

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
BRANDY MAY,)	
)	CHARGE NO. 2003CF1676
Complainant,)	EEOC NO. 21BA80706
)	ALS NO. 08-415
and)	
)	
YNS GROUP,)	
)	
Respondent.)	

ORDER

The Commission by a panel of three: Commissioners Marti Baricevic, Robert S. Enriquez, and Greg Simoncini presiding.

On review of the Recommended Order and Decision of Reva S. Bauch, Administrative Law Judge

For Complainant: Brandy May, *Pro Se*

For Respondent: Edward T. Graney, Esq.

Illinois Human Rights Commission: Harriet Parker, General Counsel
Donyelle Gray, Deputy General Counsel
Evelio Mora, Assistant General Counsel

This matter comes before the Commission pursuant to a Recommended Order and Decision issued by Administrative Law Judge Reva S. Bauch on June 9, 2009, and the Respondent's exceptions to the Recommended Order and Decision.

On review of Judge Bauch's recommendations, the public hearing record and the exceptions filed by the parties and for the reasons set forth herein, the recommendations of Judge Bauch are sustained in part and modified in part.

IT IS HEREBY ORDERED THAT:

The findings of the Recommended Order and Decision are sustained, subject to the following modification: The Respondent's managers, owners and employees shall be required to undergo anti-discrimination training, which training shall be administered by the Illinois Department of Human Rights.

I. Nature of the Case

Brandy May, the Complainant, was employed by YNS Group, the Respondent, as a sales associate in its mall clothing store. The Complainant filed a charge with the Department on December 19, 2008, alleging that the

Respondent failed to promote her due to her sex (female) and race (black), in violation of the Illinois Human Rights Act ("Act"). The Complainant also alleged that the Respondent's manager sexually harassed her in violation of the Act.

II. Proceedings

The Commission entered a Default order against the Respondent on October 15, 2008, and referred the matter to the Administrative Law Section for a hearing on damages. On April 14, 2009, Administrative Law Judge Reva S. Bauch presided over a public hearing on damages, where the Complainant appeared *pro se* and testified on her own behalf. The Respondent received notice of the hearing but failed to appear at the hearing.

After the damages hearing, Judge Bauch issued her Recommended Order and Decision. She recommended that the Respondent be ordered to:

- A.** Pay the Complainant emotional distress damages in the amount of \$50,000.00; and
- B.** Cease and desist from any sex and race discrimination, and sexual harassment, in the future.

III. Standard of Review

When reviewing an administrative law judge's Recommended Order and Decision, the Commission will sustain a finding of fact issued by an administrative law judge unless we find it to be against the manifest weight of the evidence, 775 ILCS 5/8A-103(E)(2).

In this case, the Commission does not find the Respondent's exceptions to be persuasive. Liability having been determined by default, the Commission finds no error in Judge Bauch's determination that the Complainant is entitled to damages in the amount of \$ 50,000 and that the Respondent shall cease and desist from any further sexual harassment, and sex and race discrimination, and adopts these recommendations.

However, the Commission does find that additional remedial measures are warranted in this case. Based on the egregious nature of the Respondent's conduct, the Respondent's managers, owners and employees shall also be required to undergo anti-discrimination training with the Illinois Department of Human Rights.

The Recommended Order and Decision is otherwise not contrary to the manifest weight of the evidence and is sustained in all other respects.

THEREFORE, the Recommended Order and Decision issued in this case on June 9, 2009, shall be modified to include the following relief: the Respondent's managers, owners and employees shall undergo anti-discrimination training, which shall be administered by the Illinois Department of Human Rights. Within 60 days of service of this Order upon it, the Respondent shall make arrangements with the Illinois Department of Human Rights to schedule this training. The Recommended Order and Decision, as herein modified, is sustained and adopted as the Commission's Final Order and Decision.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 24th day of November 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
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BRANDY MAY,)	
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Complainant,)	Charge No. 2008CF1676
)	EEOC No. 21BA80706
and)	ALS No. 08-415
)	
YNS GROUP,)	
)	Judge Reva S. Bauch
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on April 14, 2009. Complainant appeared *pro se*. Respondent did not appear, nor did anyone on its behalf. 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 facts were derived from the record file in this matter, as well as testimony given at the public hearing.

1. Complainant filed Charge Number 2008CF1676 with the Department on December 19, 2008.
2. The charge alleges that Respondent failed to promote Complainant due to her sex (female) and race (black), as well as containing allegations that Respondent's manager sexually harassed Complainant.

