Commission on Human Rights and Opportunities ex rel. Joselin Correa, Complainant : **CASE NO. 0710004**
: **EEOC No. 16AA601416**

v.

La Casona Restaurant Respondent : **April 28, 2008**

FINAL DECISION

Preliminary Statement

A Hearing in Damages (hearing in damages or hearing) on the above-captioned matter was held on January 24 and March 17, 2008 pursuant to General Statutes § 46a-84 (f). An entry of default was ordered on November 15, 2007 against the respondents for failure to appear at a lawfully noticed hearing conference. The entry of default established the liability of the respondents for the discrimination against the complainant. Attorney Lisa Levy of Greater Hartford Legal Aid, Incorporated appeared on behalf of Joselin Correa (complainant) who resides at 1571 Main Street, East Hartford, CT 06108. Attorney Robin Kinstler Fox appeared on behalf of the commission on human rights and opportunities (commission) located at 21 Grand Street, Hartford, CT 06106. Attorney Joseph Elder appeared on behalf of Fabio Caro, Amparo Caro and La Casona Restaurant (respondents) located at 681 Wethersfield Avenue, Hartford, CT 06114. Fabio and Amparo Caro reside at 104 Feldspar Ridge,

Glastonbury, CT 06033. Since liability has been determined, this decision addresses damages only.

Procedural History

On July 5, 2006, Joselin Correa filed a complaint affidavit of illegal discriminatory practice with the commission alleging that La Casona Restaurant discriminated against her when it terminated her employment because of her pregnancy in violation of General Statutes §§ 46a-58 (a), 46a-60 (a) (1) and (7) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C 2000e and the Civil Rights Act of 1991. On July 24, 2007, the complainant filed an amended affidavit of illegal discriminatory practice (complaint affidavit) adding as respondents Fabio Caro, the principal and co-operator of La Casona Restaurant, and Amparo Caro, a co-operator of La Casona Restaurant. The complainant also added a violation of § 46a-60 (a) (5). The commission investigated the allegations of the complaint affidavit, found reasonable cause to believe that discrimination had occurred, and attempted to conciliate the matter. After conciliation failed, the complaint affidavit was certified on October 3, 2007 to public hearing in accordance with General Statutes § 46a-84 (a).

On October 9, 2007, the notice of public hearing was mailed to all parties notifying them that a public hearing would commence with a hearing conference scheduled for October 30, 2007 at 10:30 a.m. On October 25, 2007, the respondents attempted to file a motion for continuance of the hearing conference. The office of public hearings (OPH) sent the respondents a notice of return of documents with the motion for a continuance informing the respondents that their motion did not comport to

the OPH procedures regarding filing requests for continuances. The respondents did not re-file a proper motion. On October 31, 2007, the commission and the complainant filed a motion to default the respondents for failure to appear at the lawfully noticed hearing conference pursuant to General Statutes § 46a-84 (f) and § 46a-54-88a of the Regulations of Connecticut State Agencies. The respondents did not object to the motion to default. On November 17, 2008, I granted the motion to default and ordered the hearing to be held on January 24, 2008.

On January 23, 2008 at 3:07 p.m., the respondents filed a motion to open the default order. The commission and the complainant filed an objection to the motion to open default on January 23, 2008. On January 23, 2008, I denied the motion to open the default. On January 24, 2008, the hearing in damages was held during which time the respondents filed a motion to reconsider the order denying the motion to open default. The respondents argued their motion to reconsider at the hearing and I denied that motion. Tr. 10. After having heard evidence on damages on January 24, 2008, the hearing was continued to March 4, 2008 for further evidence. On March 3, 2008, the respondents filed a motion for continuance of the March 4, 2008 hearing, which I granted. On March 7, 2008, at the request of the parties, I ordered that the hearing be continued to March 17, 2008. The hearing was held on March 17, 2008 after which time the record closed. The respondents were given proper notice of the complaint affidavit, the motion for an order of default, the order of default, and the notice of the hearing in damages. All statutory and procedural prerequisites to the hearing were satisfied and

this complaint affidavit is properly before the undersigned presiding referee for decision[1].

Findings of Fact

1. The liability of the respondents for violations of law alleged in the complaint affidavit was established pursuant to the order of default.

