

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

DEANNA LEAHY,)

Complainant,)

and)

TWIN VALLEY ENTERTAINMENT,)

Respondent.)

CHARGE NO(S): 2009SF0102
EEOC NO(S): 21BA82510
ALS NO(S): 09-0332

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 16th day of June 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: |) | |
| |) | |
| DEANNA LEAHY, |) | |
| |) | |
| Complainant, |) | Charge No.: 2009SF0102 |
| |) | EEOC No.: 21BA82510 |
| and |) | ALS No.: 09-0332 |
| |) | |
| TWIN VALLEY ENTERTAINMENT, |) | |
| |) | |
| Respondent. |) | Judge Gertrude L. McCarthy |

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 Respondent, Twin Valley Entertainment, was entered on July 8, 2009. Complainant appeared through counsel and Respondent did not appear.

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:

1. On July 15, 2008, Complainant filed a Charge with the Department alleging sex discrimination and retaliation.
2. On June 5, 2009, the Department filed a *Petition for Hearing to Determine Complainant's Damages*.
3. On July 8, 2009, the Commission issued a *Default Order*.
4. On August 7, 2009, an order was issued scheduling a public hearing on damages which was held on September 22, 2009.

5. Respondent was served with notice, but Respondent failed to appear at the damages hearing.

6. Respondent is in the business of operating adult entertainment establishments. Respondent owns and operates the Crystal Palace and Hollywood Showclub.

7. Complainant was hired by Respondent in or about 2004 to work as a waitress and bartender at Crystal Palace.

8. For the pay period May 1 – May 14, 2008, Complainant received \$602.00 in compensation, which included base pay and tips.

9. Respondent terminated Complainant on or about May 24, 2008.

10. Complainant did not find new employment until six months after being terminated. At her new job, Complainant received approximately \$300.00 in compensation every two weeks during the first seven months of employment. After those first seven months, Complainant was paid approximately \$600.00 every two weeks.

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 5/1-103(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 July 8, 2009, Respondent is liable for violations of the Illinois Human Rights Act that prohibits discrimination based on sex and retaliation based on Complainant’s protected activity.

4. Complainant has proven actual damages based on her sex discrimination claim as set forth below.

5. Complainant has proven actual damages based on her retaliation claim as set forth below.

DISCUSSION

I. Damages

A. *Lost Wages*

The Illinois Human Rights Act provides that the Commission may, after a finding of a violation of the Act, issue an order for Respondent to pay actual damages as reasonably determined by the Commission. See **Sanders and Citgo Gasoline Station**, IHRC, ALS No. 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, ALS No. 10850R, August 22, 2005.

Complainant seeks actual damages for lost wages and emotional distress. As for lost wages, Complainant presented her final pay stub from Respondent to establish an estimate of her bi-weekly compensation. The May 1 – May 14, 2008 pay stub indicates that Complainant received \$602.00 in compensation for that two-week period. Complainant testified that the \$602.00 figure was a fair estimate of her bi-weekly income from Respondent. (Tr. p. 53.) Complainant testified that Respondent terminated her on or about May 24, 2008. (Tr. p. 10.) Complainant claimed that she immediately began looking for new employment but could not find a new job for approximately six months. (Tr. pp. 54-55.) Complainant testified that she was eventually hired as a waitress at Parrot Sports Bar & Grill at a rate of \$300.00 every two weeks. (Tr. pp. 55-57.) Complainant testified that she was paid \$300.00 every two weeks for approximately seven months. (Tr. p. 57.) After her first seven months with Parrot Sports Bar & Grill, Complainant began working as a bartender. Complainant testified that she was paid approximately \$600.00 every two weeks as a bartender, *i.e.*, the same amount she was paid by Respondent. (Tr. p. 59.)

Based on the evidence above, I find Complainant to have sustained actual damages for lost wages. In computing Complainant's damages, I find the May 1 – May 14, 2008 pay stub and Complainant's testimony sufficient to enable me to compute her damages. Complainant's pay stub shows compensation over a two-week period of \$602.00. Complainant testified that this figure was a fair estimate of her bi-weekly compensation. Complainant looked for work for six months after being terminated before being hired by Parrot Sports Bar & Grill. During this six month period, Complainant did not receive income to offset the pay she lost from Respondent. Had Respondent not fired Complainant, Complainant would have received thirteen paychecks during this six month period at an estimated rate of \$602.00 per paycheck. Accordingly, I find that Complainant would have made \$7,826.00 during those six months had she not been fired.

During the first seven months of employment with Parrot Sports Bar & Grill, Complainant testified that she was paid approximately \$300.00 every two weeks as a waitress. Had she not been fired by Respondent, she would have made approximately \$600.00 every two weeks during this period. Thus, Complainant would have been paid an additional \$300.00 over each of those fifteen pay periods. Accordingly, I find that Complainant would have made \$4,500.00 during those seven months had Respondent not fired her.

