



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| <b>IN THE MATTER OF:</b>        | ) |                              |
|                                 | ) |                              |
| <b>SAMIRAH D. ELAYYAN,</b>      | ) |                              |
|                                 | ) |                              |
| <b>COMPLAINANT,</b>             | ) | <b>CHARGE NO. 2001CN1503</b> |
|                                 | ) | <b>ALS NO. 11756</b>         |
| <b>AND</b>                      | ) |                              |
|                                 | ) |                              |
| <b>ATIYEH A. SALEM, D.P.M.,</b> | ) |                              |
|                                 | ) |                              |
| <b>RESPONDENT.</b>              | ) |                              |

**RECOMMENDED ORDER AND DECISION**

This matter is before me following a public hearing conducted on February 24<sup>th</sup>, 2004. Both Complainant and Respondent filed their post-hearing briefs on July 1<sup>st</sup>, 2004. Respondent filed a Reply brief on July 15<sup>th</sup>, 2004. There are no further submissions from the parties. The matter is now ripe for decision.

**HISTORY OF PROCEEDINGS**

On April 11<sup>th</sup>, 2002, the Illinois Department of Human Rights filed a complaint with the Illinois Human Rights Commission on Complainant Elayyan's behalf. The two (2) count complaint alleged that on or about December 5<sup>th</sup>, 2000, Respondent Salem sexually harassed Complainant and that by doing so she was constructively discharged from her employment as a receptionist/doctor's assistant. Respondent filed his answer to the complaint on December 3<sup>rd</sup>, 2002 denying all allegations made in the complaint. The parties spent an extensive amount of time conducting discovery and a joint pre-hearing memorandum was filed with the Commission on December 3<sup>rd</sup>, 2003. A public hearing on the case was held February 24<sup>th</sup>, 2004 and Complainant Elayyan and

Respondent Salem were the only witnesses called to testify. Complainant introduced three (3) exhibits and Respondent introduced eleven (11).

### **FINDINGS OF FACT**

The following findings of fact are based upon the public hearing in this matter. The record consists of one-hundred and eighty-two (182) pages of transcript and any exhibits admitted into evidence during the hearing. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand. Any citations to the public hearing transcript are indicated as "Tr. page\_\_\_\_". Any joint exhibits admitted into evidence are denoted "JX-#", Complainant's exhibits are denoted "CX-#" and Respondent's exhibits are denoted "RX-#".

1. Complainant filed Charge No. 2001CN1503 with the Illinois Department of Human Rights on December 27<sup>th</sup>, 2000.
2. Complainant is an adult, female resident of the State of Illinois, and falls within a class protected under the Illinois Human Rights Act. 775 ILCS 5/1-103.
3. Respondent Atiyeh A. Salem, D.P.M. is an employer as defined by the Illinois Human Rights Act. 775 ILCS 5/2-101.
4. Complainant was hired by Respondent as a receptionist and doctor's assistant in October of 2000 for Respondent's podiatry practice located at 1112 North Ashland Avenue, Chicago, Illinois 60622.
5. Respondent has an interest in another podiatry office located at 4707 W. 79<sup>th</sup> Street, Chicago, Illinois 60652.
6. Complainant worked at the 79<sup>th</sup> St. podiatry office on occasion.

