Commission on Human Rights and Opportunities ex rel. Holly Blinkoff	: Connecticut Commission on Human Rights and Opportunities : CHRO No. 9530406
v.	:
City of Torrington, et. al.	: August 25, 2008

FINAL DECISION

Preliminary statement

On January 20, 1995, Holly Blinkoff (the complainant) filed her affidavit of illegal discriminatory practice (affidavit) with the commission on human rights and opportunities (the commission). She alleged that the City of Torrington (the city or Torrington) and its agent Dana McGuinness, Torrington's city planner, (collectively, the respondents) violated General Statutes §§ 46a-58 (a) and 46a-64 (a) (1) by discriminating against her because of her sex and religion. She filed amendments to her affidavit on September 9, 1996 and November 19, 1996. The November 19, 1996 amendment included a claim that the respondents had violated General Statutes § 46a-60 (a) (4) by retaliating against her for filing her affidavit with the commission. After preliminary investigation, the commission's investigator concluded that there was reasonable cause to believe that unfair practices had been committed as alleged in the amended affidavit and certified the amended affidavit to the commission's executive director and the attorney general on January 6, 1997. On January 31, 1997, the

respondents filed their post-certification answer denying the allegations of discrimination.

On July 14, 1997, the commission filed a motion to stay the proceedings because the complainant had filed an action against the respondents in U. S. District Court in which she raised the same claims as in the affidavit. The commission's motion was granted on August 8, 1997 by the then-presiding hearing officer. The complainant's state discrimination claims were thereafter dismissed by the federal judge at the commencement of the jury trial. Other counts were also dismissed. On April 16, 2002, a jury verdict was issued in favor of the respondents on the counts that remained. On June 18, 2003, the U. S. Court of Appeals for the Second Circuit dismissed the complainant's subsequent appeal.

The administrative proceeding on the affidavit resumed at the commission with a status conference on October 8, 2003. The respondents' motion to dismiss was granted on May 10, 2004. The commission's subsequent judicial appeal of the dismissal was sustained and the matter remanded on November 30, 2006 for further proceedings.

On April 4, 2007, the commission filed notice that at the public hearing it would be pursuing only the issue of whether the respondents violated § 46a-60 (a) (4) by retaliating against the complainant for filing her affidavit with the commission.

The public hearing was held on November 1, 2, 7, 8, 9, December 11, 12, 14, 2007 and April 23 and 24, 2008. Post-hearing briefs were due on July 24, 2008 at which time the record closed.

For the reasons set forth herein, it is found that the commission and the complainant established by a preponderance of the evidence that the respondents retaliated against the complainant (1) in 1995 when they filed a lawsuit against her seeking injunctive relief and (2) when they scheduled her special exceptions permit application in January 1997 rather than December 1996. Nevertheless, no monetary damages are awarded as the commission and the complainant failed to establish that these retaliatory actions resulted in monetary damages to the complainant.

Findings of fact

Based upon a review of the pleadings, exhibits and transcripts and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found (FF)[1]:

1. In 1979, the complainant inherited approximately 13.5 acres on Old Winsted Road in Torrington, Connecticut from her father. Tr. 300.

[1] References to an exhibit are by party designation and number. The commission's exhibits are denoted as "CHRO" followed by the exhibit number, the complainant's are denoted as "C" followed by the exhibit number and the respondents' exhibits are denoted as "R" followed by the exhibit number. Those exhibits that were proffered by more than one party may be referred to by one party's designation. References to the transcript are designated as "Tr." followed by the page number.

2. The complainant, as her father had previously done, operated the site as a quarry and sold aggregate (stone, sand and gravel) products. Tr. 301, 1454-55.
3. McGuinness served as Torrington's city planner from 1989 to 1998. Tr. 613.
4. McGuinness' duties included serving as chief zoning enforcement officer and as staff for the planning and zoning commission (P&Z). He would review site plans; make recommendations on applications submitted for zone changes, site plans or subdivisions; provide P&Z with reports; prepare the agendas for P&Z meetings and enforce zoning regulations. He supervised secretaries, a zoning enforcement officer and an inland wetlands officer. Tr. 559-60, 573-78, 613-15.
5. Beginning in 1992, McGuinness also provided P&Z with recommendations on conditions that it should consider including in the special exceptions permits it issued. Tr. 560-61, 618.
6. McGuinness had the authority to issue notices of violations and cease and desist orders without consulting P&Z. A notice of violation informs the recipient that it is violating a zoning regulation. A cease and desist order informs the recipient that it is violating the city's zoning regulations and further directs the recipient to cease its illegal conduct. Tr. 621-23.

7. In 1989, McGuinness determined that the complainant would need to obtain a special exceptions permit from the city's zoning board of appeals (ZBA) in order to operate the site. CHRO-1, p.1.
8. The respondents issued the complainant cease and desist orders for operating without a special exceptions permit on August 28, 1989, December 29, 1989 and May 24, 1990. CHRO-1, p.1.
9. On June 22, 1990, the complainant applied to the ZBA for a special exceptions permit for excavation. On July 9, 1990, the ZBA granted the permit for one year and imposed several conditions regulating the operation of the quarry. CHRO-1, p. 2; C-205, p. 8; R-1.
10. On November 14, 1990, the respondents issued the complainant a cease and desist order for, inter alia, not obtaining a grading permit as required in her special exceptions permit. On December 3, 1990, the complainant applied for a grading permit and, on December 11, 1990, the grading permit was issued. CHRO-1, p. 2.
11. On June 20, 1991, the complainant applied for renewal of her special exceptions permit. On July 8, 1991, the ZBA approved the renewal and imposed conditions regulating the operation of the quarry. CHRO-1, p. 2; C-205, p.8.
12. In 1991, the city amended its zoning regulations, effective January 1, 1992, to provide, inter alia, that special exceptions permits would be

issued by P&Z rather than the ZBA and that the permits would be valid for two years rather than one year. CHRO-1, p. 2.

13. In June 1992, P&Z agreed with the complainant that, as a result of the amended zoning regulations, the complainant had a two-year extension on her existing special exceptions permit and that the existing permit would not expire until January 1, 1994. CHRO-1, p. 2.

14. On August 26, 1992, P&Z, upon application by the complainant, agreed to modify the conditions of the special exceptions permit. The modifications included expanding the complainant's hours of operation from 8:00 AM-4:30 PM to 7:00 AM-5:30 PM, Monday through Friday. CHRO-1, p. 3; C-205, p. 8; R-2.