2. The respondents employed the complainant as a waitress. Tr. 38. She worked an average of 25 hours per week in 2006 and her hourly rate was $5.23. Tr. 40-41. CHRO Ex. 1. The complainant was paid an average of $127.53 gross wages per week; an average of $350.00 cash tips per week; an average of $23.00 cash pay per week for collecting cover charges; and an average of $13.84 cash pay per week for tending bar. CHRO Ex. 1, 2 and 10; Tr. 39-40, 44-47, 185-86. The total average gross pay per week is $514. 37. CHRO Ex. 10.

3. The respondents discriminated against the complainant because of her pregnancy when it terminated her on May 13, 2007. The respondent Fabio Caro commented to the complainant about her appearance (pregnancy) and that it would be appropriate for her to stop working. The complainant "felt really bad" was "in shock" and was crying as she entered the kitchen where others saw that she was crying but were unaware of the reason. Tr. 49-50.

4. The complainant's last day of employment was May 14, 2006. Tr. 42, 54-55. The complainant is entitled to back pay damages from May 15, 2006 through

[1] References made to the transcript pages are designated as "Tr." followed by the accompanying page numbers. References made to the exhibits are designated as "CHRO Ex." for the commission and the complainant followed by the accompanying exhibit numbers. References made to the findings of fact are designated as "FF" followed by the accompanying numbers.

April 28, 2008[2], 87 weeks plus one day. CHRO Ex. 10; Tr. 66 and 77. The complainant would have earned $44,823.67 had she not been terminated. CHRO Ex. 10.

5. The complainant's delivery due date was July 15, 2006 and she actually delivered her baby on July 19, 2006. Tr. 50, 66. The complainant would have worked until approximately the beginning of July 2006 before leaving for maternity leave. Tr. 50, 66. The complainant had no complications with her pregnancy and would have returned to work at the respondent restaurant in September 2006 had she not been terminated. Tr. 65-75; CHRO Ex. 10.

6. After being terminated, the complainant had no financial resources because her husband had not been employed and, as a result, she was depressed, confused, anxious, sensitive and had problems sleeping. The complainant experienced crying, stress and sadness. She and her husband felt the termination based on her pregnancy was unjust. Tr. 55-58, 135-36.

7. The complainant borrowed two thousand dollars ($2000) from Elizabeth Campo that is still owed. Tr. 59; CHRO Ex. 3.

8. From September through November 2006, the complainant attempted to obtain employment with other restaurants, a casino and retailers but was unsuccessful. Tr. 75-76. She then began and completed a "CNA" course. Ultimately, she began employment with Chalet Ipanema as a waitress in January 2007. Tr. 76-77

---

[2] CHRO Ex. 10, p. 2, mistakenly states that the total number of weeks of lost pay runs from May 15, 2006 through January 25, 2008 for a total of 82 weeks. The ending date for the 82nd week is actually March 23, 2008. Damages accrued through the date of this decision, April 28, 2008. Therefore, the total number of weeks from May 15, 2006 through April 28, 2008 for damages is 87 weeks plus one day. The complainant's back pay damages are calculated as $514.37 per week multiplied by 87 weeks plus one day of $73.84 ($514.37 divided by 7) for a total back pay amount of $44,823.67.

9. Chalet Ipanema paid the complainant wages of $6105.19 in 2007 and $4004.55[3] from January through April 28, 2008 for total gross wages of $10,109.74. CHRO Ex. 6, 7 and 11. It also paid her tips of $13,515.05 through April 28, 2008[4]. CHRO Ex. 8-11. Her total income from Chalet Ipanema is $23,624.79. The complainant did not work for four weeks in 2007. Tr. 77; CHRO Ex. 10.

10. The complainant received unemployment compensation of $69 per week for 26 weeks for a total of $1,794.00. Tr. 67-70; CHRO Ex. 5.

11. The complainant's total loss of income is $19,404.88.

I

DAMAGES

A

Back Pay

The complainant has requested a back pay award of $20,379.62, emotional distress damages of $8000 and consequential damages of $2431.48 for a total damages award of $30,811.10. The complainant also requested pre-judgment interest.

The order of default in this case established that the respondents violated General Statutes §§ 46a-58 (a), 46a-60 (a) (1), (5) and (7), and Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e and the Civil Rights Act of 1991.

