

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
VICTORIA HOGAN,)	
Complainant,)	Charge No. 2006CF2840
)	ALS No. 07-336
AND)	
)	
MICHAEL'S NORTH RESTAURANT,)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

The Illinois Department of Human Rights (the Department) is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Pursuant to the Commission's default order of June 27, 2007, a damages hearing was held in this matter on September 13, 2007. On that date, Complainant, Victoria Hogan, appeared *pro se* and Respondent, Michael's North Restaurant, failed to appear.

FINDINGS OF FACT

The following findings of fact were derived from both the record file in this matter and from the evidence presented at the damages hearing. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be immaterial to the issues at hand.

1. On April 25, 2007, the Illinois Department of Human Rights filed a *Petition to Determine Complainant's Damages*.

2. On June 27, 2007, the Commission granted the petition and issued a Default Order which referred this matter to the Administrative Law Section for a hearing on damages.
3. A damages hearing was held on September 13, 2007 at the Commission's Chicago offices. On that date, Complainant, Victoria Hogan, appeared *pro se* and Respondent, Michael's North Restaurant, failed to appear.
4. Respondent is in the food services business.
5. On April 13, 2006, Complainant began working for Respondent as a waitress/server. Complainant was hired as a full-time employee of Respondent and was told she would be working eight (8) hour shifts
6. Complainant worked for Respondent for approximately one (1) week. During that one (1) week period, Respondent was scheduled to work only three (3) days.
7. Complainant was paid approximately \$375.00 for the three (3) days she worked for Respondent. Thus, Complainant made approximately \$125.00 per day.
8. On or around April 18, 2006, Respondent violated the Illinois Human Rights Act when it terminated Complainant based on her sex (female).
9. Complainant was without a job for approximately two and one-half (2.5) months after Respondent terminated her from its employ.
10. Complainant is entitled to back pay in the amount of \$6,250.00

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this action.
2. Because it has been found in default, Respondent has admitted the Complainant's allegations of discrimination.
3. Complainant is entitled to recover damages for back pay due to Respondent's unlawful discrimination.

DISCUSSION

As a result of the default finding in this matter, Respondent Michael's North Restaurant is deemed to have admitted liability for unlawful discrimination and the only remaining issue which needs to be resolved is Complainant Hogan's damages. *Bielecki and Illinois Family Planning Council*, IHRC, 1302, February 3, 1988. The purpose of the damage award in Human Rights cases is to make a complainant whole. When a complainant has been the victim of unlawful discrimination under the Act, she should be placed in the position that she would have been in but for the discrimination. *Clark v Human Rights Commission*, 141 Ill App 3d 178, 490 NE2d 29 (1st Dist 1986).

In this matter, after being terminated from Michael's North Restaurant, Complainant Hogan was out of work for approximately two and one-half (2 ½) months before finding another server position at another restaurant. Complainant, who appeared *pro se* at the damages hearing, testified that for the days that she did work at Respondent restaurant she made approximately \$125.00 per day. According to Complainant Hogan's testimony, she was hired by Respondent as a full-time waitress which means that she would have made approximately \$625.00 per week had she not been unlawfully terminated by Respondent. Therefore, the six (6) weeks or two and one-half months (2 ½) months that Complainant was out of work she would have made \$6,250.00. Although Complainant testified that she then found work as a server at McCormick and Schmick's restaurant , where she was making less money (\$65.00 a day) due to her inexperience in working in a fine dining establishment, she provided no testimony whatsoever as to how long she worked there or if she was working there at the time of the hearing. Thus, Complainant's back pay award is limited to the amount of \$6,250.00.

Finally, Complainant testified that she did not suffer any emotional damage as a result of Respondent's adverse employment action. Complainant testified that she is a "strong person" and that after being terminated by the Respondent she simply began to seek other employment.

RECOMMENDATION

Based upon the foregoing, it is recommended that the following relief be granted:

1. That Respondent pay to Complainant the sum of \$6,250.00 in back pay.
2. That Respondent pay to Complainant prejudgment interest on the back pay award, with such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145.
3. That Respondent cease and desist from unlawful discriminatory employment practices.

ENTERED: NOVEMBER 25TH, 2009

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**