

# State of Connecticut

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December 8, 2014

Wendy Ann Peters  
153 Priscilla Street  
Bridgeport, CT 06610

Polish American Citizen's Club  
845 East Main Street  
Bridgeport, CT 06608

Michelle Dumas-Keuler, Esq.  
CHRO  
25 Sigourney Street  
Hartford, CT 06106

RE: CHRO ex rel, Wendy Ann Peters v. Polish American Citizen's Club CHRO No. 1220183.

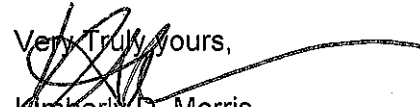
## FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent by certified mail, return receipt requested to the complainant and the respondent. The return post office receipt shall be proof of such service.

Very Truly Yours,

  
Kimberly D. Morris  
Secretary II

cc.

Michelle Dumas-Keuler, Esq. - via email only  
Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 1642 (W. Peters)

Certified No. 7014 0150 0001 0774 1697 (Polish American Citizen's Club)

Certified No. 7014 0150 0001 0774 1635 (Steven Pastic, Agent for Service, 1496 Pembroke St., Bridgeport, CT)

**STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and  
Opportunities ex rel. Wendy Peters,  
Complainant

CHRO No. 1220183

v.

Polish American Citizens Club,  
Respondent

December 8, 2014

**FINAL RULING ON HEARING IN DAMAGES**

FILED/RECEIVED  
CHRO - OPH  
2014 DEC - 8 AM 10:34  
RECEIVED BY/FILED WITH:

I.

**Preliminary Statement and Procedure**

On December 15, 2011, Wendy Ann Peters (complainant) filed a complaint with the Connecticut Commission on Human Rights and Opportunities (Commission). The complainant alleged that Polish American Citizens Club (respondent), sexually harassed and subject to a hostile work environment based on her sex (female) the complainant alleged that the respondent violated General Statutes §46a-60(a)(8), General Statutes §46a-58(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, as amended and enforced under C.G.S.46a-58(a). She was constructively discharged on June 30, 2011.

After an investigation, a reasonable cause finding was issued on September 11, 2013 and the case was certified to the Office of Public Hearings (OPH.) Notice, was sent via certified mail and delivered to the respondent's address of record. The return

receipt that was delivered back to the commission was marked, returned to sender unclaimed, unable to forward.

On December 17, 2013 the undersigned held a hearing conference. The respondent failed to appear at the conference. (TR4-5) On December 23, 2013, CHRO and the complainant filed a motion to default the respondent for failure to appear at a lawfully noticed hearing pursuant to General Statute sec. 46a-84(f), and failure to file an answer, pursuant to Regulations of Connecticut State Agencies sec 46a-54-88a(2)<sup>1</sup>. On January 22, 2014, the commission filed a motion for default and the motion was

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<sup>1</sup>Regulations of Connecticut State Agencies sec 46a-54-88a :

(a) The presiding officer may, on his or her own or upon motion by a party, enter an order of default against a respondent if the respondent:

(1) Fails to file a written answer as provided for in section 46a-54-86a of the **Regulations** of Connecticut State Agencies; or

(2) Fails to appear at a lawfully noticed conference or hearing.

(b) Upon entering an order of default, the presiding officer may take evidence and issue such orders as may be necessary. The office of public hearings shall notify the parties of the entry of the default and inform them of the date, time, and place a hearing in damages will be held. The hearing shall be limited to the relief necessary to eliminate the discriminatory practice and make the complainant whole. Service of the notice of entry of default and hearing in damages shall be made upon the respondent by certified mail, return receipt requested, or other mail service that confirms receipt.

(c) A respondent may, for good cause shown, file a motion to set aside an order of default no later than fourteen (14) days of the entry of the default. If a default was entered for failure of the respondent to file an answer, the respondent shall submit the answer with the motion. Upon a showing of good cause, the presiding officer may grant said motion and resume the proceeding as appropriate.

(d) The presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant or the commission:

(1) Fails to establish jurisdiction;

(2) Fails to state a claim for which relief can be granted;

(3) Fails to appear at a lawfully noticed conference or hearing without good cause; or

(4) Fails to sustain his or her burden after presentation of the evidence.

granted by the undersigned. A hearing in damages was held on August 20, 2014. The respondent did not appear.

