

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

Commission on Human Rights and
Opportunities ex rel.
Lisa Genovese

: CHRO No. 0530337
: Fed No. 16aa600822

v.

Ultimate Billiards, Inc.

: February 9, 2007

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

Preliminary statement

On February 7, 2005, Lisa Genovese (complainant), of 123 Forest St., New Britain, Connecticut, filed an affidavit of illegal discriminatory practice (affidavit) with the commission on human rights and opportunities (commission). In her affidavit, she alleged that her former employer, Ultimate Billiards, LLC. (respondent) of 151 Webster Square Road, Berlin, Connecticut, discriminated against her in violation of the Age Discrimination in Employment Act (ADEA)¹ and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) when it terminated her employment because of her age (42 years old at the time of the filing of the affidavit) and sex (female).

¹ 29 U.S.C. 621-634

On November 22, 2006, the commission's executive director entered an "Entry of Default Order" against the respondent pursuant to General Statutes § 46a-83 for its failure to answer interrogatories issued by the commission pursuant to General Statutes § 46a-54. Pursuant to General Statutes §§ 46a-57 and 46a-83, on November 24, 2006, the undersigned was assigned as the presiding human rights referee. Also on November 24, 2006, notice was issued to the complainant, the respondent and the commission that a hearing was scheduled for January 17, 2007 for the purposes of determining the relief necessary to eliminate the discriminatory practices alleged in the affidavit and of making the complainant whole.

On January 17, 2007, the hearing was held. The complainant and the commission appeared to prosecute the action. The respondent did not appear nor had the respondent filed motions to set aside the default or continue the hearing. The record closed on January 26, 2007, the due date for the filing of post-hearing briefs.

Findings of fact (FF)

The commission's exhibits are designated by "CHRO Ex." followed by the exhibit number. References to the transcript are designated as "Tr." followed by the page number. Based upon a review of the pleadings, exhibits and transcripts and an assessment of the credibility of the witness, the following facts relevant to this decision are found:

1. The respondent hired the complainant in 2002 for the dual positions of executive chef and kitchen manager. CHRO Ex. 1, ¶¶4 and 5.
2. The respondent provided the complainant with a benefit package that included medical and prescription drug coverage. Tr. 62.
3. The respondent terminated the complainant's employment on September 4, 2004. CHRO Ex. 1, ¶ 10.
4. At the time of her termination, the complainant's salary was \$700 per week. Tr. 15; CHRO Ex. 1, ¶4.
5. The complainant received \$10,200 in unemployment compensation benefits from the State of Connecticut. Tr. 36.
6. On July 1, 2006, the complainant obtained employment as a culinary arts teacher at Wakeford Food Corporation located in Elizabeth, New Jersey, earning \$125 per week. Tr. 27, 37 – 38.
7. The complainant will be employed as a full time executive chef with a salary commensurate to that she received from the respondent by the spring of 2007. Tr. 45 – 46.
8. Following her termination, the complainant incurred medical costs totaling \$1,370 that would have been paid through the respondent's medical benefit package had she remained an employee. Tr. 58 – 62.

Analysis

I

General Statutes § 46a-83 (i) provides in part that: “The executive director of the commission or his designee may enter an order of default against a respondent . . . (2) who fails to answer interrogatories issued pursuant to subdivision (11) of section 46a-54” Upon the entry of an order of default, the presiding human rights referee shall “enter, after notice and hearing, an order eliminating the discriminatory practice complained of and making the complainant whole.” *Id.*

With respect to her claim that the respondent violated § 46a-60 (a), “making the complainant whole” includes awards for back pay, less unemployment compensation and interim earnings that the complainant received or could have earned through reasonable diligence; reinstatement; prospective monetary relief (front pay); and prejudgment and postjudgment compounded interest on the awards of front and back pay. General Statutes § 46a-86 (b); *Ann Howard’s Apricots Restaurant, Inc. v. Commission on Human Rights & Opportunities*, 237 Conn. 209, 228 – 29 (1996); *Silhouette Optical Limited v. Commission on Human Rights & Opportunities*, 10 Conn. L. Rptr. No. 19, 603 – 604 (February 28, 1994). Emotional distress damages and attorney fees, however, are not available for violations of § 46a-60. *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 97 (1995).

