

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

BLANCA JUAREZ,)

Complainant,)

and)

FORTIS RESTAURANT DEVELOPMENT,)
INC. d/b/a EL POLLO LOCO and)
PEDRO BARRERA,)

Respondent.)

CHARGE NO(S): 2007CF2515
2007CN2516

EEOC NO(S): N/A

ALS NO(S): 08-0184C

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case.

Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
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BLANCA JUAREZ,)	
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Complainant,)	Charge No. 2007CF2515
)	EEOC No. N/A
and)	ALS No. 08-0184C
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FORTIS RESTAURANT DEVELOPMENT,)	
INC., d/b/a EL POLLO LOCO and)	
PEDRO BARRERA,)	
)	Judge Reva S. Bauch
Respondents.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on September 22, 2009, after a Default Order against Respondents Fortis Restaurant Development, Inc., d/b/a El Pollo Loco, and Pedro Barrera, personally, was entered on January 8, 2009. Complainant appeared with her attorney. Respondents did not appear, nor did anyone on their behalf. Complainant was given the opportunity to submit a post-hearing brief and a fee petition. Complainant opted not to file a post-hearing brief, but did opt to file a fee petition. Complainant's fee petition was timely filed on October 9, 2009. Respondents failed to file an appearance and respond to the Complainant's fee petition. This matter is now ready for disposition.

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

Findings of Fact

The following findings of fact were derived from the record file in this case and the public hearing:

1. On or around March 28, 2007, Complainant filed a Charge of Discrimination with the Department against Respondent Pedro Barrera.
2. On April 23, 2008, Complainant filed a Complaint against Respondent Pedro Barrera alleging sexual harassment.
3. On or around March 28, 2007, Complainant filed a Charge of Discrimination with the Department against Respondent Fortis Restaurant Development, Inc., d/b/a El Pollo Loco.
4. On or around April 23, 2008, Complainant filed a Complaint against Respondent Fortis Restaurant Development, Inc., d/b/a El Pollo Loco, alleging sexual harassment.
5. The two Complaints (ALS No. 08-0184 and 08-0185) were consolidated on July 31, 2008 and assigned ALS No. 08-0184C.
6. After being duly served, Respondents failed to appear for the initial status hearing on July 16, 2008.
7. After being duly served, Respondents failed to appear for the second status hearing on September 4, 2008.
8. After being duly served, Respondents failed to appear for the third status hearing on November 6, 2008.
9. Respondents failed to appear, file an answer to the Complaint, or participate in any manner in the proceedings regarding this matter.
10. On December 2, 2008, Complainant filed a Motion for Default.
11. The Motion for Default was served on the Respondents as evidenced by a Certificate of Service filed by Complainant's counsel filed on December 2, 2008.
12. On January 8, 2009, I entered an order granting the Complainant's Motion for Default.
13. My January 8, 2009 order was mailed to the Respondents, but was returned to the Commission with a note stating: "Attempted – Not Known, Unable to Forward."

14. On February 18, 2009, I entered an order setting a public hearing on damages for May 27, 2009.
15. Complainant's counsel filed a Certificate of Service on February 19, 2009 indicating he served my February 18, 2009 order on the Respondents.
16. On May 21, 2009, Complainant's counsel (but not Complainant) appeared for the public hearing, but Respondent failed to appear.
17. On May 21, 2009, Complainant filed a Motion to Continue the Public Hearing on Damages, which I granted.
18. On May 27, 2009, I entered an order rescheduling the public hearing for August 11, 2009.
19. Complainant filed a Certificate of Service with the Commission on May 28, 2009 indicating that she had served a copy of my May 27, 2009 order on Respondents.
20. On July 28, 2009, I entered an order rescheduling the public hearing on this matter to September 22, 2009 due to a scheduling conflict.
21. My July 28, 2009 order mailed to Respondents was returned to the Commission with a note stating: "Return to Sender, Attempted – Not Known, Unable to Forward."
22. On September 22, 2009, Complainant's counsel appeared with Complainant.
23. On September 22, 2009, Respondents failed to appear.
24. On September 22, 2009, Complainant presented her case on damages.
24. Complainant is twenty years old.
25. In October 2006, Complainant was seventeen years old and was employed by Respondent Fortis Restaurant as a cashier.
26. On October 11, 2006, Complainant was working as a cashier until her shift ended at approximately 12:30 AM.
27. After her shift, Complainant was on her way home and Respondent Barrera came out of a smaller street towards her.