## II. Findings of Fact

In any hearing in damages upon default, the hearing is limited to the relief necessary to eliminate the discriminatory practice and make the complainant whole. After conducting the schedule noticed hearing, and based upon the complaint, testimony taken, exhibits offered and introduced into the record, the following relevant facts are found:

1. All procedural notices, and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the matter and render a decision.
2. The complainant is a member of one or more protected classes.
3. On or about December 17, 2010, complainant was hired by the respondent as a bartender. (TR 14)
4. The complainant worked approximately 32 hours a week and earned \$7.00 an hour. (TR 14)
5. The complainant was paid once a week at a rate of \$7.00 per hour. (TR 14)
6. The complainant estimated her tips to be \$40.00 per day however, the IRS W2 form shows she made a total of \$3263.55 in 2011. The W-2, indicates a lower daily average amount, and is the basis for any damages calculation. (TR 14)

7. For the period from December 17, 2010 to December 31, 2010, the complainant earned \$262.50. (CHRO/C Ex 9)
8. Due to the unlawful sexual harassment the complainant was constructively discharged on June 30, 2011.
9. The complainant broke her leg on March 22, 2011 and was out of work was three weeks. (TR18)
10. The complainant collected unemployment for the time she was out of work with her broken leg. ID
11. The complainant earned \$3,526.00 (\$3263.55 + \$262.50) in tips and wages while employed by the respondent. (TR19 CHRO/C Ex 9) which averages to \$122.00 a week in income.  $(\$3,526 / 202 \text{ weeks}) = \$122.00 \text{ a week.}$
12. In 2011 the complainant collected \$1,518 in unemployment payments. (CHRO/C Ex 8)
13. The complainant sought employment from various areas and began a job working at AutoZone on the February 12, 2012, making \$9.75 an hour, working 20 to 30 hours a week. Her average pay was \$137.00 a week. See (Tr. 19, CHRO/C Ex 10)
14. As of February 12, 2012, complainant was fully mitigated.

### III.

#### Law

Upon entering a default, the presiding officer shall conduct a hearing which will be limited to determining the relief necessary to eliminate the discriminatory practice and make the complainant whole. Section 46a-54-88a of the Regulations of Connecticut State Agencies. The default admits the material facts that constitute a cause of action and conclusively determines the liability of a defendant. See, *Sklyler Ltd. Partnership v. S.P. Douthett & Co.*, 18 Conn. 802 (1989). A Hearing in Damages was held on August 20, 2014. Evidence need not be offered to support those allegations, and the only issue before the tribunal is the determination of damages. See, *Carothers v. Butkin Precision Mfg. Co.*, 37 Conn. App. 208, 209 (1995).” *Commission on Human Rights and Opportunities ex rel. Wayne Rawls, Complainant v. Dev's on Bank Street, LLC, Respondent* 2006 WL 4753465 (CT.Civ.Rts.). The entry of a default also operates as a confession by the defendant to the truth of the material facts alleged in the complaint. *Murray v. Taylor*, 65 Conn. App. 300, cert, denied, 258 Conn. 928 (2001).

The complainant had a duty to use reasonable efforts to find other employment to mitigate back pay damages. *Reed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1182 (2nd Cir. 1996); *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights and Opportunities*, 237 Conn. 2009, 229 (1996). “In order to meet this ‘extremely high’ burden of proving failure to mitigate, the [employer] ‘must show that the course of

conduct plaintiff actually followed was so deficient as to constitute an unreasonable failure to seek employment." *Evans v. State of Connecticut*, 967 F.Sup. 673, 680 (D.Conn. 1997), quoting *Bonura v. Chase Manhattan Bank*, 629 F.Sup. 353, 356 (S.D.N.Y. 1986). As in *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough*, CHRO No. 0470316, "the respondent, by virtue of its default, has obviously not met its burden in this case."

The complainant also seeks an award of post-judgment interest. In addition, complainant would be entitled to pre-judgment interest as well, both at a rate of ten percent compounded per annum. Pre-judgment and Post-judgment interest compensates the prevailing party when the prevailing party is deprived or does not have the use of the money between the order of payment and the actual payment by the losing party. *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough, Inc.*, CHRO No. 0420316 (June 30, 2006) 2006 WL 47534476. The victimized person should not be deprived of the true value of the money. *Thames Talent v. Commission*, 265 Conn. 144-45 (2003.)

## V.

### Order of Relief

1. The respondent shall pay within one week of the date this ruling, back pay, calculated at:  $\$122 \times 35 \text{ weeks} = \$4,270.0 - \$1,518.00$  (unemployment mitigation) =  $\$2,752.00$
2. The respondent shall pay to the complainant statutory post-judgment interest at the rate of 10% per annum from the date of this decision.

3. The respondent shall pay to the complainant statutory pre-judgment interest at the rate of 10% per annum.
4. The respondent shall cease and desist from any further discriminatory practices.
5. The respondent shall pay to the commission the amount of \$1,518.00, and the commission shall transfer this amount to the State of Connecticut Labor Department as repayment of unemployment compensation paid to the Complainant, pursuant to General Statutes § 46a-86(b).

It is so ordered this 8<sup>th</sup> day of December 2014.



Michele C. Mount,  
Presiding Human Rights Referee

cc.

Wendy Peters  
Michele Dumas-Keuler, Esq. – via email only  
Polish American Citizen's Club  
Steven Pastic, Agent for Servicer