3. On October 15, 2008, the Commission entered a Default Order and referred the matter to the Administrative Law Section for a hearing.
4. On the date of the hearing, Respondent failed to appear. Complainant appeared, *pro se*, and presented her case on damages.
5. Respondent hired Complainant in November 2006 as a sales associate in its mall clothing store.
6. During various times of Complainant's employment, Respondent had open manager positions.
7. Respondent was aware of Complainant's interest in a manager position.
8. Complainant was qualified for a manager position.
9. During her approximate one year of employment, Respondent failed to promote Complainant to a manager position.
10. After Complainant was hired, she noticed Respondent hired all Arab males who were paid more money than Complainant.
11. Initially, Complainant worked for a manager named Ron.
12. Ron spoke to Complainant disrespectfully at the beginning of her employment.
13. Complainant complained to the owner who stated that Ron was just a young man.
14. After that incident, Ron treated Complainant well and with respect.
15. Complainant loved working for Respondent when Ron was the manager.
16. Complainant rearranged her school schedule to help Ron at the store when he needed her.
17. Ron left as manager in August 2007.
18. After Ron left, and before a new manager started, Complainant essentially ran the store.

19. Until a new manager was hired, R.J., a 16 year old male, Arab co-worker, was given the store keys and was responsible for letting Complainant into the store.
20. At that time that R.J. was given the store keys, Complainant was 27 years old.
21. Because R.J. had the keys to the store and was late every day, Complainant had to wait outside the store every day.
22. When Complainant questioned why she did not have keys to the store, she was told that her job was to "babysit" for R.J.
23. After several weeks, a new manager, Tony, started to work at the store.
24. Tony told Complainant he did not need to respect her because she was his worker.
25. Complainant felt that her work environment was uncomfortable.
26. Tony told Complainant that if she worked hard and got the highest sales volume, her work hours would not be cut.
27. Complainant was the highest sales producer at the store.
28. Tony cut Complainant's hours.
29. Complainant complained to the owner about having her hours cut.
30. The owner explained that her hours were cut because she was a mother and she had restrictions on her time.
31. Complainant told the owner that she worked Monday through Sunday and still went to school on Tuesdays and Thursdays after work.
32. Complainant was told that R.J.'s hours were not cut because he had a family to take care of.
33. Complainant knew R.J. had no children and lived with his parents.
34. Complainant found her work environment very hostile.

35. Rick, one of Respondent's managers, told Complainant that the reason her hours were cut was because she was black and R.J. was Arab, and then laughed at Complainant.

36. When one of the owners came to the store, Complainant told him what Rick had told her and complained about being treated with disrespect.

37. The owner told Complainant that he discussed this with the other managers but that they are "just guys" who are "young."

38. A new manager, Nick, was hired.

39. On his first day, Nick told Complainant, "Don't you guys eat chicken? All black people eat chicken, so why don't you go get some chicken?"

40. Complainant asked Nick not to stereotype and said that would be like her saying all Arabs are terrorists.

41. Complainant did not like being around Nick after he made the comment about all blacks eating chicken.

42. In October 2007, Complainant's manager, Nick, told Complainant, "black girls have big lips because they suck good dick."

43. These comments made Complainant feel very uncomfortable.

44. Complainant told Tony that she thought Nick's comments were inappropriate, and Tony talked to Nick in Arabic.

45. Complainant was very upset and did not want to be at work anymore.

46. Complainant did her job, but she did not "have the thirst" for it anymore.

47. During her employment with Respondent, Complainant was attending fashion school.

48. Complainant no longer wanted to deal with fashion because of her experiences at Respondent's store.

49. Complainant found her work environment unbearable.

50. Complainant noticed she no longer was happy at work and she no longer smiled.
51. Respondent's customers commented to Complainant about the change in her attitude.
52. For Halloween, Complainant asked to work only in the morning or to take off the whole day, because she wanted to take her daughter "trick or treating."
53. Respondent refused to accommodate Complainant's work schedule request.
54. Complainant learned that R.J. was taking off Halloween Day.
55. On day, Complainant's manager walked up to Complainant, threw some clothes that Complainant had just folded, and said, "I'm talking to you. Fix this shit now."
56. Complainant told her manager to respect her and he responded, "I told you that I don't have to respect you."
57. Thereafter, an argument ensued between Complainant and her manager.
58. Shortly thereafter, both Complainant and R.J. were terminated.
59. Respondent rehired R.J. the next day.
60. Complainant felt disrespected because she is a black woman.
61. Complainant does not want to work for Arabs anymore.
62. Complainant no longer desires to walk in the mall near Respondent's store.
63. Complainant lost weight during her employment with Respondent.
64. Complainant experienced a hurt chest, as well as a hurt head.
65. Complainant went to the doctor to determine why she was losing weight.
66. After running tests, Complainant's doctor told her the weight problem was related to work stress.
67. Complainant went to see her doctor four times.
68. Complainant talked to her doctor about what was happening at work, and he told her she should find a new job.

69. Complainant was going to school for fashion, and wanted to work for Respondent to get hands on experience.

70. Originally, Complainant loved coming to work when she worked for Pops, the owner, and Ron, her initial manager.

71. As time went on, Pops noticed Complainant was angry and not happy anymore.

72. After being terminated, Complainant felt stress trying to find another job, especially because she had a young daughter to support.

