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

Commission on Human Rights and Opportunities ex rel. Kimberly Lawton, Complainant	CHRO No. 0550135 Fed No. 01-05-0327-8
v.	
Chad and Susan Jansen, Respondent	October 18, 2007

FINAL DECISION AFTER HEARING IN DAMAGES

I.

PROCEDUREAL HISTORY

On April 18, 2005, Kimberly V. Lawton (complainant) filed with Commission on Human Rights and Opportunities (commission or CHRO) an Affidavit of Illegal Discriminatory Practice (original complaint), alleging that Chad Jansen (respondent) harassed her to the degree that a hostile housing environment was created, because of her race and color, in violation of General Statutes § 46a-64 (c) (1), (2), (3), and (a), 42 U.S.C. 1981, 42 U.S.C. 1982, Title VII of the civil Rights Act of 1968 as amended 42 U.S.C. 3610 and as enforced through § 46a-58 (a)[1] and that as a result of the aforementioned statutory violations the complainant and her family were forced to vacate the apartment.

[1] The complainant on this same date filed with CHRO an identical complaint CHRO No. 0550134 against William and Kathleen Rutkauskas, her landlords, alleging the same facts and statutory violations.

On January 31, 2006 the aforementioned complaint was amended by adding Susan Jansen as an additional respondent. The amended complaint (complaint) in addition to adopting each and every allegation contained in the original complaint added that Chad Jansen was a minor until January 11, 2005 and that he resided with Susan Jansen, his mother, who observed and was aware of his conduct and was legally responsible for his actions.

After having completed her investigation the commission's investigator determined that there was reasonable cause to believe that the respondent had committed an "unfair practice" as alleged and attempted to eliminate the practice by way of conference, conciliation and persuasion. Efforts to eliminate the practice having failed, the commission on April 6, 2006 certified the complaint to public hearing in accordance with General Statutes §46a-84 (a).

On April 10, 2006 the Office of Public Hearings sent to all parties a "Notice of Contested Case Proceedings and Hearing Conference" accompanied by the complaint. Included in the aforementioned notice was notification of the time and date of the hearing conference (May 5, 2006 at 10:00 a.m.) along with the admonitions that "[a]bsent good cause, failure to appear at any proceeding, including the hearing conference, may result in the imposition of sanctions. Sanctions may include the default of the absent party." Additionally, the notice stated "[f]ailure to file an answer may result in an order of default and a hearing in damages in accordance with § 46a-54-88 (a) (1) of the regulations."

The respondents after having received the contested case proceeding notice, failed to attend the scheduled May 5, 2006 hearing conference[2] and failed to file an answer to the pending complaint.

On May 9, 2006 the undersigned having been duly appointed presiding referee in this matter issued a "Conference Summary and Order" which included an order that Chad Jansen and Susan Jansen "shall file their answer pursuant to Commission Regulation § 46-54-86a by June 10, 2006." This order further stated that this matter and CHRO ex rel. Kimberly Lawton v. William and Kathleen Rutkauskas, CHRO No. 0550134 were consolidated.[3] Both these matters were scheduled for a public hearing to occur on May 22, 23 and 24, 2007.

On February 5, 2007 the commission filed with this tribunal a motion for default against the respondents for failing to answer the pending complaint and for failing

[2]A hearing conference is the initial hearing in the contested case process. It is at this hearing that the presiding referee establishes dates for the public hearing and other conferences and shall address discovery, exchange of witness and exhibit lists, settlement conference that occurs before a referee other that the presiding referee issues a hearing conference summary and order. It is in this order that the respondents were ordered to file an answer to the pending complaint.

[3] § 46a-54-79a (c) provides "[u]pon commencement of the contested case proceeding, the presiding officer may, on his or her own or upon motion by a party, consolidate two or more complaints and issue appropriate orders relating thereto."

to appear.[4] The foregoing motion was served on the respondents in the manner prescribed by regulation. Included in the motion were dates and times as to when the requested hearing in damages was to occur against the respondents.

On February 23, 2007 having received no answer to the complaint or an appropriate pleading addressing the motion for default, I granted the motion for default.

