

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

DELILAH SANCHEZ,)

Complainant,)

and)

GABRIEL IBARRA,)

Respondent.)

CHARGE NO(S): 2009CN1495

EEOC NO(S): N/A

ALS NO(S): 09-0652

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 1st day of April 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
DELILAH SANCHEZ,)	
)	
Complainant,)	
)	
and)	Charge No.: 2009CN1495
)	EEOC No.: N/A
)	ALS No.: 09-652
GABRIEL IBARRA,)	
)	
Respondent.)	Judge Lester G. Bovia, Jr.

RECOMMENDED ORDER AND DECISION

This matter came to be heard on a public hearing on damages pursuant to a default order entered by the Commission on November 24, 2009. Complainant appeared and was represented by counsel. Though duly served, Respondent did not appear, either personally or through counsel. Accordingly, this matter is now ready for disposition.

The Illinois 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 case and evidence presented at the public hearing:

1. On October 30, 2008, Complainant filed charge number 2009CN1495 with the Department, alleging that Respondent, an employee of Midway Dodge in Chicago, Illinois, subjected Complainant to sexual harassment when she visited Midway Dodge to inquire about employment.
2. On November 24, 2009, the Commission entered a default order and referred this case to the Administrative Law Section for a public hearing on damages. The public hearing took place on March 8, 2010.

3. Pursuant to the default order, Respondent admits the allegations in the charge in accordance with section 5/7A-102(B) of the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-101 *et. seq.*

4. On May 8, 2008, Complainant visited Midway Dodge to apply for a secretarial job.

5. When Complainant arrived, Respondent confirmed to Complainant that Midway Dodge was hiring. He also advised Complainant that he would help her complete an application form.

6. After Respondent reviewed Complainant's application and saw that she did not have any secretarial experience, Respondent told Complainant to walk with him to a van in the dealership's showroom so that they could "work something out."

7. While Complainant and Respondent were alone in the van, Respondent told Complainant that she could earn \$1,000 per night if she agreed to dance, strip, and perform oral sex on him. Respondent also told Complainant that she could earn \$500 if she agreed to perform oral sex on three men. Complainant refused.

8. Furthermore, while they were still in the van, Respondent grabbed the bottom of Complainant's shirt, attempted to pull it up, and said, "Let me see what you got." Respondent also asked Complainant, "Are you a fan of the cock? Do you like dick?" Complainant became afraid and left the dealership without getting a job.

9. Complainant, who was pregnant at the time, suffered significant emotional distress as a result of Respondent's conduct.

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 November 24, 2009 default order, Respondent is liable for violating the Act's prohibition of sexual harassment.

3. Complainant is entitled to emotional distress damages in the amount of \$25,000.

4. Complainant is entitled to attorney's fees in the amount of \$2,925.

5. The Commission should order Respondent to cease and desist from further acts of sexual harassment.

DISCUSSION

A. Liability

Per the Commission's November 24, 2009 default order, Respondent is liable for the sexual harassment alleged in Complainant's charge.

B. Damages

Complainant has requested damages in the amount of \$25,000 for the emotional distress that she suffered as a result of Respondent's conduct. Complainant has not requested back pay or any other measure of 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. Actual damages can include compensation for emotional distress; however, awards for emotional distress must remain "within reasonable parameters." Village of Bellwood Bd. of Fire and Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 355, 541 N.E.2d 1248, 1258 (1st Dist. 1989). In other words, an award of emotional distress damages must be appropriate in light of the nature and duration of the suffering experienced by the complainant. Smith and Cook County Sheriff's Office, IHRC, ALS No. 1077, October 31, 2005.

To support her request for emotional distress damages, Complainant testified in depth about the allegations in her charge. On May 8, 2008, Complainant visited Midway Dodge to apply for a secretarial job. (Tr. at 11.) When Complainant arrived, Respondent confirmed to Complainant that Midway Dodge was, in fact, hiring. (Id.) Respondent got a blank application form and advised Complainant that he would help her complete it. (Id.) After Complainant completed the application, Respondent observed that Complainant had no relevant work

experience. (Id.) Respondent instructed Complainant to walk with him to a van in the dealership's showroom so that they could "work something out." (Id.)