73. Complainant found another job, but she made less money than she did while working at Respondent's store.

74. Complainant was hurt that Nick, her manager, felt that "black women have big lips because they such good dick."

75. Complainant's spirits were down from the way she was treated by having her hours cut and the comments that were made to her.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act (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 the Default Order entered on October 15, 2008, Respondent is liable for violation of the Act that prohibits discrimination based on race, sex, and sexual harassment.

4. Complainant has demonstrated that she is entitled to emotional distress damages in the amount of \$50,000.00.

5. In light of the finding of liability against Respondents, Respondents should be ordered to cease and desist from any race and sex discrimination and sexual harassment in the future.

Discussion

Damages

Emotional Distress

Emotional distress damages are recoverable as actual damages for injury or loss suffered by a complainant and caused by violations of the 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's conduct and statements. 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 Act. **Harris and Vinylgrain Industries of Illinois**, IHRC, 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 HRC Rep 131 (1985).

In support of her claim for emotional distress damages, Complainant testified on her own behalf. Throughout much of her testimony, Complainant appeared noticeably upset. Her voice was loud and she repeated several times that she felt disrespected and hurt. She asked for her daughter to leave the hearing room as she testified.

Complainant lost weight during the tenure of her employment with Respondent and sought help from her doctor on at least four occasions. She discussed with her doctor the events and comments that were bothering her at work. She also sought counseling from her doctor. After performing examinations and blood tests, her doctor informed that her weight loss was related to her job stress. He encouraged her to find new employment. Complainant testified that during her time with Respondent, her chest and head hurt.

Complainant testified that she told Respondent that she filed a charge with the Department because, "After you guys said what you said to me, I said you have to respect me as a female, and me being an employee, you can't talk to me any kind of way, because I'm not going to talk to you any kind of way. And they just felt that I was a joke and they don't have to respect me. And to be told that on a daily basis, I don't have to respect you, when I'm coming in every day... . To be told that I'm cutting your hours because you are a parent, it was too much for me to be told. And to be laughed at in my face because you don't get no hours because you're black, and you laugh in my face, and then you walk away from me, steadily laughing like it's a joke, but I come in and I make your store money every single day... ."

Complainant described how her attitude changed from loving work and having a smile on her face all the time, to hating the job. She testified that customers asked her why she was not happy anymore. She testified that the owner of the store even commented on the change in her attitude and asked Complainant why she had become so angry.

Complainant testified that she loved to sell clothes, make clothes, and design clothes, but after being treated differently than other employees because she was a black female, her spirit was broken and she hated the job. She lost interest in fashion design.

In response to being asked how she felt about the comments that had been made to her and having her hours cut, as well as not being given requested days off to spend time with her daughter, Complainant stated, "It hurt. It hurt. It hurt for him to sit there and tell me about black women having big lips because they such good dick. That hurt to know that this is how you feel about me." Complainant also said that it brought her spirits down to have to be subjected to racist and sexist comments. She said that her spirits were brought down because she had to work harder than other employees who got treated better with more hours and more money.

Over the approximate year that she worked for Respondent, Complainant was forced to endure, on a regular basis, comments about her race and sex, as well as her parental status. On a few occasions she endured racial and sexual harassment, such as comments regarding black women's lips and their usefulness in performing oral sex.

Notwithstanding that she was a high volume sales person, she was paid less money, and was required to work longer, less favorable hours, than her male Arab co-workers. Complainant felt that she was often treated like a child and with a lack of respect. In addition, despite the fact that she was a 27 year old high volume sales person, Complainant was required to wait outside the store until her 16 year old male co-worker who had the keys arrived to let her in. The co-worker was regularly late. When Complainant objected to management, she was told that it was her job to "babysit" for the co-worker. Complainant frequently complained about the racial and sexual comments directed towards her, and the different treatment, only to be laughed at and ignored. Respondent's reactions to her complaints caused Complainant further emotional distress and pain.

In sum, based on the record in this case and Commission precedent, I find Complainant has met her burden of proof; an award of **\$50,000.00** for emotional distress damages is appropriate.

Cease and Desist

Since a Default Order has been entered and there has been a finding of liability against the Respondent, it is recommended that Respondents be ordered to cease and desist from race and sex discrimination, and sexual harassment in the future. See **Magraff and Alexopolis**, IHRC, 7082, Nov. 8, 1993.

Recommendation

It is recommended that the Commission:

- (1) order Respondent to pay Complainant emotional distress damages of **\$50,000.00**; and
- (2) order Respondent to cease and desist from any sex and race discrimination, and sexual harassment, in the future.

HUMAN RIGHTS COMMISSION

BY: _____

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

ENTERED: June 9, 2009