her previous rejections of his initiatives.

There are matters such as Claywell's vindictive and unjustified summoning of the police in his trespassing claim, and the concern and aggravation sustained by the complainant in her assistance to the authorities in Claywell's criminal prosecution, that a court might well deem worthy of compensation in a civil action against Claywell, one that might include claims for battery and false imprisonment. Without clear authority, however, to consider such matters in an administrative hearing on employment discrimination

against Claywell's business entity, I believe I must limit my award to actionable sexual discrimination and sexual harassment that occurred in the workplace during the term of the complainant's employment, and the resulting constructive discharge.

That being said, there is enough evidence within this tribunal's rightful purview of that which occurred during the complainant's twenty two day employment ordeal to justify a substantial award for emotional distress.

In setting my award for emotional distress I use as a reference my decision in *DiMicco v. Neil Roberts, Inc.,* supra, 2006 WL 4753474 (which itself referenced other recent commission awards for emotional distress in support of its conclusion) in which six thousand ($6,000) dollars was awarded for workplace sexual harassment. In *DiMicco,* the individual perpetrator, while a supervisor, was essentially more "smitten" than predatory, pathetic than hostile, and while his advances were clearly unwelcome and annoying, they were not calculated to frighten, surprise and demean, as were the predatory advances of Claywell. Upon careful review of the evidence and recent commission awards for emotional distress, I herewith award the sum of fifteen thousand ($15,000) dollars for emotional distress.

B.

Lost Wages

The complainant's efforts to mitigate her damages (subsequent to a reasonable and well earned period needed to decompress and recharge) were not compelling. As

previously found, she was unwilling to work in the presence of any men (while producing no expert testimony supporting the reasonableness of this blanket prohibition), limited her media job search resources to a single local periodical, and seemingly required that an employer be located in her immediate suburban environs offering highly restricted hours acceptable to her. The complainant has requested lost earnings in the amount of one hundred twenty dollars ($120) per week (12 hours x 10 dollars per hours). I am prepared, due to the seriousness of the abuse she endured leading to her constructive discharge, to award lost wages for a period of six months (26 weeks) and therewith set the award for such wages at three thousand one hundred twenty dollars ($3,120). I do find that reasonably suitable employment could and should have been secured (in the context of evaluating mitigation efforts) after a six month recuperation.

V.

Interest

Pursuant to *Thames Talent Ltd. v. CHRO*, 265 Conn. 127 (2003), pre-judgment and post-judgment interests are awarded on the lost wages award and post-judgment interest on the emotional distress award (an allowance for lawful pre-judgment interest having been factored into the rounded award for emotional distress).

Order of Relief

1. The respondent shall pay the complainant the following:
    a. Back pay in the amount of $3,120.

b. Emotional distress damages in the amount of $15,000.

c. Prejudgment interest (compounded and rounded) on the back pay in the amount of $1,310.

2. The respondent shall cease and desist from the practice complained of concerning the complainant and concerning all employees who may or will in the future become similarly situated.
3. The respondent shall not engage in or allow any of its employees to engage in any conduct against the complainant or any party to or participant in these proceedings in violation of General Statutes § 46a-60 (a) (4).
4. All moneys paid to the complainant shall include post judgment interest in the amount of 10% compounded per annum to the date of payment.
5. The respondent shall post at all Connecticut business locations the commission posters concerning equal employment in conspicuous places visible to all employees and applicants for employment (see General Statutes §§ 46a-54 (13) and 46a-60).

It is so ordered this 9th day of December 2008.

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J. Allen Kerr, Jr.,
Presiding Human Rights Referee

cc.

Jane Doe
Kurt Claywell
Claywell Electric
Alix Simonetti, Esq.