28. Respondent Barrera was the general manager of the restaurant and Complainant's supervisor.
29. Mr. Barrera told Complainant he wanted to talk with her for a while.
30. Mr. Barrera told Complainant he would give her a ride home.
31. Complainant informed Mr. Barrera that she lived only a few blocks away and could go home by herself. She said she was tired and wanted to go home.
32. Mr. Barrera had beer in his car and Complainant thought he was a little drunk.
33. Finally, Complainant agreed to let Mr. Barrera drive her home, but she told him she really was not interested in talking that night.
34. Complainant suggested that they talk the next day and Mr. Barrera agreed.
35. On the way home, Mr. Barrera told Complainant she needed a mature man.
36. Mr. Barrera told Complainant he wanted to be with Complainant.
37. Instead of going in the correct direction to Complainant's house, Mr. Barrera went straight and passed her house.
38. A few blocks from her house, Mr. Barrera stopped the car and told Complainant he wanted to be with her, not the other co-worker he was dating.
39. Complainant told him she wanted to go home, but Mr. Barrera pulled over to her side of the car and tried to hug her.
40. Complainant tried to push him away, but Mr. Barrera told her not to resist.
41. Mr. Barrera then tried to put his hand on Complainant's neck to try to turn her into him so he could kiss her.
42. As Complainant turned away, one of her earrings came off.
43. Mr. Barrera tried to put his hand on Complainant's thigh, and then he tried to put his other hand on her breast.
44. Complainant put her hand on Mr. Barrera's face to keep him away.
45. Complainant told Mr. Barrera to stop.

46. Mr. Barrera tried to touch Complainant's thigh more than three times and tried to touch her breasts once.
47. Complainant got out of the car and ran home, as Mr. Barrera called after her.
48. When Complainant arrived at home, she was crying.
49. Complainant's aunt was at her home and they talked.
50. Mr. Barrera kept calling Complainant on the telephone while she was talking to her aunt, but she did not answer the telephone.
51. Complainant's aunt answered the telephone and told Mr. Barrera what he had done was bad and he should not call anymore.
52. For approximately twenty minutes, Complainant cried as her aunt hugged her.
53. Complainant felt uncomfortable and bad about the incident in the car.
54. After the incident, Complainant stayed away from her family, even though in the past, they were very close.
55. Complainant stayed away from her family for about a month.
56. Complainant did not want her family members to hug her.
57. After the incident, Complainant did not feel right. She stayed by herself and did not go out much.
58. Complainant stayed in her house, in her room, for several days.
59. Complainant slept a lot in her room and sometimes did not get up.
60. Complainant stopped taking classes at school because her mind was somewhere else.
61. In her current job, Complainant does not talk to male co-workers and tries to stay away from them.
62. Complainant did not go to work after the incident for three days. Thereafter, she attempted to resign.
63. Complainant confronted Mr. Barrera and told him he had done something really bad.