7. On December 5<sup>th</sup>, 2000, Complainant was employed by Respondent and working at Respondent's 1112 North Ashland, Chicago, Illinois location at about 1:00 p.m.
8. Both Complainant and Respondent are of the Muslim faith.
9. Respondent did not sexually harass Complainant on December 5<sup>th</sup>, 2000 while she was working at his podiatry office located at 1112 N. Ashland, Chicago, Illinois.
10. The appointment book for the 1112 N. Ashland Avenue office contains written entries for December 5<sup>th</sup>, 2000 which reflect that Respondent had a scheduled house call at 11:45 a.m. and a 1:00 p.m. scheduled appointment with a Dr. Kamal and a Mr. Lynch at the 79<sup>th</sup> Street podiatry office. These written entries were made by Complainant in her capacity as receptionist.
11. Respondent Salem was not present in the Ashland Avenue office between 1:00 p.m. and 1:15 p.m. on December 5<sup>th</sup>, 2000. Rather, Respondent had just completed a scheduled house call at the Horizon View Restaurant located in Des Plaines, Illinois and was driving on the 294 toll way to the scheduled 1:00 p.m. meeting at the 79<sup>th</sup> Street podiatry office with a Dr. Kamal and a Mr. Lynch.
12. At 1:12 p.m. on December 5<sup>th</sup>, 2000, Respondent used his cell phone to call the 79<sup>th</sup> St. podiatry office to let the receptionist there know that he was running late for the scheduled 1:00 p.m. meeting there with a Dr. Kamal and a Mr. Lynch.
13. Complainant worked all of the hours she was scheduled to work on December 5<sup>th</sup>, 2000. Complainant worked until 3:00 p.m. and did not leave work early on December 5<sup>th</sup>, 2000.

14. Complainant was not at work on December 6<sup>th</sup>, 2000 because it was her scheduled day off.
15. Complainant returned to work at the Ashland Avenue office on December 7<sup>th</sup> and December 8<sup>th</sup> and worked her regularly scheduled hours. Complainant was also at work on December 9<sup>th</sup>, 2000.
16. On December 9<sup>th</sup>, 2000, a former female employee of Respondent's appeared at the Ashland Avenue office and a dispute arose between her, her boyfriend and Respondent regarding her last paycheck. At that time the police were called and the former employee accused Respondent of sexual assault. At the same time, Complainant also decided to tell the police that she had been sexually assaulted by Respondent.
17. December 9<sup>th</sup>, 2000 was Complainant's last day of employment with Respondent.
18. While working at Respondent's podiatry offices, Complainant accepted a number of collect telephone calls from a man in a Tennessee correctional facility without Respondent's consent to do so. On some days, Complainant spent over one-hour talking on the phone to this man.
19. While employed at Respondent's podiatry offices, Complainant made some "900 number" calls to the Psychic Hotline without Respondent's consent to do so. Complainant used the office telephone to make these calls.
20. When one of the two podiatry offices was closed, incoming telephone calls to the closed office were forwarded to the office that remained open. In that case, the receptionist answering the telephone at the office that remained open would be answering the telephone for both the 79<sup>th</sup> St. and the Ashland Avenue podiatry office.

21. Respondent transmitted to Complainant a written Inter-Office Communication, dated December 2<sup>nd</sup>, 2000 (RX-1), reprimanding Complainant for accepting personal telephone calls while working at both the Ashland Avenue and 79<sup>th</sup> Street offices, including collect calls from a Tennessee correctional facility.

### **CONCLUSIONS OF LAW**

1. Complainant is an “aggrieved party” and Respondent is an “employer”, as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(1)(a) respectively.
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent was Complainant’s employer on December 5<sup>th</sup>, 2000 and for all periods relevant to the complaint.
4. Under Section 2-101(E)(3) of the Human Rights Act, “sexual harassment” means any unwelcome advances or requests for sexual favors or any conduct of a sexual nature when such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creates an intimidating, hostile or offensive working environment.
5. Complainant did not establish by a preponderance of the evidence that she was sexually harassed by Respondent in violation of Section 2-102(D) of the Act.
6. Complainant did not establish by a preponderance of the evidence that Respondent constructively discharged her by sexually harassing her in violation of Section 2-102(D) of the Act.

### **CONTENTIONS OF THE PARTIES**

In her complaint, Complainant Elayyan alleges that on December 5<sup>th</sup>, 2000, while employed and working for Respondent Salem at his podiatry office at 1112 N. Ashland in Chicago, Respondent sexually harassed her. Elayyan claims that on that date, Salem summoned her into his private office and asked her to shred some papers. While kneeling down near the shredder, Elayyan alleges that Salem got up from his desk chair, closed the door to his private office, turned off the lights and began to kiss and fondle her. Elayyan contends that Salem then picked her up, threw her onto the floor and continued to kiss and fondle her while he proceeded to masturbate.