On April 24, 2007 the undersigned was presented with a signed stipulated agreement between Kimberly Lawton, CHRO and William and Kathleen Rutkauskas detailing that the aforementioned parties had reached an agreement as to "all claims arising out of the charges made or could have made in CHRO complaint number 0550134…" Furthermore, the parties had agreed that a payment of fifteen thousand ($15,000) dollars would be made to Kimberly Lawton and that she would withdraw her complaint (CHRO 0550134) against the Rutkauskas'. Upon the filing of the aforementioned agreement and withdrawal of complaint, I issued on April 26, 2007 an Order of Dismissal pursuant to the stipulated agreement.

The consolidated matter to this pending complaint having been disposed of and there being no need to conduct the public hearing I heard the hearing in

[4] Commission counsel in her motion for default requested that the hearing in damages be heard at the same time as the public hearing on the then pending complaint involving the Rutkauskas'.

damages pursuant to my earlier order on May 22, 2007. The complainant appeared with counsel and the commission appeared through its counsel Kimberly Jacobsen. The respondents did not appear but did file a letter dated March 2, 2007 and which was date stamped as being received by the Office of Public Hearings on March 5, 2007. In this letter the respondent, Susan Jansen acknowledges that she and her son Chad Jansen being in default along with questioning what damages could the complainant have suffered. The respondent, Susan Jansen, then offered presumably to the undersigned referee that if I needed to speak to the respondents I should come down to their "place" after having scheduled a date in advance.[5] The record closed on July 20, 2007 when the complainant and commission filed a joint post-hearing memorandum.

II.

PARTIES

The complainant is Kimberly Lawton of 68 Yarwood Street, Stratford, Connecticut 06615. The Commission on Human Rights and Opportunities is located at 21 Grand Street, Hartford, Connecticut 06106. The respondents are Chad Jansen and Susan Jansen of 571 Howe Avenue, Apt. 2, Shelton, Connecticut 06484.

[5] The letter dated March 2, 2007 from Susan Jansen was marked at the hearing in damages as Referee Exhibit 1. I purposefully marked this letter believing it offered proof of the respondent's being aware of the default order entered and the date at which the hearing in damages was scheduled.

III.

COMPLAINANT'S POSITION

The complainant alleges that she and her three (3) minor children moved to 573 Howe Ave., Shelton, CT on or about July 2001 and resided there for approximately four (4) years. Approximately a year after taking occupancy and throughout the remainder of their tenancy she and her children were the subject of respondent Chad Jansen's harassment in the form of the most vulgar racial epithets, coupled with his constant banging on the common wall of the complainant's apartment and the playing of racist music. All of this resulted in creating a hostile environment directly related to the race and color of the complainant and her children.

After 2 ½ years of respondent Chad Jansen's harassment, complainant felt forced to remove herself and her children from the apartment due to the toll it as taking on her and her children. As a result of being forced to remove herself and her children, the complainant could only find a Section 8 approved apartment in Shelton that was totally undesirable as it was in complete disrepair when compared to the apartment she occupied at 573 Howe Avenue, Shelton, Connecticut.

As a consequence to the ongoing racial harassment and hostile environment that she and her children experienced from respondent Chad Jansen the complainant

suffered emotional distress, lost time from her employment and was caused to become a heavy drinker.

IV.

FINDINGS OF FACT[6]

After conducting the scheduled and noticed hearing and based upon the complainant exhibits offered and introduced into the record and testimony taken, the following facts relevant to this decision are found:

1. All procedural notices, and jurisdictional pre-requisites have been satisfied and this matter is properly before this presiding referee to hear the matter and render a decision.
2. The respondents by letter dated March 2, 2007 acknowledged that they were in default. (Ref. Ex. 1)
3. The complainant, a black female and her three minor children moved to 573 Howe Ave., 2nd fl., Shelton CT, (the subject apartment) on or around July 2001. (TR 9-10)
4. The complainant and her children, prior to moving to 573 Howe Ave., lived in Bridgeport CT and moved to Shelton believing it had a better education system and was more peaceful and attractive. (TR 101-102)

[6] Reference to an exhibit is by party designation and number. The commission's exhibits are denoted as CHRO Ex. followed by the exhibit number. The complainant's exhibits are denoted as "Compl" followed by the exhibit number and page. The referees' exhibit is denoted by Ref. Ex. followed by the exhibit number. References to testimony are to the transcript page (TR.) where the testimony is found.