64. Mr. Barrera apologized and said he did not know what had gotten into him. He asked Complainant to forgive him.
65. Complainant decided not to quit her job with Respondent Fortis Restaurant because she did not want to explain the reason to her parents.
66. On September 22, 2009, I entered an order setting a briefing schedule for a fee petition.
67. My September 22, 2009 order was sent to the Respondents and was returned to the Commission with a note stating: "Return to Sender, Attempted -- Not Known, Unable to Forward."
68. On July 14, 2008, Complainant filed a petition for attorney's fees for work performed by Attorney Melissa Brabender, as well as some of her co-counsel and paralegals/law clerks.
69. Respondents did not file any response to the fee petition.
70. Attorney Brabender has been licensed to practice law in the state of Illinois since 2008.
71. Attorney Brabender has been practicing in the area of employment and labor law since July 2009.
72. Attorney Brabender and her co-counsel request a billing rate of \$200.00.
73. Attorney Brabender's paralegals and law clerks request a billing rate of \$100.00 and \$125.00.
74. Complainant also requested costs and expenses in the amount of \$100.00.
75. Attorney Brabender's fees total \$1,300.00.
76. Attorney Brabender's co-counsel's fees total \$1,200.00.
77. Attorney Brabender's paralegals/law clerks' fees total \$1,086.50.
78. Complainant's total requested fees and costs are \$3,686.50.

79. Complainant's fee petition references an Exhibit A that is a time and expense report for Complainant's case as of November 7, 2009.

80. The fee petition fails to itemize the services rendered for Complainant and the time allocated for these tasks.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondents are "employers" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accordance with my Default Order entered on January 8, 2009, Respondents are liable for violation of the Illinois Human Rights Act that prohibits discrimination based on sexual harassment.

6. Complainant has demonstrated that she is entitled to emotional distress damages in the amount of \$10,000.00.

8. In light of the finding of liability against Respondents, Respondents should be ordered to cease and desist from sexual harassment in the future.

11. Because of their failure to file appearances and respond to Complainant's fee petition, Respondents have waived the issue of fees.

9. Attorney Melissa Brabender and her co-counsel's hourly rate of \$200.00 is reasonable.

10. Attorney Brabender's paralegals'/law clerks' hourly rates of \$100.00 and \$125.00 are reasonable.

11. Although the fee petition fails to itemize services rendered and the time allocated to those services, the total amount requested is reasonable.

12. Complainant has demonstrated that she is entitled to attorney's fees in the amount of \$3,587.50.

13. Complainant has failed to explain details for the one expense sought, amounting to \$100.00, and therefore, there should be no award for this expense.

Discussion

A. Default

Respondents failed to appear, answer the Complaint or otherwise defend themselves in this matter. Thus, on January 8, 2009, I granted the Complainant's Motion for Default. I recommend that the default against the Respondents be affirmed by the Commission and a finding of liability for sexual harassment be found as to Respondents. Once the order of default is entered, the allegations of the complaint are deemed to be admitted. **Payne and Roseland Christian Health Ministries, Inc., IHRC, ALS No. 11591, Jan. 1, 2003.** As a result, a finding of liability against Respondents is appropriate in this case.

B. Damages

1. Emotional Distress

Emotional distress damages are recoverable as actual damages for injury or loss suffered by a complainant and caused by violations of the Illinois Human Rights Act. **Village of Bellwood v. Illinois Human Rights Comm'n**, 184 Ill. App.3d 339 (1989). Complainant has the burden of coming forward and presenting evidence for the relief she seeks. Complainant must prove by a preponderance of the evidence that she is entitled to emotional distress damages.

It is apparent from the record that Complainant suffered a severe emotional reaction to Respondent Pedro Barrera's conduct. The degree of emotional distress was significantly over and above that which would be expected from "the mere fact of a civil rights violation" and therefore, is compensable under the Illinois Human Rights Act. **Harris and Vinylgrain Industries of Illinois**, IHRC, ALS No. 11382, Aug. 1, 2001.

The probative factors in determining the amount of an emotional distress award are the nature and duration of the suffering experienced by complainant. **Smith v. Cook County Sheriff's Office**, 19 Ill. H.R.C. Rep. 131 (1985).