Salem denies that the above-described sexual encounter ever occurred. He maintains that Complainant has fabricated the entire story because he confronted her regarding some collect telephone calls that she accepted from a Tennessee correctional facility and personal phone calls that she made to the psychic hotline using the office telephone. Salem claims that on the day and time in question he had just finished up a house call at the Horizon View Restaurant in Des Plaines, Illinois and was driving on the 294 toll way toward the 79<sup>th</sup> Street podiatry office for a 1:00 p.m. meeting with a Dr. Kamal and a Mr. Lynch.

### **DISCUSSION**

Complainant Elayyan began her employment with Respondent around October of 2000 as a receptionist/doctor's assistant. Respondent, a podiatrist, was affiliated with two podiatry offices, one located at 1112 N. Ashland Avenue in Chicago, the other located at 4707 W. 79<sup>th</sup> Street in Chicago. Elayyan worked primarily at the Ashland Avenue office with Dr. Salem, but occasionally worked at the 79<sup>th</sup> Street office as well. Complainant Elayyan's regular work hours were from 9:00 a.m. to 3:00 p.m., five days a week. Tr. pages 12-15.

Complainant testified that Salem's alleged sexual attack on her occurred between 1:00 and 1:15 p.m. on December 5<sup>th</sup>, 2000 and that the incident lasted for approximately three to four minutes. She stated it was only interrupted when an unidentified person walked through the main, outer office door causing the bell on the door to ring. Complainant claims that the sound of the bell alerted Respondent that a third party was present in the outer office and this caused him to cease the sexual attack. Tr. pages 15-18. Complainant further testified that after the bell rang, both Respondent and she got up off the floor. Complainant maintains that after she stood up she immediately went to the bathroom to rearrange her clothes and use her cell phone to call her girlfriend to report what had just happened. Tr. pages 17-18.

Respondent testified at the hearing that on the day in question, December 5<sup>th</sup>, 2000, he had a scheduled house call at 11:45 a.m. in the morning and a scheduled 1:00 p.m. meeting with a Dr. Kamal and a Mr. Lynch. Tr. page 142. Respondent stated that he attended both of these appointments, with the 11:45 a.m. appointment being at the Horizon View Restaurant on Manheim Road in Des Plaines, IL and the 1:00 p.m. meeting taking place at the 79<sup>th</sup> Street podiatry office. Respondent testified that on that day he had been running late for the 1:00 p.m. meeting. Both appointments are reflected on the December 5<sup>th</sup> date/ time entry found in Respondent's Exhibit 4 (RX-4), which is a copy of an appointment book that was ultimately admitted into evidence. On direct examination, Respondent testified that RX-4 was a copy of the appointment book used at the Ashland Avenue location and that the writing under the December 5<sup>th</sup> date was Complainant's writing. Tr. page 142.

The issue as to whether RX-4 was a copy of the appointment book from the Ashland Avenue or the 79<sup>th</sup> Street office was raised several times. On cross examination, when asked if Respondent had mentioned where he was going around 1:15 p.m. on December 5<sup>th</sup>, Complainant testified that after the alleged attack, she was