Complainant and Respondent got into the van, and Respondent closed the door. (Id. at 12.) Then, Respondent told Complainant that he had another opportunity for her: Complainant could earn \$1,000 per night if she agreed to dance, strip, and perform oral sex on him. (Id.) Respondent also told Complainant that she could earn an additional \$500 if she agreed to perform oral sex on three men. (Id.) Complainant refused. (Id.)

After Complainant's refusal, Respondent's tone and actions became more aggressive, which frightened Complainant. (Id.) Respondent told Complainant, "Well, let's just see what you got." (Id.) Then, Respondent grabbed the bottom of Complainant's shirt and attempted to pull it up. (Id.) Complainant said "no" several times and said that she needed to leave because she was pregnant and not feeling well. (Id. at 12-13.) Respondent then asked Complainant, "Are you a fan of the cock? Do you like dick?" (Id. at 13.) Complainant became very afraid. (Id. at 13.) Somehow, Complainant was able to escape the van, and she left the dealership without getting a job. (Id. at 13.) Complainant later learned that Midway Dodge was not even hiring at that time, contrary to what Respondent had told her. (Id. at 20.)

Complainant testified that the incident at the dealership affected her in many ways. Complainant feared for her physical safety because she was alone with Respondent in the van, and because Respondent made an attempt to remove her clothing against her will. (Id. at 12-14.) Complainant, who lives near the dealership, still feels shame when she walks past the dealership. (Id. at 25-26.) She tries to avoid the dealership altogether when she is not with her fiancé. (Id. at 19.) Moreover, because Complainant provided her address on the job application, she lives in constant fear that Respondent may retaliate against her or her family due to the criminal complaint that she filed against him. (Id. at 22-23.) In addition to the constant fear, the incident also has caused Complainant to experience intermittent trembling,

stomach sickness, loss of appetite, depression, and feelings of guilt and insecurity. (Id. at 14-17, 23-27.)

Also, after the incident, Complainant's fiancé ended their relationship because he believed that Complainant likely did something to invite Respondent's advances. (Id. at 18-20.) Complainant was so devastated that she contemplated abortion because she did not want to be a single parent. (Id. at 20-21.) Although Complainant and her fiancé have reconciled, the trust that her fiancé has in her remains weak. (Id. at 21.)

When a complainant's testimony is credible, the Commission will accept it as a sufficient basis for emotional distress damages. Warzecha and Wis. Tool and Stamping Co., IHRC, ALS No. 04-238, April 22, 2009. I find Complainant's testimony about her ordeal and the emotional distress that she has suffered and continues to suffer to be highly credible and persuasive.

The issue, then, is whether the \$25,000 award that Complainant seeks is appropriate on these facts. By way of comparison, in Sanders and Citgo Gasoline Station, IHRC, ALS No. 11873, June 23, 2003, the Commission awarded damages for emotional distress in the amount of \$15,000 in a case with somewhat similar facts. Complainant Tiffany Sanders visited a Citgo station with a female friend to apply for a job as a cashier. (Id.) When Ms. Sanders asked if there were any job openings and requested an application, the owner of the gas station pointed at Ms. Sanders, called her a "bitch," and told her that she would be hired only if she would "suck his dick" in the restroom. (Id.) Moreover, the owner spoke to Ms. Sanders with such passion that saliva was coming from his mouth as he spoke and spraying the bulletproof glass in front of him. (Id.) Startled and terrified, Ms. Sanders and her friend left the gas station. (Id.) After the incident, Ms. Sanders went home, shaking and in tears, and was too traumatized and overcome with fear to explain to her mother what happened until several days afterward. (Id.) Soon after the incident, Ms. Sanders moved away from Chicago permanently; she returned only when necessary to prosecute her case or visit her mother. (Id.)