5. The property at 573 Howe Ave. was a two story building owned by William and Kathleen Rutkauskas and consisted of four apartments; the complainant occupied an apartment on the second floor whose common wall divided her apartment and that of the respondents. (TR 21)
6. The subject apartment's condition at the time of the complainant moving was beautiful having just been remodeled. (TR 18, 131)
7. The complainant loved the subject apartment, was happy and planned on living there for long term. (TR 18, 36)
8. The respondent Chad Jansen beginning on or about October or November of 2002 began peeking into complainant's windows which caused the complainant to complain to respondent Susan Jansen (Chad's mother). (TR 19-20)
9. The complainant after having complained to the respondent Susan Jansen regarding her son peeking into her windows began to experience in December 2002 annoying problems such as the playing of loud music, banging on the wall and cursing. This activity continued on a daily basis throughout the time the complainant resided at 573 Howe Ave. (TR 20-21)
10. The respondent Chad Jansen when yelling would use vulgar racial epithets such as "monkey go back to Africa"; "I wish you would go somewhere"; "get the hell out of here"; "we don't need you here"; "you wait until we catch you outside"; "this neighborhood went to shit when yous [sic] moved over here"; "go back to fucking Africa you nigger." (TR 20-24)

11. The respondent Chad Jansen would play loud “heavy” rock music, some of which contained racist lyrics that referred to “African monkeys” or “go back to Africa, monkeys.” (TR 25)
12. The respondent Chad Jansen was born January 11, 1987. (Comp. Ex. 2)
13. Amaru Lopez, a resident in the same building as the complainant and living in a first floor apartment stated to the complainant she heard respondent Chad Jansen’s racist comments. Additionally, Bill, (last name unknown) a tenant who lived right below the complainant, complained about the racist comments made by the respondent Chad Jansen. (TR 26-28, 51-52)
14. In August a counselor from a neighborhood mental health clinic heard the respondent Chad Jansen call the complainant a “fucking nigger.” (TR 52, 54)
15. As a result of the respondent Chad Jansen’s racist remarks, Jose Lopes, (Amara Lopez’s husband) spoke to Chad Jansen as to why he was “picking on” the complainant when she was not bothering him. (TR 28)
16. The respondent Chad Jansen’s playing of loud music, banging on the wall and yelling racist comments caused the complainant’s children to cry and become scared. (TR 30-31)
17. The complainant felt hurt and became angry and upset upon hearing that the respondent Chad Jansen used the term “nigger” in referring to her children. (TR 34)

18. The complainant believed that the term “nigger” meant that individuals with black skin color were inferior to individuals with white skin color. At times the complainant’s feelings of hurt, anger and being upset would manifest themselves by her screaming and cursing and would at times cause her to cry. (TR 34-35)
19. The first time the respondent Chad Jansen’s racial comments caused the complainant to cry was on the day her newborn, Omarion Crawford, was brought home for the first time. On that day the respondent Chad Jansen again was yelling “nigger.” (TR 35-36)
20. The complainant’s mother, Willie Mae Lawton, while at the complainant’s apartment in 2002 (specific date not testified to) heard the respondent Chad Jansen banging on the wall and yelling racial epithets. She also heard him playing music that referred to “gooks” and “niggers.” She also witnessed the respondent, Chad Jansen spitting out the window at the complainant’s children. (TR 39-40, 134-135)
21. On or about February 2004, the complainant’s sister while babysitting for the complainant’s children heard the respondent, Chad Jansen banging on the walls, yelling racial epithets and playing loud music. As a result of his actions, the complainant’s sister called the Shelton Police Department who warned the respondent to stop calling the complainant and her family “nigger.” (TR 37, Compl. Ex 2, Compl. Ex 4[7])

[7] The exhibit identified as Compl Ex 4 is a police report for an incident occurring on January 7, 2005 contained in this report is a reference to Chad Jansen being warned on May 30, 2004 to stop calling the complainant and her family “niggers.”