the one that reminded him that he had a 1:00 p.m. meeting at the 79<sup>th</sup> Street location because she was the one that “wrote it in the book.” Tr. pages 54-55. At first, Complainant testified that she had no idea if RX- 4 was a copy of the appointment book from 1112 N. Ashland or from the 79<sup>th</sup> Street office, but that the handwriting found under the December 5<sup>th</sup> entry could very well be her own. Tr. pages 56-57. Curiously, when questioned later by her attorney she provided testimony that RX-4 was not a copy of the appointment book used for the 1112 N. Ashland Avenue office, but rather was for the 79<sup>th</sup> Street office. Tr. pages 160-161. Next to the 1:00 p.m. entry on RX-4 the following is written: “Appointment with Dr. Kamal and Mr. Lynch, 4707 W. 79<sup>th</sup> St.” It is difficult for this tribunal to believe that someone would write down the exact numerical address for a meeting that was to take place at the 79<sup>th</sup> Street office *on the appointment book used at the 79<sup>th</sup> Street office*. All of the foregoing evidence taken together establishes that RX-4 is much more likely than not a copy of the appointment book used in the year 2000 at the Ashland Avenue office location and that Complainant is the one who wrote down the 11:45 a.m. and 1:00 p.m. appointments that Respondent had scheduled for December 5<sup>th</sup>. Thus, it is this tribunal’s conclusion that Respondent did in fact have an 11:45 a.m. scheduled house call in Des Plaines, Illinois and a 1:00 p.m. scheduled meeting at the 79<sup>th</sup> Street office for December 5<sup>th</sup>, 2000.

The question then becomes did Salem attend those appointments and, even if he did, did he stop at the Ashland Avenue location in between time and sexually attack Complainant? As far as his attendance at the December 5<sup>th</sup> appointments, the evidence presented at the hearing shows that it is more likely than not that Salem did attend both the 11:45 a.m. appointment in Des Plaines and the 1:00 p.m. meeting at 79<sup>th</sup> Street for which he arrived approximately 15 minutes late.

Respondent’s testimony is consistent with the telephone records he presented at the hearing, specifically RX- 9. RX-9 is a monthly summary of Respondent’s monthly

AT&T Wireless telephone activities for the end of November 2000 through late December 2000. The record for December 5<sup>th</sup>, 2000 indicates that Respondent made a wireless call to a number in Des Plaines, IL at 11:56 a.m. Respondent stated that this call was made to a pharmacy in Des Plaines after he completed a minor surgical procedure at the Horizon View Restaurant for an ingrown toe nail. CX-1; Tr. pages 111-112 and 136. Complainant has offered nothing to refute this testimony. While there was no evidence presented by either party regarding what entity this dialed number is or was associated with, a cellular phone call made to a Des Plaines telephone number at 11:56 a.m. is consistent with RX-4 and Respondent's testimony that he did attend the scheduled house-call at the restaurant in Des Plaines.

Respondent contends that he left the Horizon View Restaurant around 12:30 p.m. and drove back on 294 South toward the city for a 1:00 p.m. meeting on 79<sup>th</sup> St. with Lynch and Kamal. Tr. pages 110 – 111. Respondent testified that he was running late for the meeting and while exiting the 294 at 1:12 p.m. he used his cell phone to call the 79<sup>th</sup> Street office to let the receptionist know that he was on his way. Tr. pages 126-127. Respondent's monthly wireless telephone statement shows that at 1:12 p.m. he did make a call to the 79<sup>th</sup> Street office. RX-4. Indeed, the statement shows that from 1:08 p.m. to 1:37 p.m. Respondent made a series of nine (9) calls to various numbers from his wireless phone. RX-4. After 1:37 p.m., Respondent did not make another call from his cell phone until 3:01 p.m., which is consistent with CX-1 which indicates that the 1:00 p.m. meeting actually started at 1:38 p.m. and ran until about 3:00 p.m. All of the above evidence considered in totality makes it quite probable that Respondent did in fact attend the scheduled meeting at 79<sup>th</sup> Street with Kamal and Lynch, that he arrived approximately 15 minutes late or around 1:15 p.m. and that the actual meeting did not get started until 1:38 p.m. Complainant, again, has provided nothing to refute this

evidence except her testimony that Salem was indeed present at the Ashland Avenue office between 1:00 and 1:15 p.m. on the 5<sup>th</sup> - - the day of the alleged attack.