15. On May 17, 1993, in response to complaints and a referral from P&Z regarding the noise level from work being done at the complainant's quarry, Torrington's city council referred the matter to the Torrington Area Health District (TAHD) for monitoring and action. CHRO-1, p. 4.

16. TAHD serves as the equivalent of a local board of health for nineteen area towns, including Torrington, enforcing state public health statutes and its own regulations. The director of health serves as the executive director, supervising a staff of twenty five people and reporting to a board of health composed of twenty members. Tr. 27, 106.

17. TAHD is a separate entity from the respondents. Tr. 94.

18. On June 24, 1993, the complainant applied to TAHD for a noise variance. Tr. 107; R-67.
19. TAHD granted the variance in September 1993. CHRO-1, p.4.
20. TAHD restricted the complainant's operation hours to Monday through Friday, 9:00 AM to 3:00 PM and limited the size of a rock crusher plant to no larger than 30 inches by 42 inches. Tr. 334-35.
21. The variance remained in effect until 1996. Tr. 64.
22. TAHD took no enforcement or adverse action against the complainant after 1996. Tr. 33
23. On December 30, 1993, McGuinness advised the complainant that her special exceptions permit would expire on January 1, 1994 and that she would need to apply for a renewal. CHRO-1, p. 4. McGuinness again notified the complainant on January 18, 1994 that her permit had expired and she needed to apply for a renewal. CHRO-15.
24. On January 27, 1994, the complainant applied to P&Z for a renewal of her special exceptions permit. CHRO-1, p. 4.
25. On May 11, 1994, P&Z denied, without prejudice, the complainant's permit renewal application because it lacked a survey. Tr. 314; C-205, p. 9.
26. On June 20, 1994, the complainant submitted additional information to the P&Z in support of the renewal of her permit. CHRO-16

27. On July 13, 1994, P&Z approved the renewal of the complainant's special exceptions permit and imposed conditions regulating the operation of the quarry. CHRO-17; C-205, p.9.

28. The conditions included restricting operations to Monday through Friday, 7:00 AM to 5:30 PM and allowing maintenance between 8:00 AM to 1:00 PM on Saturdays. CHRO-17; C-205, p. 9.

29. Doreen Bowski was the owner and occupant of residential property abutting the complainant's quarry. Tr. 354. She complained to McGuinness that the complainant had operated on Saturday, October 9, 1994, in violation of her permit. CHRO-18.

30. On or about November 28, 1994, McGuinness issued the complainant a cease and desist order for violating the conditions of her permit by operating a rock crusher and a front-end loader on a Saturday afternoon (November 26, 1994). CHRO-19; Tr. 788-89.

31. On January 20, 1995, the complainant filed her affidavit of illegal discriminatory practice with the commission alleging that the respondents were discriminating against her on the basis of her sex and religion. Affidavit.

32. The respondents received notice of the allegations shortly after the filing of the affidavit. Tr. 530-31, 642-44, 768.

33. Between January 20, 1995 and July 9, 1995, the respondent received no complaints about the complainant's operation of her business. CHRO-21.

34. On July 10, 1995, McGuinness received another complaint from Bowski. Bowski alleged that the complainant had violated the conditions of her special exceptions permit by operating her business on a Saturday (July 8, 1995) and by operating her business until 6:30 PM. CHRO-20, p. 1.

35. On July 14, 1995, in response to Bowski's complaint, McGuinness conducted a site inspection of the complainant's property. He did not observe any violations and sent a letter to the complainant reminding her of the conditions of her special exceptions permit. The complainant received the correspondence on or about July 18, 1995. CHRO-20, p. 1; Tr. 767.

36. On July 18, 1995, Bowski contacted McGuinness claiming that the complainant had been operating her business until 7:20 PM on July 12, in violation of the conditions of her special exceptions permit. CHRO-20, p. 1; Tr. 769-70.

37. On July 20, 1995, at approximately 7:00 PM, Bowski contacted McGuinness claiming that equipment was operating on the complainant's property in violation of the conditions of the special exceptions permit. At approximately 7:15 PM, McGuinness drove by the complainant's property

and observed a front loader truck dumping crushed rock. CHRO-20, p.2; Tr. 775-76.

38. On July 21, 1995, McGuinness received a telephone call from Bowski who reported that work was being done on the complainant's property until 8:00 PM. CHRO-21, p. 3; Tr. 777.

39. On July 21, 1995, McGuinness spoke with Delia Donne, the city's mayor, and with Albert Vasko, the city's corporation counsel. Vasko recommended that McGuinness issue the complainant a cease and desist order based on McGuinness' observations on July 20, 1995 and that Vasko would then seek to obtain a court injunction. CHRO-21, p. 3; CHRO-45.

40. On July 21, 1995, McGuinness issued the complainant a cease and desist order. McGuinness found the complainant to have violated a condition of her special exceptions permit by operating her quarry on Thursday, July 20, 1995, at 7:15 PM. R-6. The complainant's permit had limited her hours of operations to Monday through Friday, 7:00 AM to 5:30 PM. CHRO-17; R-6.

41. The cease and desist order required the complainant to discontinue and/or remedy the violation within ten days. R-6.

42. Because the cease and desist order only prohibited the complainant from operating in violation of the conditions of her special exceptions permit,

the complainant could continue operating her business within the conditions of the permit. Tr. 528-29; R-6

43. The cease and desist order further informed the complainant that: “Another inspection of the property will be made in ten days. If compliance is not established, your case will be referred to the City’s Corporation Counsel for legal action.” R-6.

44. The respondents did not perform another inspection of the complainant’s property ten days thereafter. Tr. 688-89, 715-16.

45. On Saturday, July 22, 1995, Bowski called McGuinness to report that the complainant was operating in violation of the conditions of her special exceptions permit. McGuinness drove by the site at approximately 11:15 AM and observed a front loader truck dumping a load of crushed stone. CHRO-20. On July 24, 1995, Bowski also called the city’s planning and zoning department to report the July 22 violation and to add that the complainant had operated until 2:30 PM. CHRO-21; Tr. 793-94.

46. On August 2, 1995, Vasko, naming P&Z as the plaintiff, instituted a lawsuit against the complainant. The lawsuit alleged that the complainant was conducting her excavation business in violation of the city’s zoning regulations and had been issued a cease and desist order directing her to correct the violations. CHRO-22. The complainant received the lawsuit on Saturday, August 5, 1995. Tr. 370.