22. On or about April 2004, the complainant's father while babysitting at the complainant's apartment when the respondent, Chad Jansen again banged on the walls and referring to the complainant's family as "niggers." Because of the respondent Chad Jansen's conduct on this occasion, the complainant's father called her at work requesting that she return home as a result of the harassment he was experiencing. When the complainant arrived home she contacted the Shelton Police Department.
23. On three different occasions the respondent, Chad Jansen physically and verbally assaulted the complainant's children. On the first occasion, the respondent, Chad Jansen referred to the complainant's son, Tavares, as a "monkey" and "hog spit" on him. In another incident Chad Jansen threw a rock at the complainant's son's head. The third incident involved the complainant's children, Tavares and Dashana. While playing with Amara Lopez's daughters, the respondent, Chad Jansen referred to the complainant's children as "niggers." (TR 55)
24. The complainant's son, Tavares went to counseling over the incidents involving the respondent, Chad Jansen. (TR 97)
25. On several occasions when the complainant went to the respondent, Susan Jansen or her husband to discuss the conduct of their son Chad, complainant was told by Susan Jansen and her husband that they would talk to him. (TR 40)
26. On one occasion while at the Rooster Grocery Store the complainant overheard the respondent, Chad Jansen from the cooler saying "that's the

nigger” to 5 or six “skin heads” who were pinning her against the cooler until the intervention of the store owner. (TR 43-44, 49)

27. The respondent, Chad Jansen during the tenancy of the complainant displayed at different points in time two flags in his bedroom window that faced the street of the respondent’s apartment. One flag was that of the confederacy and the other was (believed to by the complainant to be) a white supremacist flag which displayed a black field with a white fist with white stars. (TR 41-43)
28. The complainant due to the stress caused by the respondent Chad Jansen’s conduct, missed 5 days of work at her job at Big Lots. The complainant on these days was earning $7.25 per hour at six hours per day. (TR 81-83)
29. The complainant as a result of the respondent Chad Jansen’s racist harassment believes that her life for the past year has been in an uproar. (TR 85)
30. The complainant as a result of the respondent Chad Jansen’s harassment moved from the apartment at 573 Howe Ave. to an apartment located at 202 ½ Howe Ave., Shelton. This apartment was in total disrepair. There were missing windows, cracked walls, defective doors, mildew, and rat stools. (TR 87-85, Compl. Ex A-K)
31. The complainant’s lifestyle has changed as a result of moving into the subject apartment and coming into contact with the respondent, Chad Jansen. Specifically she has withdrawn, she no longer takes her kids out,

she no longer goes out with her girlfriends; she no longer wants to talk to her friends (as they feel all she does is complain); and she is depressed. (TR 99-107)

32. As a result of the respondent Chad Jansen's conduct the complainant's feelings towards Caucasian people has changed. She is now more nervous and apprehensive in dealing with white people. Furthermore, had the complainant known what was going to happen after moving to 573 Howe Ave., she would have stayed in Bridgeport. (TR 103, 107-109)
33. The complainant's mother noticed the complainant's depression (as a result of the respondent Chad Jansen's conduct) to the degree she thought that the complaint might put herself and her children in danger. She further observed the complainant crying constantly and an increase in her drinking. (TR 136-138)
34. The complainant filed identical complaints against Chad Jansen and William and Kathleen Rutkauskas (landlords to both the complainant and the respondents). (*see* OPH public files)
35. The complainant settled her CHRO complaint docket no. 0550134 against William and Kathleen Rutkauskas, her landlords for $15,000. (para. 4 complaint, TR 112-113)
36. On or about January 9, 2005, the complainant's brother-in-law, Daniel Sullivan (Caucasian), while assisting the complainant with an altercation with the respondent, Chad Jansen and his brother Eric Jansen, was told by the respondent to "stop taking up for those niggers, you need to take

up for your own kind." This incident again resulted in the Shelton Police being called by the complainant.[8] (TR 56-57, Comp. Ex. 3)

37. As a consequence of this racial harassment the complainant starting in 2003 and continuing throughout her tenancy modified her living pattern at the subject apartment. So as to avoid confrontation with Chad, she would leave early in the morning and return late in the evening; stopped allowing her children to go outside to play; would stay at her sister's house in Shelton after work and; go to live with her mother in Bridgeport on weekends. (TR 60-64)

38. The complainant on numerous occasions sought assistance from the housing authority which administered the Section 8[9] program from which she received her rental subsidy. She was told by Joanne Hause, her case worker, after explaining the racist nature of the comments that she needed to notify her landlord and that Section 8 did not get involved with disputes between tenants. (TR 65-67)

[8] The basis for the complaint to the Shelton Police Department was the belief that the respondent, Chad Jansen and his mother hit the complainant's car, upon investigation the Shelton Police found no evidence of the complainant's car being damaged.