---

[3] The payroll records from Chalet Ipanema represent the total income of $2335.98 from January through March 8, 2008 (10 pay periods). Taking $2335.98 divided by 10 pay periods equals an average pay of $233.60 per week. Taking $233.60 divided by 7 days equals an average pay of $33.37 per day. The pay of $233.60 for 7 weeks from March 9 through April 27, 2008, equals $1635.20 plus one day of $33.37 added to the total pay of $2335.98 amounts to a total income of $4004.55 from January through April 28, 2008.

[4] The complainant earned $11,803.55 in tips at Chalet Ipanema through March 9, 2008. CHRO Ex. 10. The complainant earned an average of tips of $244.50 per week. CHRO Ex. 10. She earned tips for 7 weeks from March 10, 2008 through April 28, 2008 of $1711.50. The complainant's total amount of tips earned through April 28, 2008 is $13,515.05.

Pursuant to General Statutes § 46a-86 (b), the presiding referee has the authority “ to order the hiring or reinstatement of employees, with or without backpay . . ..” The Connecticut Supreme Court has further stated that "the victim of a discriminatory practice is to be accorded [her] rightful place in the employment scheme, that is [s]he has a right to be restored to the position [s]he would have attained absent the unlawful discrimination . . . such an order for relief may include retroactive and prospective monetary relief . . . where prohibited discrimination is involved the hearing officer has not merely the power but the duty to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future." (Citations omitted; internal quotation marks omitted.) *State* v*. Commission on Human Rights & Opportunities*, 211 Conn. 464, 478 (1989); see also *Silhouette Optical Limited* v*. Commission on Human Rights & Opportunities*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV92520590 (January 27, 1994).

“This remedial goal is furthered by vesting in a [human rights referee] broad discretion to award reinstatement, back pay or other appropriate remedies specifically tailored to the particular discriminatory practices at issue. . . . [Section 46a-86 (b)] vests discretion in a [human rights referee] to grant such relief under the proper circumstances.” *Commission on Human Rights & Opportunities* v*. Truelove and Maclean, Inc.*, 238 Conn. 337, 350-51 (1996). Consistent with federal law, the goal of the courts is to make the complainant whole and put her in the position she would have been in absent the discriminatory conduct. See *Landgraf* v*. USI Film Prods.*, 511 U.S. 244, 254 (1994). In addition, the amount of back pay awarded must be reduced by the

amount that the complainant has earned through reasonable mitigation. See General Statutes § 46a-86 (b).

The respondents' liability for back pay begins when the discriminatory act causes economic injury. The period during which the respondents are liable for back pay ends when the complainant obtains a comparable or higher paying job. See *Commission on Human Rights & Opportunities ex rel. Isabel Gomez v. United Security Inc.*, CHRO No. 9930490, p. 5 (Jan. 28, 2000), citing *Harkless v. Sweeney Independent School District*, 466 F. Sup. 457, 469 (S.D. Tex) aff'd. 608 F.2d 594, 22 FEP1571 (5th Cir. 1979).

In addition, General Statutes § 37-3a authorizes the human rights referee to award pre-judgment interest on the back pay award. The award of interest on back pay is within the discretion of the human rights referee. See *Silhouette Optical Limited v. Commission on Human Rights & Opportunities*, supra, Superior Court, Docket No. 92-520590, pp.21-22.

The complainant provided testimony and documentary evidence to support her claim for back pay. The respondents did not rebut this evidence. On average, the complainant earned $514.37 per week at the respondent restaurant beginning from 2005 until her termination on May 14, 2006. FF 2. She would have earned $44,823.67 from May 15 2006 through April 28, 2008 had she not been unlawfully terminated. FF 4. After leaving the respondents' employ, the complainant mitigated her damages by obtaining employment with Chalet Ipanema. FF 8. She earned a total of $23,624.79 from Chalet Ipanema. FF. 9. She also received $1794.00 of unemployment compensation. FF 10. Her total mitigation of damages is $25,418.79. FF 9 and 10. The total loss of back pay is the amount she would have earned at the respondent

restaurant of $44,823.67 minus her mitigation of $25,418.79 for a total back pay award of $19,404.88. FF 11.