47. P&Z had not voted to sue the complainant and was unaware that Vasko had initiated the lawsuit naming P&Z as plaintiff until its August 23, 1995 meeting when the complainant informed P&Z of the lawsuit. Tr. 427, 595; CHRO-4, pp. 1-2.

48. The lawsuit sought, inter alia, a show cause hearing and temporary and permanent injunctions ordering the complainant to comply with the city's zoning regulations by operating her excavation business in accordance with her special exceptions permit. Tr. 502; CHRO-22.

49. The show cause hearing never occurred and the injunction orders were never issued by the superior court. Tr. 509, 532-33.

50. The usual procedure following the issuance of a cease and desist order is for P&Z to refer the matter to the city council to authorize litigation if the violations are not corrected. Tr. 629-30; CHRO-4, p.3; CHRO-28, CHRO-30. McGuinness admitted to P&Z that this procedure was not followed in the institution of the lawsuit against the complainant. CHRO-4, p.3, CHRO-65; Tr. 630.

51. On August 22, 1995, Bowski contacted the respondents to complain that the complainant had been operating her site on Saturday, August 19, 1995 beyond the hours permitted in her special exceptions permit. Tr. 795; CHRO-21.

52. On Saturday, January 20, 1996, Bowski called Tom Barbero, the city's zoning enforcement officer, to complain that the complainant was operating her site in violation of her special exceptions permit. Barbero drove by the site and observed the crusher and pay loader in operation. CHRO-21; R-20; Tr. 803-04.

53. The complainant operated her quarry between January 1996 and September 1996. R-12; R-13; R-17; R-20.

54. On April 5, 1996, Bowski complained to the city's police department that the complainant was operating her quarry in violation of the conditions of her special exceptions permit by operating a front end loader prior to 7 AM and by operating on Good Friday. Tr. 366; R-12.

55. On May 29, 1996, an employee of the state department of environmental protection observed furtive dust emanating from the complainant's property and crossing the property line. On August 5, 1996, the department issued the complainant a notice of violation for air pollution. R-17.

56. In July 1996, the complainant's 1994 special exceptions permit expired. CHRO-45.

57. In early August 1996, Mary Jane Gryniuk, the city's mayor, and Charlene Antonelli, the city's purchasing agent, discussed the expiration of the complainant's special exceptions permit. They decided that the city would

not purchase material from the complainant until she had renewed her permit. Tr. 907-08, 919, 1063-66.

58. Because of the expiration of the special exceptions permit, on August 12, 1996, the city advised the complainant that although it was not cancelling the open purchase order between her and the city, the city would not purchase any more stone and gravel from her until she had obtained a permit. Tr. 433-34, 453-55, 907-08; R-18. The city informed the complainant that once the permit was obtained, the city would put the complainant back on their active vendor list. Tr. 918; R-18, R-25.

59. On August 22, 1996, the complainant was operating her quarry. CHRO-21; R-19. The respondents issued the complainant a cease and desist order for operating her quarry without a permit, as her 1994 permit had expired and she had not applied for renewal of the permit. The cease and desist order required the complainant to cease all gravel operations until she had received permit approval from P&Z. R-19.

60. The complainant received the cease and desist order on August 24, 1996. CHRO-7, p. 1.

61. The complainant operated her quarry on August 30, 1996. CHRO-21.

62. On September 13, 1996, the city withdrew its 1994 lawsuit against the complainant. CHRO-35.

63. Despite having received the cease and desist order on August 24, 2006, the complainant continued operating her business in October and November 1996. CHRO-7, p. 1; CHRO 21.

64. On October 9, 1996, P&Z voted to recommend to the city council that legal action be taken against the complainant for operating her gravel business without a special exceptions permit in violation of the cease and desist order. CHRO-7. The city council did not vote to take legal action.

65. On November 12, 1996, the complainant appealed the August 1996 cease and desist order to the ZBA. CHRO-8, CHRO-25. On December 9, 1996, the ZBA denied the appeal because it had been filed more than thirty days after the issuance of the cease and desist order. CHRO-9.

66. On November 21, 1996, the complainant applied to P&Z for renewal of her special exceptions permit. R-54.

67. The complainant primarily sought three modifications of her 1994 permit: longer hours of operation on Mondays through Fridays; operation on Saturdays; and operation on Good Friday. Tr. 1027.

68. On January 8, 1997, P&Z held a public hearing on the complainant's application for renewal of her special permit. CHRO-11.

69. On February 13, 1997, P&Z approved the complainant's application for a special exceptions permit with conditions. The renewed permit included the modifications sought by the complainant. Tr. 1032; R-24; C-205, p. 9.

70. On February 25, 1997, upon P&Z's renewal of the special permit, the city reinstated the complainant as a vendor and the complainant became eligible to provide quotes on new contracts. R-26.

71. On August 1, 1997, the city invited the complainant to bid on 3,375 tons of double washed 3/8 inch stone. The complainant declined as she could not provide the product. R-27.

72. On August 4, 1997, the city invited the complainant to bid on fine, processed gravel and on 3/4 inch gravel. CHRO-48.

73. After the renewal of her special exceptions permit in February 1997, the complainant refused to bid on material sought by the city. She either could not supply the product, was unavailable by telephone to be advised of the opportunity to place a bid, was not at the quarry site, or expressed her belief to the city's purchasing agent that the city would not buy from her. Tr. 1147-50

74. In 2000, the complainant sold the quarry site to the Gorman Brothers Company and ceased doing business. Tr. 301, 1203.

Analysis

I

A

In her November 19, 1996 amendment to her affidavit, the complainant alleged that the respondents violated § 46a-60 (a) (4). Section 46a-60 provides in relevant part that "(a) It shall be a discriminatory practice in violation of this section: . . . (4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84 . . . ." "'Person' means one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, receivers and the state and all political subdivisions and agencies thereof . . . ." General Statutes (2008 Sup.) § 46a-51 (14).

B

A "retaliation claim follows the familiar burden-shifting framework developed to evaluate allegations of disparate treatment." (Internal quotation marks omitted.) *Galligan v. Milford Public Schools*, Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. AAN-CV-04-0085584-s (January 27, 2006) (2006 WL 337144, 9).