[9] The Section 8 program is a federally operated rent supplement program under the Department of Housing and Urban Development and administered locally by municipal housing authorities and designed to assist qualified low-income persons pay their rental obligations. See, *United States Housing Act of 1937, Section 8 as amended;* 42 USCA section 1437f; *Commission on Human Rights & Opportunities ex rel. Colon v. Sullivan,* 2005 Conn. Super. LEXIS 2748 4 n.7.

39. Prior to moving into the subject apartment the complainant would occasionally (perhaps once a month) have a glass of wine or beer. (TR 84)

40. The complainant had developed and/or experienced physical symptoms that she believes are directly related to the respondent Chad Jansen's conduct. The complainant's hair has fallen out; she has lost weight and feels very shaky, started to experience sleeping problems in 2003, couldn't eat and started "drinking heavy" and would get migraine headaches. (TR 71-72, 74)

41. The complainant when she thinks about what occurred at 573 Howe Ave., Shelton starts to drink. (TR 104)

42. By 2004 the complainant found herself drinking three (3) six-packs of beer a day, she never having consumed quantities like that before. (TR 74)

V.

DISCUSSION

The undersigned's order of default pursuant to General Statutes § 46a-83 (i) authorizes the presiding officer to issue an order eliminating the discriminatory practice complained of and making the complainant whole. The allegations brought by the complainant that have not been responded to, are deemed admitted without the need of further proof. Regulations of Connecticut State Agencies § 46a-54-88a (b). Liability has been determined pursuant to the order of default and damages shall be awarded.

A.

Damages/emotional distress

Liability having been determined there remains the assessment of damages based on the evidence presented. In this instance the complainant is requesting damages for her emotional distress, lost time from her employment, attorney's fees and interest (pre and post judgment). The authority to award damages under General Statutes § 46a-86 (c)…"has been construed to include the authority to award damages for emotional distress or other non-economic harm.... Such awards must be limited to compensatory, rather than punitive amounts…" *Commission on Human Rights & Opportunities ex rel. Ronald Little v. Stephen Clark, et al.,* CHRO No. 9810387 at 17 (Citations omitted).

The criteria to be considered in arriving at an award for emotional distress include "the subjective emotional reaction of the respondent's actions; the public nature of the respondent's actions; the degree of the offensiveness of those actions; and the impact of those actions on the complainant. *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* CHRO No. 0550116 (October 27, 2006).

"The public policy considerations in support of emotional distress damages in a housing discrimination case are discussed extensively in *Commission on Human Rights & Opportunities ex rel. Harrison v. Greco,* CHRO No. 7930433 (June 3,

1985). For example, [a]warding humiliation and mental distress damages would deter discrimination and encourage filing of complaints, particularly in the housing area where out of pocket damages are often small… [t]hat damages for emotional distress are not readily subject to precise mathematical computation is sufficient reason to deny then once the right to such damage has been established…" (Citations omitted; internal quotations omitted) *Commission on Human Rights & Opportunities ex rel. Hartling v. Carfi,* supra.

In assessing and applying the above criteria to the actions of the respondent, Chad Jansen the offensiveness of those actions is glaring at a minimum. He chose to use the most vile, demeaning and to many the ugliest of terms when referring to the complainant and her children. This person, not satisfied with yelling his bigoted, ignorant and hateful comments, found it necessary to play on almost a daily basis rock music at a volume that was meant to annoy and harass the complainant. Not satisfied to just play loud rock music, he chose to also play music that contained racist lyrics. Finally, respondent Chad Jansen's efforts to harass the complainant did not stop with his hate filled speech or music but he even resorted to spitting on the complainant's children. While I am cognizant of the age of the respondent, Chad Jansen and that for most of the time in question he was a minor, I find that his actions can in no way be condoned or mitigated based on his age.