In addition, the presiding human rights referee shall order the respondent to pay to the commission the amount of unemployment compensation paid to the complainant, which the commission shall then transfer to the appropriate state agency. General Statutes § 46a-86 (b).

II

The complainant also alleged that the respondent violated § 46a-58 (a) when it terminated her employment because of her age. Section 46a-58 (a) states: “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.” The complainant alleged that the specific law of the United States that the respondent violated is the ADEA when it terminated her employment on account of her age. Although age discrimination is within the purview of § 46a-60, it is not included within the protections of § 46a-58. “[T]here are some forms of discrimination that are prohibited under § 46a-60, such as discrimination due to age or marital status, that are not within the purview of § 46a-58 (a) and that, therefore, § 46a-58 would be inapplicable.” *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 357 (1996). Because age is not enumerated as a protected basis

under § 46a-58 (a), this claim must be dismissed. *Id*; *Poeta-Tisi v. Griffin Hospital*, 2006 WL 1494078, 8 (Conn. Super.)

Conclusions of law

As a result of the entry of a an order of default against the respondent for its failure to answer interrogatories, a hearing in damages was held to determine the relief necessary to eliminate the discriminatory practice and to make the complainant whole. The commission and the complainant presented evidence from which damages can be ascertained and awarded for reimbursement of medical expenses, back pay, front pay until March 20, 2007 (the commencement of spring by which time the complainant expects to obtain employment as a full time chef with commensurate salary; Tr. 45-46).

The commission and the complainant, however, did not provide a legal basis to support the complainant's claims for emotional distress damages and attorney fees. Further, the complainant did not offer any testimony or exhibits in support of her claim for \$15,000 in reimbursement for advanced culinary chef training that she raised for the first time in her post-hearing "Request for Reward." Also, the 20 years of front pay sought by the complainant in her "Request for Reward" is contradicted by her testimony that she expects to be employed as a chef by the spring of 2007 (Tr. 45-46).

Order

1. The respondent is ordered to pay the complainant \$75,400 in back pay. Back pay is calculated at the complainant's average compensation rate of \$700 per week from the date of her termination to the date of judgment (128 weeks) for a total of \$89,600 less mitigation of \$10,200 in unemployment compensation benefits and less \$4,000 in salary from Wakeford Food Corporation (\$125 per week for 32 weeks of employment). FF 4, 5, 6.
2. The respondent shall pay the complainant \$15,790 in prejudgment interest awarded on the back pay award of \$75,400, calculated at the rate of 10 percent per annum compounded annually.
3. The respondent shall pay to the commission the sum of \$10,200 in reimbursement for unemployment compensation benefits paid to the complainant by the State of Connecticut. FF 5. The commission shall then transfer such amount to the appropriate state agency.
4. The respondent shall pay the complainant front pay in the amount of \$2,875. This represents the complainant's previous average weekly compensation of \$700 less her current average weekly mitigation of \$125 for the five weeks from the entry of this judgment to March 20, 2007. An order of reinstatement is not a viable option given the sexual harassment the complainant experienced by the respondent's management. Tr. 24 - 25. The award is reasonable as to the

amount of time as the complainant expects to be reemployed as a chef by spring 2007. FF 7.

5. The respondent shall pay the complainant postjudgment interest on the back pay and front pay awards at the rate of 10 percent per annum, compounded annually.
6. The respondent shall pay the complainant \$1,370 in reimbursement of medical expenses incurred by the complainant that would have been paid through the respondent's medical insurance program. FF 2,8.
7. Pursuant to General Statutes § 46a-60 (a) (4), the respondent shall not engage in or allow any of its employees to engage in any conduct against the complainant.
8. Should prospective employers seeking references concerning the complainant ever contact it, the respondent shall provide only the dates of said employment, the last position held and rate(s) of pay. In the event additional information is requested in connection with any inquiry regarding the complainant, the respondent shall require written authorization from the complainant before such information is provided, unless required by law to provide such information.
9. The respondent shall cease and desist from all acts of discrimination prohibited under federal and state law and shall provide a nondiscriminatory work environment pursuant to federal and state law.

10. Pursuant to General Statutes § 46a-54 (13), the respondent shall post the commission's posters concerning equal employment in conspicuous locations visible to all employees and applicants for employment.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Ms. Lisa Genovese
Thomas J. Mullins, Esq.
Ultimate Billiard
Mr. James McCarthy
David L. Kent, Esq.