First, the commission must establish the four elements of a prima facie case of retaliation: (1) the complainant engaged in a protected activity; (2) the respondent was aware of that activity; (3) the complainant incurred an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse action. *Ayantola v. Bd. of Trustees of Techn. Colleges*, Superior Court, judicial district of Litchfield at Litchfield, Docket No. LLI-CV-05-4002793-s (July 11, 2007) (2007 WL 2204181, 3); *Tosado v. Connecticut, Judicial Branch*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. FBT-CV-03-0402149-s (March 15, 2007) (2007 WL 969392, 5); *Ledan v. Danbury*, Superior Court, judicial district of Waterbury at Waterbury, Docket No. UWY-CV-04-4001302-s (July 18, 2006) (2006 WL 2349017, 6); *Galligan v. Milford Public Schools*, supra, 2006 WL 337144, 8.

With respect to the first element, the filing of an affidavit of illegal discriminatory conduct with the commission constitutes a protected activity. § 46a-60 (a) (4); *Ayantola v. Bd. of Trustees of Techn. Colleges*, supra, 2007 WL 2204181, 3. The commission need not establish that the respondents' underlying conduct was in fact a violation of § 46a-60 but only that the complainant had a good faith, reasonable belief that the underlying challenged actions of the respondents violated the law. *Ledan v. Danbury*, supra, 2006 WL 2349017, 7.

The second element of the prima facie case is satisfied if the commission can establish that the respondents had general corporate knowledge that the complainant

had engaged in a protected activity. *Gordon v. New York City Bd. of Educ.*, 232 F.3d 111, 116 (2d Cir. 2000).

The third element of a prima facie case of retaliation, an adverse action, differs significantly from that of a typical discrimination claim. In a retaliation complaint, a materially adverse action is one that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination. . . . [W]e phrase the standard in general terms because the significance of any given act of retaliation will often depend upon the particular circumstances. Context matters." (Citations omitted; internal quotation marks omitted.) *Tosado v. Connecticut, Judicial Branch*, supra, 2007 WL 969392, 6.

The fourth element of a prima facie case requires the commission to introduce sufficient evidence to establish an inference of a causal connection between the protected activity and the adverse action. Causation can be established indirectly or circumstantially, for example, by showing that the adverse action was followed closely in time by discriminatory treatment *Gordon v. New York City Bd. of Educ.*, supra, 232 F.3d 117; *Farrar v. Stratford*, 537 F. Sup.2d 332, 354 (D. Conn. 2008). There is, however, "no Second Circuit bright-line rule as to when this temporal link becomes too attenuated to demonstrate causation." *Ledan v. Danbury*, supra, 2006 WL 2349017, 6. Causation can be established indirectly also through evidence such as disparate treatment of similarly situated circumstances. *Gordon v. New York City Bd. of Educ.*, supra, 232 F.3d 117. Similarly situated circumstances need not be identical situations;

they need only be "a situation sufficiently similar to [their own] to support at least a minimal inference that the difference of treatment may be attributable to discrimination." (Internal quotation marks omitted.) *United Technologies Corp. v. Commission on Human Rights & Opportunities*, 72 Conn. App. 212, 226; cert. denied, 262 Conn. 920 (2002). The commission can also establish causation directly through evidence of retaliatory animus directed against the complainant by the respondents. *Gordon v. New York City Bd. of Educ.*, supra, 232 F.3d 117; *Farrar v. Stratford*, supra, 537 F. Sup.2d 354; *Ledan v. Danbury*, supra, 2006 WL 2349017, 6. While the commission need not establish that specific agents or decision-makers knew of the protected activity; *Gordon v. New York City Bd. of Educ.*, supra, 232 F.3d 116; the lack of knowledge on the part of a particular agent or decision-maker may serve as evidence of a lack of a causal connection, countering the commission's circumstantial evidence. Id., 117.

A prima facie case is established, and a rebuttable presumption of retaliation arises, if the commission can show that a retaliatory motive played a part in the adverse actions, even if the retaliatory motive was not the sole cause and there were objectively valid grounds for the respondents' actions. *Ledan v. Danbury*, supra, 2006 WL 2349017, 6.

Once a prima facie case is established, the burden shifts to the respondents to articulate a legitimate non-retaliatory reason for the adverse actions. Once they do so, the presumption of retaliation dissipates. The commission and the complainant, having retained the burden of persuasion, must show both that (1) the respondents' proffered

reason for their actions was not their true reason but a pretext for a retaliatory motive and also that (2) retaliation was a substantial reason for the respondents' actions. *Ayantola v. Bd. of Trustees of Techn. Colleges*, supra, 2007 WL 2204181, 3; *Ledan v. Danbury*, supra, 2006 WL 2349017, 6; *Galligan v. Milford Public Schools,* supra, 2006 WL 337144, 9. While the ultimate burden of proof remains with the commission, "[t]his allocation of burdens of proof and production are not meant to be rigid, mechanistic, or ritualistic. The critical question is whether a plaintiff has proven by a preponderance of the evidence that the defendant intentionally discriminated or retaliated against the plaintiff for engaging in a protected activity." (Internal quotation marks omitted.) *Ledan v. Danbury*, supra, 2006 WL 2349017, 6.

C

The commission and the complainant alleged that the respondents discriminated against the complainant for filing her affidavit with the commission by committing the following retaliatory acts: boycotting the complainant's business; issuing a cease and desist order in 1995 and initiating subsequent judicial action; issuing a cease and desist order in 1996 and initiating subsequent judicial action; requiring compliance with zoning regulations; being restrictive/selective in their enforcement actions; delaying administrative hearings on the complainant's applications; negatively impacting the complainant's ability to refinance her mortgage; imposing noise, operational hours and buffer requirements; regulating the location and type of machinery allowed on site; not

allowing maintenance of machinery on weekends and not allowing the recycling of material. See commission's and complainant's lists of adverse actions at issue, dated and filed October 15, 2007. With respect to all the alleged retaliatory actions, the commission satisfied the first two elements of its prima facie case: the complainant had engaged in a protected activity, the filing of her affidavit with the commission, and the respondents were aware of the filing of the affidavit prior to taking the alleged retaliatory action.[2] The two remaining prima facie elements and whether the commission met its ultimate burden will be discussed with each alleged adverse action.

Whether the respondents boycotted the complainant's business

The complainant alleged that the city boycotted her business in 1995 and 1996 in retaliation for her filing the affidavit. Complainant's brief in support of retaliation, p. 17; Commission's post hearing memorandum of law, p. 48. The respondents contend that they temporarily ceased doing business with the complainant beginning in August 1996 because she had failed to renew her special exceptions permit. FF 57, 58. The commission and the complainant, though, have failed to prove by a preponderance of the evidence either that the respondents' articulated non-discriminatory reason is a pretext for retaliation or that retaliation was a substantial reason for their actions.