B

Emotional Distress and Other Costs

An award of emotional distress damages is authorized by § 46a-86 (c) for a violation of § 46a-58 (a) through a violation of the federal law, Title VII. See *Commission on Human Rights & Opportunities ex rel. Crebase* v. *Procter & Gamble Pharmaceuticals*, CHRO No. 0330171, pp. 69-70 (July 12, 2006). Section 46a-58 (a) provides, "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability."

In this case, the respondents deprived the complainant of her rights under Title VII to a work environment free of sex discrimination (based on her pregnancy). "[I]n *Trimachi v. Connecticut Workers Compensation Committee*, the court determined that General Statutes [§] 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. . . . the Connecticut Supreme Court concluded that, under § 46a-58 (a), the commission could prosecute violations of General Statutes §§ 10-15c and 10-4b. The court further determined that the remedies available under General Statutes § 46a-86 (c) apply to violations of § 46a-58 (a). *Commission on Human Rights & Opportunities* v. *Board of*

Education of the Town of Cheshire, supra**,** 270 Conn. 665. The court's rationale in finding that violations of state education statutes are within the purview of § 46a-58 (a) is equally applicable in finding that violations of federal discrimination law are also within the purview of § 46a-58 (a). Therefore, the respondent[s'] deprivation of the complainant's rights under Title VII to a work environment free of sex discrimination constitutes a violation of § 46a-58 (a) and enables the complainant and commission to seek the remedies available to them under § 46a-86 (c)." (Citations omitted.) *Commission on Human Rights & Opportunities ex rel. Crebase* v*. Procter and Gamble Pharmaceuticals*, supra, CHRO No. 0330171, pp. 70-71.

In order to determine the amount of emotional distress damages, the following criteria are considered. "First, the most important factor of such damages is the subjective internal emotional reaction of the [complainant] to the discriminatory experience which [she] has undergone . . . and whether the reaction was intense, prolonged and understandable. . . . Second, is whether the discrimination occurred in front of other people. . . . For this we must consider if the discriminatory act was in public and in the view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. The third and final factor is the degree of the offensiveness of the discrimination and the impact on the Complainant. . . . In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation. . . . It is important to also consider further factors that exacerbate the emotional distress suffered by the [Complainant]. . .. These further factors are consequences arising from the discrimination." (Citations omitted; internal quotation marks omitted.) *Commission on Human Rights &*

Opportunities ex rel. Aguiar v*. Frenzilli*, CHRO No. 9850105, pp. 9-10 (January 14, 2000) citing *Commission on Human Rights & Opportunities ex rel. Donna Harrison* v*. John Greco*, CHRO No. 7930433 (June 3, 1985); see also *Commission on Human Rights & Opportunities ex rel. Douglas Peoples* v*. Estate of Eva Belinsky*, Superior Court, judicial district of Stamford-Norwalk at Norwalk, Docket No. CVNO8806-1209 (Nov. 8, 1988); *Commission on Human Rights & Opportunities ex rel. Crebase* v*. Procter & Gamble Pharmaceuticals*, supra, CHRO No. 0330171.

On May 13, 2006, the complainant was alone when respondent Fabio Caro commented about her appearance (pregnancy) and told her it would be appropriate for her to stop working. FF 3. The complainant testified that Fabio Caro told her "the way that [she] should look" and she testified, "It was very condescending." Tr. 49-50. The complainant's testimony regarding Fabio Caro's statement to her was unintelligible. Nevertheless, no one else was present when Fabio Caro said this to the complainant. Tr. 50. She felt "bad" and was "in shock." FF 3. While she was crying, she entered the kitchen where other people were present and they saw that she was crying; however, they were not aware of the conversation with Mr. Caro. FF 3. The complainant did not testify as to the length of time she cried or experienced her bad feelings or that she was embarrassed or humiliated.

The discriminatory act was of respondent Fabio Caro telling the complainant that she no longer could work because of her pregnancy or "how she looked." The complainant alleged in her complaint affidavit that the respondent Fabio Caro said, "because of her pregnancy [she] was not aesthetically pleasing to the environment." Complaint affidavit, ¶ 8. The complainant's attorney also used those terms during the

hearing; however, this was not the complainant's testimony. Tr. 50. Notwithstanding this inconsistency, neither phrase is highly offensive or egregious. I find them to be slightly offensive. Fabio Caro did not use derogatory terms in describing the complainant's appearance but merely commented on "how she looks." Tr. 49-50. I do not find that his comment was made with the intent to cause the complainant pain, embarrassment or humiliation. See *Commission on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli*, supra, CHRO No. 9850105, p. 20. Fabio Caro testified that he was considering the complainant's health and/or her baby's health; however, he did not explain this to her when he terminated the complainant because of her pregnancy. Tr. 268-69.