In support of her claim for emotional distress damages, Complainant testified on her own behalf. Although there was only one incident, Complainant was only seventeen years old at the time. Mr. Barrera touched Complainant on her thigh more than three times and touched her breast one time. The incident occurred in a car, making it more secluded and confining. Complainant testified that she got out of the car and ran home. Immediately after the incident, she cried for twenty minutes and tried to get herself together, as her aunt attempted to comfort her. Complainant also testified that she: (1) felt uncomfortable and bad about the incident; (2) failed to return to work for three days; and (3) stayed in her room sleeping. For approximately one month, she kept her distance from family members and did not want to be hugged or touched by them. Complainant was distracted after the incident and left school because she could not concentrate on her classes. Currently, Complainant keeps her distance from male co-workers.

In sum, based on the record in this case and Commission precedent, I find Complainant has met her burden of proof; an award of **\$10,000.00** for emotional distress damages is appropriate.

2. Cease and Desist

Since a Default Order has been entered and there has been a finding of liability against the Respondents, it is recommended that Respondents be ordered to cease and desist from sexual harassment in the future. See **Magraff and Alexopolis**, IHRC, ALS No. 7082, Nov. 8, 1993.

3. Attorney's Fees

As permitted by my Order entered on September 22, 2009, Complainant's attorney timely submitted a fee petition on October 9, 2009. In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, and multiplying that figure by the number of hours expended.

The standard for determining the proper fee award by the Commission is found in **Clark and Champaign National Bank**, 4 Ill. H.R.C. Rep. 193 (1982). Respondents chose not to file a timely response. Since no response was filed, all issues related to the petition are waived. **Leseiko and Chase/Ehrenberg & Rosene, Inc.**, IHRC, ALS No. 11592, Mar. 23, 2004. However, I have still analyzed the billing rates and hours requested to determine if they meet appropriate standards of reasonableness.

a. Reasonable Hourly Rates

In the fee petition, Attorney Melissa Brabender and her co-counsel request a total of \$2,500.00 for their time on this case. This amount was calculated using 12.50 hours of time. In addition, the fee petition states that the rate of \$200.00 per hour was used to calculate the attorneys' fees. Even without Respondents' waiver of fee petition objections, I find the hourly rate reasonable, and in accordance with Commission's recent orders on attorney's fees.

In addition, Complainant requests an award for services by paralegals/law clerks in the total amount of \$1,887.50. This amount was calculated using a rate of \$125.00 per hour for most of the paralegals/law clerks, and a rate of \$100.00 per hour for one of the paralegals/law clerks. Even without Respondents' waiver of fee petition objections, I find the

hourly rates reasonable, and in accordance with Commission's recent orders on fee petitions.

b. Number of Hours Reasonably Worked

Once the hourly rate is decided, the next step is to determine whether the hours claimed are reasonable. The total fee requested is \$3,587.50, based on 12.5 hours for the attorney time and 9.25 hours for paralegals/law clerks time. Although uncontested by Respondents, I still must carefully examine fee statements. Complainant failed to file detailed fee statements itemizing the hours billed for services performed by the attorneys and paralegals/law clerks. Thus, the fee petition is not in accordance with 56 Ill. Admin. Code §5300.765 (a) (1) and is insufficient to allow appropriate scrutiny. Notwithstanding the same, the total hours worked and the total fees requested are consistent with other Commission cases relating to damages cases.

Thus, I recommend that Complainant be awarded total fees in the amount of **\$3,587.50**. However, since Complainant has provided no details as to expenses, I recommend that no expenses be awarded.

Recommendation

It is recommended that the Commission:

- (1) order Respondents, jointly and severally, to pay Complainant emotional distress damages of \$10,000.00;
- (2) order Respondents, jointly and severally, to pay Complainant attorney's fees in the amount of \$3,587.50;
- (3) order Respondents to cease and desist from any sexual harassment in the future.

HUMAN RIGHTS COMMISSION

BY: _____

**REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: November 9, 2009