[2] The respondents conceded that the complainant's filing of her affidavit constituted a protected activity and that they were aware the affidavit had been filed. Respondents' post-hearing brief, p. 17.

The special exceptions permit granted by P&Z to the complainant in 1994 had expired in July 1996. FF 56. The complainant did not apply to P&Z for renewal of the permit until November 1996, which was then granted by P&Z in February 1997. FF 66, 69. Between July 1996 and February 1997, the complainant would have been operating her quarry illegally. It is reasonable that the respondents would not purchase material from a business that did not have the necessary permit to operate legally. The commission and the complainant attempted to show that the city did business with vendors who had zoning violations. Businesses with zoning violations, however, are not similarly situated to a business that does not have a permit to operate legally. Tr. 454-55.

The commission and the complainant also attempted to show that the city did business with O&G, a quarry across the street from the complainant's site, after O&G's special exceptions permit had lapsed. O&G's permit renewal application was pending before P&Z in August 1996; O&G received a notice of violation for operating after the expiration of its permit on September 4, 1996; and its permit was renewed a week later, on September 11, 1996. CHRO 5; C-213; CHRO 23. Although the complainant alleged that O&G received a large purchase order from the city; C-212; despite the expiration of its permit, it is not clear from the record when the city placed the order, when the city received the material or when the city paid for the material. Also, unlike the complainant, O&G had applied for renewal of its permit prior to the issuance of the cease and desist. Further, there is a qualitative difference between a vendor with a pending renewal

application and a vendor who waits five months after her permit expires before filing an application for renewal.

After the renewal of her permit, it was the complainant, not the respondents, who determined that she was unable and/or unwilling to bid on the city's requests for product. FF 70-73.

Issuing a cease and desist order in 1995 and subsequent judicial actions

The commission and the complainant allege that the respondents' issuance of a cease and desist order in July 1995 and institution of a lawsuit in August 1996 seeking temporary and permanent injunctive relief were retaliatory acts. They have failed to demonstrate that the cease and desist order was retaliatory. They have, however, demonstrated by a preponderance of the evidence that the respondents' explanation for the lawsuit is not worthy of credence and is pretextual, and also that the respondents were motivated by retaliatory animus.

The cease and desist order was the result of five complaints by Bowski in a twelve day period (July 8-20, 1995) about the complainant's operating her quarry on Saturdays, operating before and after her permitted hours, and furtive dust escaping from the complainant's site. FF 33, 34, 36, 37. Some of the permit violations were witnessed by McGuinness. FF 37; CHRO-20, CHRO-21. The respondents' initial attempt to address Bowski's complaints simply by correspondence (July 14, 1995) to

the complainant reminding her of her permit conditions was unsuccessful. FF 35-38. The cease and desist order was then issued on July 21, 1995. FF 40. When informal correspondence is unsuccessful in remedying persistent permit violations, it is reasonable for the respondents to take further action. Also, the cease and desist order did not require the complainant to cease doing business; it only required her to cease violating the conditions of her special exceptions permit, identified in the order as operating at 7:15 PM, after her permitted hours. FF 41, 42; R-6.

Unlike the issuance of the cease and desist order, there is persuasive evidence that the lawsuit was retaliatory. First, the respondents committed notable procedural irregularities in commencing the litigation. Although the cease and desist order states that the complainant's site would be re-inspected ten days after the order's issuance, no such inspection occurred; yet, the respondent's nevertheless initiated litigation. FF 43, 44, 46. The lawsuit identified P&Z as the plaintiff in the action despite the fact that P&Z had never voted to commence litigation. FF 46, 47. McGuinness admitted to P&Z that the institution of litigation had not followed the typical process. FF 50. McGuinness set the agenda for P&Z meetings; Tr. 573, 577-78; yet, he did not report to P&Z on a consistent basis all of the complaints he received regarding zoning violations. The chairman of P&Z was not sure why McGuinness chose the complaints he did for referral to P&Z. Tr. 561-62, 570-71; 577-78

Second, the commission and the complainant demonstrated that the respondents' explanation for instituting the lawsuit is not credible. The respondents

articulated several reasons for instituting the lawsuit: (1) the complainant failed to comply with the cease and desist order within ten days; CHRO-45; (2) the complainant did not "appeal the cease and desist order within the ten days allowed by law;" CHRO-45; (3) obtaining "injunctive relief from the court to perhaps make Ms. Blinkoff realize that she needed to operate within the bounds of her special exception permit." Tr. 470, 468-70, 510-11; and (4) prompt action was necessary because the complainant "would operate for very short periods of time. Before any enforcement of the zoning regulations could take place, Ms. Blinkoff would cease her operation and there would be no controversy to litigate." CHRO-45; Tr. 471-72, 510-11. These explanations, though, are either factually incorrect or contradicted by the respondents' own actions (or inaction). With respect to the first and second explanations, the respondents had no idea whether the complainant had complied with the cease and desist order within ten days because they did not re-inspect the property. FF 44. The complainant actually had thirty, not ten, days to appeal the cease and desist order to the ZBA; CHRO-8; however, the respondents had instituted the lawsuit prior to the expiration of the thirty-day period. FF 46.

With respect to their third and fourth explanations, the respondents' assertions of the need for immediacy and to teach the complainant to comply with her permit conditions are contradicting by their inaction in allowing the lawsuit to remain on the court docket for over a year without taking any action to obtain the temporary and permanent injunctions they were seeking. FF 49, 62. In fact, the injunctions were never

issued and the respondents withdrew the lawsuit in September 1996. FF 49, 62. Also, the respondents received no complaints about the complainant's business operations between the time she filed her affidavit with the commission on January 20, 1995 and July 9, 1995. FF 33.

The notable inconsistencies between the respondents' articulated reasons for instituting the lawsuit and their actions demonstrate a retaliatory animus in their institution of the lawsuit.

Zoning compliance, the 1996 cease and desist order and subsequent judicial actions, the delay of administrative hearings to acquire permits and the impact on the complainant's mortgage application

The issues of zoning compliance, the August 1996 cease and desist order, the scheduling by McGuinness of the complainant's application for renewal of her special exceptions permit in January 1997, and the complainant's refinancing of her mortgage are interrelated issues that evolve from the complainant's insistence that the respondents could not require her to obtain a special exceptions permit because her quarry pre-existed the city's adoption of zoning regulations.