As for lost wages, I find that Complainant has sustained actual damages in the amount of \$12,326.00.

B. *Emotional Distress*

Complainant has also requested actual damages for emotional distress in the amount of \$25,000.00. (Tr. p. 61.) Complainant testified that she was subjected to near constant sexual harassment from her manager, Jim Lindsey, over the course of several months. (Tr. pp. 16-21.) Complainant asserted that Lindsey repeatedly requested sex

and grabbed her aggressively, leaving bruises. (Tr. p. 16-18.) Complainant testified that on one particular occasion, Lindsey called her into work on a night she was not scheduled to work. (Tr. p. 29.) Complainant sat down in a chair when she learned that she did not have to work. (Tr. p. 30.) Complainant testified that Lindsey “kept trying to scoot [her] over next to him.” (Tr. p. 30.) When Complainant resisted, Lindsey grabbed her by the back of her hair hard enough to pull her out of her chair. (Tr. p. 30.) Lindsey also followed Complainant around the bar and grabbed her on the arm hard enough to instantly leave a bruise. (Tr. p. 30.) Complainant testified that Lindsey would not allow her to leave and that she thought she would be raped. (Tr. p. 31.)

In response to Lindsey’s behavior, Complainant testified that she repeatedly told Lindsey she was not interested in a relationship with him and that she did not want him to touch her. (Tr. p. 20.) Complainant asserted that she told another manager about Lindsey’s behavior. (Tr. p. 21.) Complainant also claimed that she told Tina Sanders, a co-owner, about Lindsey’s behavior (Tr. p. 23.) However, according to Complainant, Sanders “kind of laughed it off.” (Tr. p. 23.)

Complainant testified that Lindsey’s actions made her feel physically ill and fear going to work. (Tr. p. 36.) Complainant stated, “It was very upsetting to, every single day, know that is what you are walking into when you go to work.” (Tr. p. 47.) According to Complainant, she has still not recovered from her experience. Complainant testified that she assumes the worst in people now, fears physical contact from others, and does not smile as much as she did before the harassment began. (Tr. p. 48.)

Based on the foregoing testimony, I find Complainant to have sustained actual damages in the form of emotional harm and mental suffering. Complainant informed Respondent that she was being subjected to verbal and physical harassment by her supervisor. By ignoring her complaints, Respondent placed Complainant in a position of constant fear. The fear Complainant experienced has had lasting emotional effects.

Accordingly, I find that \$25,000.00 in actual damages for emotional distress is a reasonable request.

II. Attorney's Fees

As a final matter, Complainant's attorney has requested \$4,000.00 in attorney's fees and \$124.30 in costs. In support of the request, Complainant's attorney submitted a *Statement of Attorneys Fees* (Statement) in which Complainant's attorney claims he expended 20 hours of attorney time at a rate of \$200.00 per hour. Complainant's attorney also claims costs in the form of travel expenses of 226 miles at the rate of \$.55 per mile.

The Statement utterly fails to comport with the Commission's Rules regarding petitions for fees and costs. See **56 Ill. Adm. Code § 5300.765**. Commission Rule 5300.765 requires documentation of "[t]he number of hours for which compensation is sought, *itemized according to the work that was performed, the date upon which the work was performed* and the individual who performed such work" (Emphasis added). In addition, the request must include the hourly rate customarily charged by the individual performing the work and appropriate documentary support for such claimed rate. Finally, the party seeking reimbursement for costs must provide documentation of the costs.

The Statement fails to itemize the work performed, fails to provide the dates on which the work was performed, fails to provide documentary support for the claimed rate of \$200.00 per hour, and fails to provide documentation of the travel costs. Because the Statement fails to comply with the Commission's Rules, the award of attorney's fees and costs shall be reduced. **Gipson and H. P. Mechanical Inc., et al.**, IHRC, ALS No. 06-060(C), August 3, 2007.

Accordingly, I recommend the requested attorney's fees and costs be reduced by 50%. Therefore, it is recommended that Complainant's attorney be awarded \$2,000.00 in attorney's fees and \$62.15 in costs incurred in the prosecution of this case

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief::

1. Complainant be awarded \$12,326.00 in actual sustained damages for lost wages.
2. Complainant be awarded \$25,000.00 in actual sustained damages for emotional harm and mental suffering..
3. Complainant be awarded \$2,000.00 in attorney's fees and \$62.15 in costs.
4. Respondent clear from Complainant's personnel records all references to the filing of Charge No. 2009SF0102 and the subsequent disposition thereof.
5. Respondent cease and desist from discriminating on the basis of sex.
6. Respondent cease and desist from age, race and sex discrimination as well as retaliation in the future.

HUMAN RIGHTS COMMISSION

BY: _____
GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: 10-19-10