

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

MARIA CORREA,)

Complainant,)

and)

DANIEL'S LITTLE SHOP OF HORRORS,)

Respondent.)

CHARGE NO(S): 2009CF0789
EEOC NO(S): 21BA83148
ALS NO(S): 09-0566

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 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

3. During Complainant's employment with Respondent, Respondent compensated Complainant by paycheck.

4. Complainant produced proof of two paychecks, totaling \$603.50, which were returned to Complainant unpaid due to insufficient funds. In addition, each returned check incurred a fee of \$25, which was Complainant's responsibility.

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. Per the Commission's October 21, 2009 Default Order, Respondent is liable for violating the Act's prohibition of discrimination based on national origin.

3. Complainant has established actual damages related to the returned checks in the amount of \$653.50. Complainant has not established that she is entitled to any other damages.

4. Complainant is entitled to prejudgment interest on her actual damages in accordance with the Act and the Commission's Procedural Rules.

5. The Commission should order Respondent to cease and desist from further acts of unlawful discrimination.

DISCUSSION

A. Liability

Per the Commission's October 21, 2009 Default Order, Respondent is liable for the acts of national origin discrimination alleged in Complainant's charge, namely, paying Complainant unequal wages, denying her an hourly wage increase, and discharging her.

B. Damages

After finding a respondent liable for violating the Act, the Commission may enter an order requiring that respondent to pay damages to the complainant as reasonably determined by the Commission. Muhammad and Prof'l Staffing Servs., IHRC, ALS No. 08-346, March 17, 2009. The purpose of a damages award is to make the complainant whole. Id. Furthermore, it

is axiomatic that ambiguities in the calculation of damages must be resolved in favor of the prevailing employee and against the discriminating employer, as it was the employer's wrongful actions that gave rise to the uncertainty in the first place. Salto and Audio-Tex Indus., Inc., IHRC, ALS No. 06-472, July 7, 2008. That axiom is particularly true where, as here, the employer has failed to participate in the case in any way. Id. However, a damages award cannot be based on pure speculation. Roady and PPG Indus., Inc., IHRC, ALS No. 8930, March 9, 1999.

Although Respondent unlawfully paid Complainant unequal wages, denied her an hourly wage increase, and discharged her, Complainant presented no evidence to establish her entitlement to back pay relating to those acts of discrimination. The only damages award that Complainant has requested relates to bounced paychecks. Complainant testified that numerous paychecks that she attempted to cash were returned to her unpaid due to insufficient funds. (Tr. at 6-8.) Complainant speculated that the total value of all of the returned checks was approximately \$2,400. (Id. at 6-7.)

At the public hearing, Complainant provided documentary proof of what she described as "all" of the bounced paychecks. (Id. 6-8.) As it turned out, she provided proof of only two such checks: 1) a check in the amount of \$416.30, according to an October 11, 2008 letter from a Currency Exchange (Complainant's Ex. 1); and 2) a check in the amount of \$187.20, according to another October 11, 2008 letter from that same Currency Exchange (Complainant's Ex. 3). The two letters also reveal that Complainant incurred a fee of \$25 for each returned check, or \$50 total.

As the principles discussed above make clear, I must disregard Complainant's pure speculation that the total value of the returned checks was approximately \$2,400. Her own testimony that the two checks that she supplied constituted "all" of the bounced checks compels the conclusion that her speculation was inaccurate. Thus, the only trustworthy evidence of actual damages in this case is the documentary evidence regarding the two bounced checks.

Accordingly, I find that Complainant established actual damages in the amount of \$653.50, which represents the sum of the two returned checks and the two returned-check fees.

C. Prejudgment Interest

The Act allows an award of prejudgment interest on a complainant's actual damages. See 775 ILCS 5/8A-104(J). Accordingly, Complainant is entitled to prejudgment interest on her actual damages. Complainant's prejudgment interest award is to be calculated as provided in section 5300.1140 of the Commission's Procedural Rules. See 56 Ill. Adm. Code 5300.1140.

D. Reinstatement

Inasmuch as Complainant has not requested that her employment be reinstated, I make no recommendation regarding reinstatement.

E. Cease and Desist

In light of the Commission's finding of liability against Respondent, I recommend that the Commission order Respondent to cease and desist from further acts of unlawful discrimination.

RECOMMENDATION

Based on the foregoing, I recommend that the Commission: 1) award Complainant actual damages in the amount of \$653.50; 2) award Complainant prejudgment interest on her actual damages award in accordance with the Act and the Commission's Procedural Rules; and 3) order Respondent to cease and desist from further acts of unlawful discrimination.

HUMAN RIGHTS COMMISSION

BY: _____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: April 15, 2010