Beginning in 1989, pursuant to the zoning regulations, the respondents required the complainant to obtain a special exceptions permit in order to operate her quarry. FF 7. To comply with the zoning regulations, they required her to obtain a permit in 1990,

1991 and 1994.[3] FF 8-11, 23. The complainant's position has been that because her quarry was a pre-existing, non-conforming use, the respondents have minimal, if any, regulatory authority over its operation. At every ZBA or P&Z hearing on her permit applications she vigorously protested the requirement that she obtain such a permit. The respondents' insistence that the complainant was subject to a special exceptions permit predates the 1995 filing of her affidavit and fatally undermines the prima facie element of a causal connection between filing of the affidavit and the requirement that the complainant comply with the zoning regulations by obtaining a special exceptions permit.[4]

When the complainant's 1994 permit expired in July 1996 and she continued in operation, the respondents, on August 22, 1996, issued her a cease and desist order directing her to cease operations until she had renewed her permit. FF 56, 59. The

[3] In *Taylor v. Zoning Board of Appeals*, 65 Conn. App. 687 (2001), the plaintiff and the defendant similarly disagreed over whether the town could regulate by special permit a pre-existing, non-conforming sand and gravel operation and whether the town could issue a cease and desist order when the quarry continued operating after the expiration of the permit. The court concluded that the town has the right to regulate the nonconforming use under its police powers, could exercise that right through the requirement that the plaintiff obtain a special permit, and could issue a cease and desist order if the quarry operated after the expiration of the permit. Id., 697-98. Thus, in their requirement that the complainant in this case obtain a special exceptions permit despite being a pre-existing, non-conforming use, the respondents were not only historically consistent but were also legally correct.

[4] Further, the 1997 special exceptions permit (R-24), post-dating the filing of the affidavit, contained conditions that were actually less restrictive than the 1994 permit (CHRO-17).

respondents had also issued the complainant cease and desist orders for operating without a permit on August 28, 1989, December 29, 1989 and May 24, 1990. FF 8. The respondents' consistency, both before and after the complainant's filing of her affidavit, in requiring her to have a permit in order to operate her quarry fatally undermines the causal connection between the filing of the affidavit and the permit requirement.

The complainant received the cease and desist order on August 24, 1996. FF 60. She appealed the cease and desist order to the ZBA at its November 12, 1996 meeting. At the meeting, the complainant argued, inter alia, that she was not required to obtain a special exceptions permit because of her pre-existing, non-conforming use and that the respondents could not place an expiration date on her permits. CHRO-8. The ZBA denied the appeal on December 9, 1996 because it was untimely filed. FF 65.

In the interim between ZBA hearings, the complainant, on November 21, 1996, had filed an application with P&Z for a renewal of her permit. FF 66. P&Z held its public hearing on January 8, 1997, and subsequently approved the renewal on February 12, 1997. FF 68, 69. The commission and the complainant argued that McGuinness could have put the complainant on P&Z's agenda for its late December 1996 meeting rather than its January 8, 1997 meeting. CHRO-10, p.3; CHRO-11, pp. 15-16. McGuinness claimed that P&Z was responsible for scheduling its public hearings. CHRO-11, pp. 15-16. However, McGuinness' job duties included preparing the agendas for P&Z meetings. FF 4. Given the credible testimony as to his job duties, I conclude that the

complainant was not placed on the December 1996 agenda in retaliation for filing her affidavit with the commission.

The commission and the complainant argue that the scheduling of the complainant's hearing in January 1997 rather than December 1996 negatively impacted the complainant's then-pending mortgage application. The commission and the complainant, however, did not establish by a preponderance of the evidence that the delay did, in fact, negatively impact the mortgage. First, the delay between August 1996 and November 1996 was the result of the complainant's failure to promptly file her application with P&Z. Her decision instead to spend valuable time in an untimely appeal of the cease and desist order to the ZBA is mystifying as the respondents had for the prior six years made it clear that they required the complainant to obtain a special exceptions permit to operate her quarry. FF 7, 8, 11, 23. Second, the closing on the mortgage had already occurred on December 31, 1996, prior to the P&Z hearing. Tr. 1573-74; CHRO-11, pp 4-5.

Finally, with respect to the complainant's allegation that the 1996 cease and desist order was followed by retaliatory judicial action, there is no evidence that the respondents filed a lawsuit in superior court based on the complainant's failure to renew her permit.

Restrictive/selective enforcement actions

The complainant's allegations of retaliatory restrictive/selective enforcement actions appear based on her view that enforcement actions were taken against her for her violations of her permit, while other quarries, in particular O&G, were not the subject of enforcement actions for their violations. First, it should be noted that many of the situations identified by the commission and the complainant as evidence of disparate treatment predate the complainant's filing of her affidavit. For example, the commission is critical that the complainant was denied a permit in 1994 for lack of an updated survey map. Commission's post-hearing brief, p. 39. This 1994 requirement predates the January 1995 filing of the affidavit. The commission is critical that in 1994 McGuiness told the complainant that she had to move her rock crushing plant 800 feet from her property line. Commission's post-hearing brief, p. 40. This 1994 requirement predates the January 1995 filing of the affidavit. The commission, citing exhibits C-223 and referring to an incident referenced in C-224, is critical of McGuinness for issuing the complainant a notice of zoning violation for noise while not issuing O&G a violation for excessive noise. Commission's post-hearing brief, pp. 40-41. Exhibit C-223, however, is dated January 26, 1993. The incident with O&G occurred in 1989-90. Tr. 1275-76. Both dates occurred prior to the January 1995 filing of the complaint. The commission is critical that beginning in 1990, as part of its special exceptions permit renewal, O&G was permitted to maintain its own log of complaints received from neighbors while the

complainant was not. Commission's post hearing brief, pp. 41-42. As the commission noted, this 1990 difference in permit conditions between O&G and the complainant predated the 1995 filing of the affidavit. The commission notes that Bruce Hoben, a consulting city planner retained by P&Z relative to the complainant's 1997 permit renewal, agreed with the complainant that the respondents' 1994 permit restrictions were unreasonable. Commission's post-hearing brief, pp. 46-47. The conditions imposed by P&Z in the 1994 permit predate the January 1995 filing of the affidavit. Even assuming the respondents were treating quarries differently, differences predating the filing of the affidavit could not have been in retaliation for the filing of the affidavit.

