STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
KHALID H. MUHAMMAD,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2008CA0134
	)	EEOC NO(S):	21BA72190
and	)	ALS NO(S):	08-0346
	)		
PROFESSIONAL STAFFING SERVICES,	)		
	)		
	)		
Respondent.	)		

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 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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Complainant,	)	**Charge No.: 2008CA0134**
	)	**EEOC No.: 21BA72190**
PROFESSIONAL STAFFING SERVICES,	)	**ALS No.: 08-0346**
	)	
Respondent.	)	**Judge Gertrude L. McCarthy**

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on November 19, 2008, after a Default Order against Respondent, Professional Staffing Services, was entered on September 3, 2008. Complainant appeared *pro se* and Angela Cuadrado (Cuadrado), owner of Respondent, appeared on behalf of Respondent.

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 facts were derived from the record file in this matter, as well as from testimony given and exhibits admitted at the public hearing.

1. On July 26, 2007, Complainant filed a Charge with the Department alleging age and race discrimination.

2. On July 29, 2008, the Department filed a *Petition for Hearing to Determine Complainant's Damages*.

3. On September 3, 2008, the Commission issued a *Default Order*.

4. On October 22, 2008, an order was issued scheduling a public hearing on damages which was held on November 19, 2008.

5. Respondent was served with notice and Respondent's owner appeared at the damages hearing on behalf of Respondent.

6. Respondent is in the business of providing staffing for catered events.

7. Complainant was hired by Respondent as a waiter in 2006.

8. Respondent's business is seasonal, with the slow period being January through March.

9. In 2006, Complainant received $770.75 in non-employee compensation.

10. In 2007, Complainant received $750.64 in non-employee compensation.

11. In 2007, Complainant worked at a small jewelry story in Chicago.

12. Respondent's owner works out of her home.

13. Waitstaff are subcontracted out by Respondent and are supposed to call in to receive assignments.

14. Respondent paid Complainant $11.00 per hour.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as these terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-1-3(B) and 5/1-101(B).

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

3. In accordance with the *Default Order* entered on September 3, 2008, Respondent is liable for violations of the Illinois Human Rights Act that prohibit discrimination based on age and race.

4. Complainant has proven actual damages based on his claim of age discrimination as set forth below.

5. Complainant has proven actual damages based on his claim of race discrimination as set forth below.

DISCUSSION

Damages

The Illinois Human Rights Act provides that the Commission may, after a finding of a violation of the Act, issue an award for Respondent to pay actual damages as reasonably determined by the Commission. See **Sanders and Citgo Gasoline Station,** IHRC, 11873, June 23, 2003. The purpose of an award of damages is to make the complainant whole. See **775 ILCS 5/8A-104(J)** and **Littleton and Overnite Express Co.,** IHRC, 10850R, August 22, 2005.

At the public hearing, Complainant's only evidence of what may be considered actual damages were his 2006 and 2007 W-2 forms from Respondent company, reflecting income of $770.75 and $750.64 respectively. (See Exhibits 1 and 2.) Complainant provided no further evidence of actual loss of income and requests $2,100.00. (Tr. p. 27.) Complainant claims the basis for that figure is ". . . if I would have continued to work with her (Respondent) what it could have been for the remainder of last year and also this year." (Tr. p. 28.) Complainant claims that in a telephone conversation with Cuadrado she said he was fired. (Tr. p. 20.)

Cuadrado, testifying on behalf of Respondent, stated that "If he would have called in August, he would have gotten work." (Tr. p. 35.)

Cuadrado called Delwin Wright (Wright) as a witness. Wright testified that the company policy is that "there is no set money you earn." (Tr. p. 40.) "You have to call in every week, Tuesday, Wednesday, to get work. If you don't call in, you don't get work." (Tr. p. 40.)

Complainant obtained a finding of liability by default against Respondent. As a result of the default, based upon Respondent's failure to respond to the Charge, the

allegations of the Charge are deemed admitted. See **775 ILCS 5/7A-102(B)** and **Cruz and Architrade, Inc.,** ILCS, 9992, December 10, 1997. Complainant's allegation in the Charge that he was fired (Tr. p. 20) is, therefore, deemed admitted. Based on Complainant's firing, and the evidence, I find Complainant to have sustained actual damages. In computing Complainant's damages, I find the W-2 forms for 2006 and 2007 which he provided sufficient to enable me to compute his actual damages. Complainant's 2007 W-2 form shows an income from Respondent in the amount of $750.64 which is almost identical to his 2006 income from Respondent. Accordingly, I find that Complainant would have made $750.64 for 2008 had he not been fired.

I, therefore, find that Complainant has sustained actual damages in the amount of $750.64 which reflects his lost income.

As reinstatement has not been requested, it is not part of my recommendation.

RECOMMENDATION

It is recommended to the Commission that:

1. Complainant be awarded $750.64 in actual sustained damages for the reasons set forth above

2. Respondent clear from Complainant's personnel records all references to the filing of Charge No 2008CA0134 and the subsequent disposition thereof.

3. Respondent cease and desist from discriminating on the basis of age and race.

HUMAN RIGHTS COMMISSION

BY:

GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: January 27, 2009