Having concluded that Chad Jansen's conduct clearly offensive, assessment must be made as to the impact it had on the complainant. At this point it is worth highlighting that the harassment experienced by the complainant was neither isolated, sporadic nor limited in nature. This activity perpetrated by Chad Jansen occurred over a period of approximately 2 ½ years. Due to his harassing conduct the complainant developed symptoms that she (with good reason) associates with the stress brought on by Chad Jansen's conduct. These symptoms include loss of hair, sleep difficulties, migraine headaches, weight loss, feeling shaky and becoming a heavy drinker. I find the comments and actions of Chad Jansen to be highly offensive and egregious so as to infer an intent to produce maximum pain, embarrassment and humiliation and so as to cause an increase to any award for emotional distress. *Aquiar v. Frenzilli,* CHRO No. 9850105 (January 14, 2000).

In assessing the extent or nature of the emotional distress claimed, I must consider the public nature of the discriminatory conduct. In simple terms, did it occur in front of other people causing the complainant to suffer further humiliation and thus warranting a higher award for emotional distress. The record before me offers ample evidence to conclude that Chad Jansen's racially based harassment was witnessed by more than just the complainant. The record in this case reveals that the complainant's parents, sister, neighbors and children all experienced the racially charged harassment directed at the complainant and her

children. I therefore conclude that as a result of the public nature of Chad Jansen's actions, the emotional distress award must be increased accordingly.

In arriving at an appropriate award for emotional distress I am cognizant of past awards made by other presiding officers. Awards appear to run the scale from the nominal $1,000 awarded in *Commission on Human Rights & Opportunities ex. Rel. Daniels v. Ruellan,* CHRO No. 0550012 (November 6, 2006) to the order rendered in *Commission on Human Rights & Opportunities ex rel. Planas v. Bierko,* CHRO No. 9420599 (February 8, 1995) for $75,000.[10] My focus is to try and find through past decisions an appropriate range in which to analyze and calculate a meaningful award.

Three decisions that offer guidance to me are *Commission on Human Rights and Opportunities ex rel. Scott v. Jemison,* CHRO No. 9950020; *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* CHRO No. 9810387 (August 2, 2000) and to a slightly lesser degree *Commission on Human Rights & Opportunities Maybin v. Berthiaume,* CHRO No. 9950026 (March 29, 1999). In each of these cases it appears that the discriminatory conduct took place over a significant period of time. However, in the *Little* matter the presiding referee had specific reservations as to the perception by the public of the discriminatory conduct but nonetheless awarded $20,000 for emotional distress. In *Maybin* the

[10] This decision seems to be at the far end of the extreme of awards. Scant facts and conclusions are given which makes it difficult to use in arriving at an appropriate award for emotional distress.

hearing officer awarded $50,000 for emotional distress after finding that the respondent forced “complainant and her family to live as if under siege, afraid to leave the house…” this as a result of the respondent directing racial slurs toward the complainant and her family. While I find some similarity in the *Maybin* matter to the present case I temper my use of this case due to the limited nature of the hearing officer’s findings of facts. In the *Scott* case the complainant alleged that for 2 ½ years she and her children endured highly offensive racially derogatory language from her landlord which occurred in public. The presiding referee in awarding the complainant $6,000 for emotional distress found there were mitigating factors against issuing a higher award. Such mitigating factors do not present themselves in the case before me.

In the present case the complainant seeks an award of $100,000. While I believe based on the evidence presented the complainant is entitled to a substantial and meaningful award designed to deter the conduct displayed by Chad Jansen I am not prepared to award $100,000 based on the history of awards ordered. Given the evidence presented and having had the opportunity to witness the testimony of the complaint and having found her credible I conclude that an award of $40,000 for her emotional distress is fair and reasonable.

B.

Lost wages

The complainant testified that she missed 5 days of work at her job at Big Lots due to stress brought on by respondent Chad Jansen's harassment. At the time the complainant worked 6 hour shifts earning $7.25 per hour. I find those losses are allowed and award the complainant $217.50 for time lost from her job.

C.

Liability of Susan Jansen for damages

The complainant seeks to include Susan Jansen as a responsible party for damages awarded based on the default ordered. While the respondent, Susan Jansen has been defaulted, the fact that default has entered merely "…operates as a confession by the defaulted defendant of the truth of the material facts alleged in the complaint and which are essential to entitle the plaintiff to some of the relief prayed. It is not the equivalent of an admission of all the facts pleaded. The limit of its effect is to preclude the defaulted defendants from making any further defense and to permit the entry of a judgment against them on the theory that he has admitted such of the facts alleged in the complaint as are essential to such judgment. It does not follow that the plaintiff is entitled to a judgment for the full amount of the relief claimed. The plaintiff must still prove how much of the judgment prayed for in the complaint he is entitled to receive." (Internal quotations marks omitted) *Whitaker v. Taylor, et al.,* 99 Conn. App. 719, 726

(2007) quoting *Bank of New York v. National Funding,* 97 Conn. App. 133, 138-139 (2006).