Second, there is no documentary evidence that McGuinness or other city personnel inspected the complainant's quarry other than in response to a complaint from Bowski. In some cases, no violations were found and, while a city official may have spoken to or corresponded with the complainant, no enforcement action was taken. CHRO-1, CHRO-19, CHRO-20, CHRO-26.

Third, O&G, like the complainant, received a cease and desist order for operating without a permit. Unlike the complainant, O&G had a pending application for renewal the time of the order. CHRO-5; C-213; CHRO-23. Also, in response to noise complaints, between 1995 and 1997, P&Z did refer O&G to TAHD, who oversaw a noise study done by a private consultant. Tr. 61, 75. (O&G was ultimately determined to be operating within permitted limits. Tr. 79.) Subsequent to the complainant's sale of her quarry, P&Z also referred to TAHD noise complaints received about the purchaser. Tr. 88.

Further, despite the complainant's claims that the respondents treated her worse than it treated O&G, a comparison of O&G's 1994 permit and the complainant's 1994 permit, even though they pre-date the filing of the affidavit, show either that the were treated similarly or that the complainant's conditions were actually often less restrictive. Both were prohibited from operating on Good Friday. CHRO-17, ¶ 5; R-94, ¶ 1. Both were limited on Saturdays only to maintenance. CHRO-17, ¶¶ 3, 6; R-94, ¶¶ 2, 3. But, while O&G's operations were limited to 8:00 AM – 4:30 PM, Monday through Friday, the complainant was allowed to operate from 7:00 AM – 5:30 PM, Monday through Friday. R-94, ¶¶ 3, 4; CHRO-17, ¶ 2. While O&G's blasting was limited to 9:30 AM – 4:30 PM, Monday through Friday, the complainant's blasting hours were 8:00 AM – 4:30 PM, Monday through Friday. R-94, ¶¶ 5, 6; CHRO-17, ¶ 4. While O&G was required to give adjoining property owners advance notice of blasting; R-94, ¶¶ 7-9; no such requirement appears in the complainant's permit. CHRO-17. While the complainant was required to maintain at least a twenty-foot wide buffer along the northern property boundary, O&G was required to install a fifteen-foot high earth or stone barrier or berm along its northerly boundary. CHRO-17, ¶ 12; R-94, ¶ 12.

Imposing restrictions on noise, operational hours, buffer requirements, placement of machinery on site, and type of machinery allowed on site

Many of the adverse actions the complainant alleged, including restrictions on noise, operational hours, buffer requirements, placement of machinery on site and type of machinery allowed on site, were restrictions imposed prior to her filing the affidavit in January 1995, either by TAHD in its 1993 noise variance or by P&Z in the 1994 special exceptions permit. FF 18-22, 27, 28; CHRO-17. Further, TAHD is an entity that is separate and distinct from the respondents and was not named as a respondent in this matter. FF 16, 17. It is axiomatic that actions allegedly in retaliation for the filing of an affidavit must have occurred after the filing of the affidavit. Thus, the commission and the complainant have not established either the causal connection element to the prima facie case or their ultimate burden that retaliation was a substantial reason for the respondents' actions.

Maintenance of machinery on weekends

The complainant's 1994 special permit allowed maintenance work between 8:00 AM and 1:00 PM on Saturdays but did not allow operations on Saturdays or Sundays. CHRO-17, ¶¶ 2, 3, 5. Bowski frequently complained that the complainant was operating her quarry on Saturdays rather than merely performing maintenance and that she was operating beyond the 1:00 PM deadline. CHRO 20, 21. The complainant claimed that

the work being done was routine maintenance. It is clear that there was a long-standing dispute, predating the filing of the affidavit, between Bowski, the complainant and the respondents as to what constituted permissible Saturday maintenance and what constituted proscribed operations. Even after the complainant sold the property, this dispute over "maintenance versus operations" continued between Bowski, the respondents and the complainant's successor until at least 2002. C-208. The commission and the complainant failed to prove by a preponderance of the evidence that this disagreement, predating the filing of the affidavit and continuing after the sale of the property, between the complainant and the respondents was the result of retaliatory animus.

Not allowing the recycling of material

The commission and the complainant have failed to provide adequate evidence as to what specific incidents at what specific times the complainant is referring relative to her claim that she was not allowed to recycle material. Therefore, they have not met their prima facie elements of establishing that an adverse action occurred or was causally related to the filing of the affidavit. They have also not met their ultimate burden of establishing that the actions were motivated by retaliatory animus.

III

Damages and other relief

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 state the presiding officer's findings of fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter." General Statutes (2008 Sup.) § 46a-86 (a).

'Affirmative action' does not include attorney's fees for a hearing before the commission or compensatory damages; *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 92-93 (1995); nor does it include an economic award that would be "punitive or result in a windfall to the complainant;" *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 704 (2004). Typically, "the phrase 'affirmative action' is a term of art used to describe possible steps for employers to take in recruitment and hiring to eliminate employment barriers to minorities." *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, supra, 232 Conn. 107. The phrase, though, also authorizes the presiding officer "to

accomplish the remedial purpose of the statute" by restoring the complainant to her "rightful economic status absent the effects of the unlawful discrimination." (Internal quotation marks omitted.) Id., 111.

The presiding officer is also authorized to award relief including prejudgment and post judgment compounded interest on the award of front and back pay. *Silhouette Optical Ltd v. Commission on Human Rights & Opportunities*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV-92-520590 (January 27, 1994) (10 Conn. L. Rptr. No. 19, 604).

B

With respect to the complainant's damage claims in general, despite the 1995 cease and desist order and pending injunctive action, the complainant continued operating and receiving income from her quarry between January and September 1996. FF 53-55, 59, 61; R-13. Labrie Asphalt & Construction, Inc., with whom the complainant had a crushing contract during this time period, could have returned in September 1996 (or upon the complainant obtaining a permit) but for the complainant's breach of contract. R-13. Her loss of income between January 1995 and August 1996 was due to her breach of contract with Labrie; R-13; and her loss of income between August 1996 and February 1997 was due to her unreasonable failure to timely file an application with P&Z for renewal of her special exceptions permit. Further, despite her claims that the respondents were restricting her "to the point where I cannot operate and make a

living;" CHRO-11, p. 9; in May 1997, the complainant, seeking to purchase a crusher, represented to a potential vendor she had "an established, viable business and are unable to meet the demands of our business sales" and that the "only way to overcome our inventory shortage and keep our business and sales consistent is to manufacture the materials ourselves with our own [crusher] plant." R-75.