Even aside from this attempted reconstruction of the time line for December 5<sup>th</sup>, 2000, Complainant's behavior after the alleged sexual attack is suspect. While it is true that Complainant is a woman of the Muslim faith and that she lived at home with her parents at the time of the alleged occurrence, her later actions are simply inconsistent with a brutal sexual assault such as the one she has described. Tr. pages 15-17; see *Complaint*. Complainant testified that somewhere between 1:00 and 1:15 p.m. Respondent shut her into a closed room, turned off the lights, grabbed her by the shoulders and began rubbing his hands all over her body, while kissing her neck and lips. In her Complaint, Complainant alleges that Respondent told her to "suck his chin" and then forcibly picked her up, made her lay on the floor on her back, while he got on top of her. Tr. pages 15-17; see *Complaint*. According to Complainant, Respondent then held her hands together above her head so that she was unable to move them. He opened buttons on her blouse and reached underneath her bra to touch her breasts. He forced her to rub his groin. Finally, according to Complainant, he asked her to touch his penis as he masturbated while lying on top of her. Tr. pages 15-17; see *Complaint*. After this vicious, physical attack on her person, which Complainant testified lasted up to 4 minutes, Complainant finished out the workday. Tr. page 19. Complainant testified that she had to stay at work because as an unmarried, Muslim woman she couldn't tell anyone, including her parents, that she had been "touched". Tr. page 18. According to her, her reputation in the community depended on it. However, Complainant also stated that immediately after the alleged attack she called her girlfriend "Noel" to report what had happened. Complainant also testified that after the attack she "*reminded* [Respondent] that he needed to go to a meeting that he ha[d] with the other guys on 79<sup>th</sup> and Cicero." Tr. pages 54-55.

After her regularly scheduled day off of December 6<sup>th</sup>, Complainant returned to work on December 7<sup>th</sup> and again on December 8<sup>th</sup> and worked her regularly scheduled hours of 9:00 a.m. to 3:00 p.m. She testified that Salem was at the Ashland Avenue office on those days, they said their usual “good mornings”, but then just avoided each other. Tr. page 20. In addition, Complainant also came to work on December 9<sup>th</sup> and only decided to tell the police about the attack because a former employee, who was in a bitter dispute with Respondent about her last paycheck, was also there accusing Respondent of sexual assault. Tr. pages 102-106. It is extremely difficult for this tribunal to believe that *any human being*, including Complainant, could bear to be in the same small office space for hours, alone with the man who had just days before brutally attacked them in the way that Complainant has described. Plain and simple fear of a similar assault would more than likely prevent any reasonable human being, Muslim or not, from subjecting themselves to such danger.

Finally, Complainant readily admits that she accepted collect telephone calls from a man being held in a Tennessee Correctional Facility and that she became friendly with him. Tr. pages 78-79 . Indeed, the telephone records from both the Ashland Avenue and 79<sup>th</sup> Street offices indicate seventeen collect telephone calls from Mason, Tennessee from November 28<sup>th</sup> through December 5<sup>th</sup>, 2000. RX-7. On many of the days, Complainant spent almost two (2) hours on the telephone with this person, with all of the calls totaling over one-hundred and eighty dollars (\$180). These calls, along with at least some of the “Psychic Hotline” calls that this tribunal believes were made by Complainant (see RX-7), adds up to almost four-hundred dollars (\$400) worth of telephone calls that Complainant made during her short time working for Respondent. It is this tribunal’s finding that Respondent confronted Complainant about these calls in early December of 2000, both orally and in writing, just before the time of the alleged harassment. Tr. pages 123-124; RX-1.

**CONCLUSION**

For all of the above reasons, I recommend that the instant Complaint and Charge of Discrimination of Samirah Elayyan against Atiyeh A. Salem be dismissed with prejudice.

**ENTERED: November 4<sup>th</sup>, 2004**

**HUMAN RIGHTS COMMISSION**

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**MARIETTE LINDT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**