Having reviewed the proposed findings of fact presented in the joint post hearing memorandum, I am unwilling to find that any action taken by Susan Jansen was an act that was discriminatory in nature. In no instance was it alleged that Susan Jansen was present when Chad Jansen harassed the complainant and in no proposed findings of fact is it even hinted that she either condoned or was complicate with her son from a behind the scenes perspective. From the evidence presented I cannot find that Susan Jansen violated § 46-64 (c) (1)-(3) or the federal statutes alleged and enforced through § 46a-58 (a). I therefore find that while the respondent, Susan Jansen was defaulted, the complainant has failed to present sufficient evidence to warrant the entry of a judgment for damages against her.

In addition to statutory claims presented and stated within the procedural history of this decision, the complainant alleges that Susan Jansen was the mother of Chad Jansen, a minor during most of the time in question, and as such she is legally responsible for Chad. The complainant offers no support for this theory the statutory jurisdiction that I must work within (§ 46a-86). The complainant did at the hearing on May 22, 2007 and again in her post-hearing brief raise § 52-

572[11] as an alternative mechanism to support an award against Susan Jansen albeit limited to $5,000 per the statute.

This tribunal (an administrative agency) possesses limited jurisdiction *Tele Tech of Connecticut Corp. v. Department of Public Utility Control,* 270 10 Conn. 778, 789 (2004). Administrative agencies of limited jurisdiction are dependent entirely upon the validity of the statutes vesting them with power and cannot confer upon themselves jurisdiction. Id. Furthermore, "[i]t is clear that an administrative body must act strictly within its statutory authority… It cannot modify, abridge or otherwise change the statutory provisions...." Id. In this instance the complainant and the commission argue that this tribunal has authority based on the statutes controlling this agency to award damages under § 52-572 despite it not in any manner being referred to in any statute that I act under. Nor was any case law brought to my attention that could be of some guidance on this issue absent clear statutory authority which confers on the commission to the jurisdiction to award damages under § 52-572 I can see no way for the complainant to obtain the relief offered under General Statute § 52-572 in this forum. Similarly, common law actions, such as negligence for failing to control a child, are beyond this tribunal jurisdiction.

[11]General Statute § 52-572 provides in relevant part: "any person…, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults."

The complainant and the commission cite to *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* supra, for the proposition that Susan Jansen is liable to the complainant for the respondent, Chad Jansen's conduct and his being a minor. I disagree with this interpretation as no judgment was rendered against any minors' parent. More to the point, Ronald Little did in fact seek damages against Sandra Bauer, the mother of Luke Bauer, a respondent in that CHRO matter. However, Ronald Little did so in Superior Court in a two count complaint. The first count was based on negligent supervision. The second count was under § 52-572. *Little, et al. v. Bauer,* 2002 WL 442309 (February 25, 2002). I find this case both illustrative as to how to seek redress against a minor's parent in a situation which this case presents and supportive of my decision.

The complainant has not alleged or argued any fact that would authorize me to award damages against Susan Jansen therefore I decline to do so.

D.

Attorney Fee's

The complainant included in her post-hearing memorandum a request for attorney's fee accompanied by an affidavit of attorney's fees executed and sworn to by Attorney Alan Rosner. Included in his affidavit is a breakdown of time spent that totaled 57.5 hours. Additionally, he requested an hourly rate of $190.00. While Attorney Rosner's affidavit states that all time associated with the work

performed was solely related to matter involving the Jansen's, I must conclude otherwise.

My review of the affidavit reveals that times are entered for reviewing respondents answer on 7/14/2005. However in this matter the Jansen's were defaulted for failing to answer. Further time and expense were attributed to reviewing respondent's request for production, which seems curious as the Jansen's did not file one. While these are two examples of the co-mingling of attorney time I do find both the hourly rate and time spent reasonable and do hereby award the requested amount. I make this award in conjunction with my ruling regarding the settlement proceeds obtained by the complainant from the Rutkauskas's in CHRO 0550134.