More specifically, the commission and the complainant failed to offer persuasive evidence that the complainant's rightful economic status suffered either (1) as a result of the 1995 lawsuit or (2) as a result of the December 1996 – January 1997 delay in placing on the P&Z agenda her application for renewal of her special exceptions permit.

1

a

In August 1995, the respondents initiated a lawsuit against the complainant for her failure to comply with the July cease and desist order. It is important to note, first, that the lawsuit (like the cease and desist order) did not require the complainant to cease all work. Indeed, the complainant did not cease operations after her receipt of the lawsuit. FF 51, 53-55, 59, 61. The lawsuit sought temporary and permanent injunctions requiring the complainant "to comply with Section 8.2.3 of the Torrington Zoning Regulations by operating her excavation business in accordance with the conditions

attached to her special exception." CHRO-22, p. 6[5]; FF 48. Second, whatever impact the temporary and permanent injunctions may have had on the complainant's business is purely speculative as neither a temporary nor a permanent injunction was ever issued by the superior court. FF 49.

b

While the complainant did not incur business losses as a result of the retaliatory lawsuit, she may have incurred attorney's fees between August 1995, when the suit was filed, and September 13, 1996, when the suit was withdrawn, defending herself in superior court against the lawsuit. These defense costs may have been compensable had the commission or the complainant introduced competent evidence of damages.

The parties received notice in December 2006 that the public hearing would commence on October 30, 2007. (Hearing conference summary and order, December 19, 2006). The parties also received timely notice of the continuance of public hearing dates. The public hearing was held on diverse dates between November 1, 2007 and April 24, 2008. Despite the considerable time for preparation for the hearing and presentation of evidence, the complainant failed to proffer any evidence of the attorney's fees she incurred in defense against the lawsuit. She was then given until

[5] The special exceptions permit at issue was the one issued in 1994. While the complainant believed that the conditions of her 1994 permit were too restrictive for her to operate profitably, these restrictions could not have been retaliatory for the filing of the affidavit because they predated the filing of the affidavit.

May 2, 2008 to provide the bills from the attorney, and the respondents were given the opportunity to examine the attorney on his bills on May 29, 2008. Tr. 1623; Post-hearing order, April 28, 2008.

On May 2, 2008, the complainant offered as to attorney's fees a July 6, 1998 statement "Re: City of Torrington, Etc." of a "Balance Due Now $8,380". (Emphasis added.) C-237. There was no information provided as to the attorney's hourly rate, the type of services rendered or when the services were rendered. The respondents filed a timely request to examine the attorney; Respondents' motion to preclude, May 12, 2008; and the complainant was directed to secure the attendance of the attorney; Ruling re: the respondents' motion to preclude, May 13, 2008. On May 25, 2008, the complainant, though, filed notice that she could not secure the attendance of the attorney but would, instead, provide an affidavit from him and testify herself. The Connecticut Supreme Court has recently made it clear that the respondents have an absolute right to examine under oath the billing attorney himself. *Commission on Human Rights & Opportunities v. Sullivan*, 285 Conn. 208, 239 (2008). Affidavits by the attorney and testimony by the complainant are not acceptable alternatives. As no admissible evidence was proffered as to the attorney's fees incurred by the complainant in defense of the lawsuit, no damages are awarded.

The commission and the complainant also failed to produce substantive, credible evidence that the complainant incurred damages as a result of McGuinness placing the complainant's application for permit renewal on P&Z's January 8, 1997 agenda rather than on its December 1996 agenda. The complainant had closed on her mortgage on December 31, 1996, thereby forestalling a foreclosure action against her property. CHRO-11, pp. 4-5; Tr. 1573-74. The attorney's fees she incurred relative to the mortgage application and the P&Z hearings would have been incurred regardless of when the closing and hearings occurred. As previously discussed, the attorney's fees she incurred in connection with the ZBA hearings were not the result of any retaliatory action by the respondents; the fees were the result of the complainant's historic insistence that she did not need a special exceptions permit and the respondents' historic insistence that she did.

Even if McGuinness had placed the complainant on the December 1996 P&Z agenda, there is no assurance that the permit would have been granted by the end of December as P&Z did not act on the complainant's permit application in just one meeting. At its January 8, 1997 meeting, it took the suggestion made by the complainant's attorney to seek an opinion from the city's corporation counsel regarding preexisting, non-conforming uses. CHRO-10; CHRO 11, pp. 6, 7. The opinion had not

been received by its January 22, 1997 meeting, so P&Z did not vote to approve the permit until its February 1997 meeting. It would be unduly speculative to award damages absent reliable evidence that P&Z would have approved the permit in December 1996 had it been on the December 1996 agenda. It would also be unduly speculative to award damages absent reliable evidence of damages attributable solely to the scheduling delay.

Conclusions of law

1. The commission and the complainant established by a preponderance of the evidence that the respondents retaliated against the complainant in 1995 when they filed a lawsuit against her seeking injunctive relief.
2. The commission and the complainant established by a preponderance of the evidence that the respondents retaliated against the complainant when they scheduled her special exceptions permit application in January 1997 rather than December 1996.
3. The commission and the complainant failed to establish by a preponderance of the evidence that the complainant incurred compensable damages as a result of the respondent's 1995 lawsuit or as a result of the one month delay in the December 1996 and January 1997 scheduling of the complainant's application for renewal of her special exceptions permit.

4. With respect to the remaining alleged adverse actions (boycotting the complainant's business; issuing a cease and desist order in 1995; issuing a cease and desist order in 1996 and initiating subsequent judicial actions; requiring compliance with zoning regulations; being restrictive/selective in their enforcement actions; negatively impacting the complainant's ability to refinance her mortgage; imposing noise, operational hours and buffer requirements; regulating the location and type of machinery allowed on site; not allowing maintenance of machinery on weekends and not allowing the recycling of material), the commission and the complainant failed to establish that the respondents' explanations for their actions were false and were a pretext for a retaliatory motive and/or failed to establish that retaliation was a substantial reason for the respondents' actions.

Order

1. The respondents shall cease and desist from retaliatory action against any person who has or may file an affidavit with the commission alleging that the respondents have committed discriminatory practices.
2. The respondents shall not engage in, nor allow any of its employees to engage in, any conduct against the complainant, any other party to this proceeding or any participant in this proceeding in violation of General Statute § 46a-60 (a) (4).

3. Pursuant to General Statute 46a-54 (13), the city shall post in locations conspicuous to its employees and the public notices provided by the commission concerning discriminatory practices.

_____
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
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