The impact on the complainant was that after being terminated she felt depressed, anxious, sensitive and could not sleep. FF 6. She testified that on May 16, 2006 while she was visiting with her nurse, she was feeling sad and she contacted the respondents to try to keep her job; however, she was rejected and was crying while visiting her nurse. FF 6; Tr. 55-56. The complainant was now very sad, nervous, confused and desperate because she was without employment and her husband was not working at the time. FF 6; Tr. 56. The complainant had no financial resources and, she and her husband believed the termination was unjust. FF 6. She testified that during another visit to the nurse's office approximately fifteen days later, she told the nurse that she still had problems sleeping and experienced stress. Tr. 134-36; FF 6. There was no testimony as to the duration of the emotional distress (the sleeplessness or stress) experienced by the complainant. It appears that the impact from the discrimination had subsided some time after her second visit with her nurse.

Other additional factors to take into account when determining the amount of emotional distress awards are the consequences of the discrimination. These factors exacerbate the distress caused from the discrimination. See *Commission on Human Rights & Opportunities ex rel. Donna Harrison* v*. John Greco*, supra, CHRO No. 7930433, p.17. The complainant testified that she borrowed $2000 from Elizabeth Campo and that she had "nothing for [her] baby." Tr. 58-59. However, she also testified that after she was terminated from the respondents' employ she received a gift from the respondent Amparo Caro for her baby shower. Tr. 124-25. The acceptance of the gift to some extent diminishes the negative impact on the complainant. It is important to know the facts surrounding the acceptance of the baby shower gift, i.e., was it received at the baby shower possibly held at the respondent restaurant or why did she accept a gift from respondent Amparo Caro? Though, no evidence concerning the baby shower gift was provided. It is common knowledge that at a baby shower the guests usually provide gifts to the mother for the care of her baby. Yet, there was no testimony to further explain the baby shower, when or where it occurred and what was received. In addition, I find that the complainant did borrow $2000; however, no evidence was provided showing what the $2000 loan was used for or what she purchased with it. FF 7. Therefore, I do not find that the $2000 loan was an expense incurred by her as a direct result of the respondents' discriminatory act.

The complainant also testified that another consequence was that once she was terminated she could not afford her Sprint cell phone bill. Tr. 62-64. However, there is no evidence as to when the bill became delinquent. The only evidence provided was a letter from the RPM collection agency dated October 18, 2006. There was no evidence

provided to show at what time she became unable to pay the Sprint bill before the collection agency began collection proceedings. I do not find the cell phone expense of $431 was an expense incurred by her as a direct result of the respondents' discriminatory act.

Because the complainant's negative feelings on the day of the termination were not caused by a discriminatory act done in public, the discriminatory act was not highly egregious, the impact on the complainant was mild and the duration of the impact was unknown, the complainant shall be awarded $2500 in emotional distress damages.

II

ORDER

1. The respondents shall cease and desist from any further discriminatory practices.
2. The respondents shall not retaliate against the complainant.
3. The respondents shall pay to the Complainant $19,404.88 for back pay plus 10 % pre-judgment interest of $1940.49.
4. The respondents shall pay to the complainant $2500 in emotional distress damages.
5. The respondent shall pay to the complainant statutory post-judgment interest at the rate of 10% per annum from the date of this decision.
6. The respondents shall post the commission's antidiscrimination posters in conspicuous locations of the work place so that they shall be visible to all employees and applicants for employment.

7. The respondent shall pay to the commission $1794, which was paid to the complainant for unemployment compensation, and the commission shall then transfer $1794 to the appropriate agency.

SO ORDERED.

Hon. Donna Maria Wilkerson Brillant
Presiding Human Rights Referee

c.: Robin Kinstler Fox, Assistant Commission II
Attorney Lisa Levy
Attorney Joseph Elder