E.

Interest

The complainant and commission have sought an order of interest at a rate of 10% per year compounded annually. As to prejudgment interest the complainant and the commission cite to numerous cases which they argue stand for the proposition of awarding prejudgment interest as a method of making the victim of discrimination whole (*see* post hearing memorandum pg 22-23). While as a boilerplate proposition the stated purpose at times is true, the cases cited do not support the awarding of prejudgment interest in this case. Specifically, the case referred to in the joint memorandum confirm the prejudgment interest is to

"compensate party deprived use of money;" *Thames Talent Ltd. v. Commission on Human Rights & Opportunities,* 265 Conn. 129, 144 (2003); such as back pay. In this instance there is no claim of wrongful detention of monies (except for the 5 days of lost wages) as well there could not be until a judgment is rendered awarding monies for the claimed emotional distress. There being no viable claim of wrongfully withholding money I find no authority that would allow me to award prejudgment interest on any award for emotional distress.

As to the monies representing lost wages, it being in my discretion to award prejudgment interest, I decline to exercise this discretion due to the minimal amount of the award. *Maloney v. PCRE, LLC,* 68 Conn. App. 727, 755 (2002).

Regarding the request for post judgment interest I do grant this and will make this an element in my order of relief.

F.

Settlement proceeds received from William and Kathleen Rutkauskas

As has been stated earlier in this decision this matter was commenced at the same time as *Commission on Human Rights & Opportunities ex rel. Lawton v. Rutkauskas,* CHRO No. 055134. The allegations made in each case were identical. The harm suffered as alleged by the complainant is identical. The only significant differences are the names of the respondents and the CHRO case numbers. In the hearing in damages, the complainant and her witnesses testified

to the same facts relating to emotional distress as they would have had this case been tried together. I am constrained to believe that had this gone to full public hearing the complainant could not have argued much less proved that her emotional distress was any greater as a result of the Rutkauskas' conduct.

The complainant's position that no credit should be given for the Rutkauskas's settlement and her reliance on *Black v. Goodwin, Loomis and Britton,* 239 Conn. 144, 168 quoting *Gionfriddo v. Garlenhaus Café,* 15 Conn. App 392, 397-98 (1988) aff'd, 21 Conn. 67 (1989) is both in error and misplaced. The *Gionfriddo* decision stands for the proposition that when a plaintiff sues two separate joint tortfeasors in separate suits for the same harm and receives a judgment from one, then in the event of a second suit, the second tortfeasor may raise collateral estoppel defensively arguing that the plaintiff has been compensated fully for the harm claimed. Any further award of damages in the second action would result in double damages.

The present matter presents an entirely different scenario than that in *Gionfriddo*. Here there is no claim of the complainant's damages being satisfied by the aforementioned settlement with the Rutkauskas'. What is present is that the damages sustained and alleged are identical as to both Chad Jansen and the Rutkauskas's and that a finding has been made as to the extent of the complainant's damages and an appropriate award made. That being the case

anything not credited against that award that was received earlier by the complainant for her claims alleged become a windfall or “double damages.”

I therefore will follow the path created in *Commission on Human Rights & Opportunities ex rel. Little v. Clark,* supra and credit the settlement proceeds from the Rutkauskas’s to the judgment rendered here.

VI.

Order

1. The respondent, Chad Jansen shall pay to the complainant damages in the amount of $36,142.00 calculated as follows:

a.	Emotional Distress	$40,000
b.	Lost time from work	$217.50
c.	Attorney’s fees	$10,925
	Subtotal	$51,142.50
	Settlement Credit	$15,000
	Total	$36,142.50

2. The respondent, Chad Jansen shall pay post judgment simple interest on the award. Said interest shall occur daily on the unpaid balance form the date of this decision at a rate of 10% per annum.
3. The respondent, Chad Jansen shall cease and desist from the discrimination practices complained of as well as from any other acts of discrimination prohibited by stat or federal law.

It is so ordered this 18th day of October 2007

_____
Thomas C. Austin, Jr.
Presiding Human Rights Referee

cc.

Kimberly Lawton
Chad Jansen
Susan Jansen
Kimberly Jacobsen, Esq.
Alan Rosner, Esq.