In the instant case and Sanders, both complainants faced unwelcome, outrageous, and vulgar sexual advances while attempting to apply for jobs. Both complainants also experienced significant emotional distress as a result of their incidents. However, Complainant's incident appears objectively to have been worse than Ms. Sanders' because: 1) unlike Ms. Sanders, Complainant was alone with Respondent and pregnant, making it less likely that Complainant could have successfully defended herself if necessary; 2) Complainant was in much closer proximity to Respondent than Ms. Sanders was to the gas station owner (who was behind bulletproof glass), making it more difficult for Complainant to flee; 3) unlike Ms. Sanders' incident, Complainant's incident involved physical contact (*i.e.*, Respondent's attempted removal of Complainant's clothes); and 4) unlike Ms. Sanders' harasser, Complainant's harasser may have her home address.

It also is worth noting, of course, that the \$15,000 emotional distress damages award in Sanders is over seven years old. Thus, the award in Sanders may be slightly outdated.

Furthermore, where a complainant has established her entitlement to damages, it is axiomatic that uncertainties concerning the amount of damages to be awarded must be resolved in favor of the prevailing complainant and against the respondent. Salto and Audio-Tex Indus., Inc., IHRC, ALS No. 06-472, July 7, 2008. The complainant receives the benefit of the doubt in such circumstances because it was the respondent's wrongful actions that gave rise to the uncertainties in the first place. Id. That axiom is particularly true where, as here, the respondent has failed to participate in the case in any way. Id. Although the Commission typically cites that axiom in the context of back pay awards, I see no logical reason to ignore that axiom as I consider Complainant's requested emotional distress damages award.

The foregoing factors compel the conclusions that Complainant is entitled to a larger award than that which Ms. Sanders received, and that Complainant's requested award is reasonable under the circumstances. Therefore, I find that Complainant is entitled to emotional distress damages in the amount of \$25,000.

C. Attorney's Fees and Costs

Complainant timely submitted a petition for attorney's fees. Complainant has made no request for costs. Though duly served with the petition, Respondent filed no response to it. Accordingly, Respondent has waived all objections related to the petition. Leseiko and Chase/Ehrenberg & Rosene, Inc., IHRC, ALS No. 11592, March 23, 2004.

Even though Respondent filed no response to the petition, I still must scrutinize the petition to ensure that it meets the Commission's standards for fairness and reasonableness. Pierre and Nw. Limousine Serv., Inc., IHRC, ALS No. 06-379, June 13, 2007, citing Clark and Champaign Nat'l Bank, IHRC, ALS No. 354(J), July 2, 1982. The most common formula for calculating attorney's fees is multiplying a set hourly rate by the number of hours worked on a client's matter. Id. That formula is the one used by Complainant's counsel in this case.

Complainant's counsel avers that he spent a total of nine hours working on Complainant's case. (Affidavit of K. Memon at 2.) Also, Complainant's counsel attached to his affidavit a detailed and itemized billing record describing his work. (Id.) Having reviewed the billing record, I find that the total hours and the work described are reasonable under the circumstances.

Complainant's counsel also asserts that his hourly rate, \$325, is reasonable for an attorney with his experience. (Id.) Complainant's counsel avers that he has over 12 years of experience representing clients in civil rights and employment matters. (Id. at 1-2.) In addition, Complainant's counsel has proffered an affidavit from Chicago attorney Edward Stein in support of his position that \$325 per hour is a reasonable rate under the circumstances. (Affidavit of E. Stein at 4.) I agree that the hourly rate sought by Complainant's counsel is reasonable.

Based on an hourly rate of \$325 and a total of nine hours worked, Complainant calculates, and thus requests, attorney's fees in the amount of \$2,925. Recent Commission precedent reveals that Complainant's requested attorney's fees award actually is much lower than what has been awarded in other default cases. See, e.g., Gipson and HP Mech., Inc.,

IHRC, ALS No. 06-060, August 3, 2007 (\$8,658); Kleinfeldt and Blackberry Café, IHRC, ALS No. 06-247, June 13, 2007 (\$6,307).

Based on the evidence submitted with Complainant's petition and recent Commission precedent, I find that Complainant is entitled to an attorney's fees award of \$2,925.

D. 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 sexual harassment.

RECOMMENDATION

Based on the foregoing, I recommend that the Commission: 1) award Complainant emotional distress damages in the amount of \$25,000; 2) award Complainant attorney's fees in the amount of \$2,925; and 3) order Respondent to cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____

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

ENTERED: July 1, 2010