

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
<b>DONNA HALUSKA,</b>	)	
	)	
Complainant,	)	CHARGE NO: 2001SA0167
	)	EEOC NO: 21BA03341
and	)	ALS NO: 11760
	)	
<b>MEIJER INC. AND BRIAN MILHOLIC,</b>	)	
	)	
Respondents.	)	

**RECOMMENDED ORDER AND DECISION**

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On April 11, 2003, an Order was entered which granted Complainant’s motion for default judgment against Respondent Milholic due to Milholic’s failure to file a responsive pleading to the instant Complaint. (On November 19, 2002, the portion of Complainant’s Complaint against Respondent Meijer Inc. had been dismissed pursuant to a motion for voluntary dismissal filed by Complainant.) On June 10, 2003, a hearing on the issues of damages was held in which only Complainant appeared. Neither Complainant nor Respondent Milholic filed a brief as to the issues raised in the damages hearing.

**Findings of Fact**

Based on the record in this matter, I make the following findings of fact:

1. In July of 1995, Respondent Meijer Inc. hired Complainant for a position in its loss prevention department at its Champaign, Illinois store. In her position, Complainant monitored store activity and apprehended suspected shoplifters. At times during Complainant’s employment, she and others in the loss prevention department were required to view customers through security cameras stationed throughout the store.

2. At all times pertinent to this Complainant, Respondent Meijer Inc. operated its store 24 hours a day and hired individuals in its loss prevention department to monitor store activities in three shifts.

3. During the beginning of 2000, Respondent Brian Milholic became Complainant's supervisor. While there were occasions when Milholic worked a different shift from Complainant, Milholic generally spent approximately one-third of his eight hour shift with Complainant either in the security room or on the floor of the store.

4. Beginning in March of 2000, Milholic, while in the security room, operated security cameras in Complainant's presence in such a fashion as to zoom in on the breasts and rear-ends of female customers. Milholic's actions had nothing to do with apprehending suspected shoplifters. At times Milholic would print out the images on the security cameras, make oral comments such as "look at those jugs" and "look at those boobs bounce" and place the resulting photographs on the office bulletin board. Milholic would also write remarks on the photographs regarding the breast size of the female subjects.

5. On frequent occasions between March 2000 and June 2000, Milholic asked Complainant whether she had sex with her boyfriend the prior evening and whether her boyfriend had "gone down on her". Milholic also asked Complainant on one occasion whether her boyfriend, whom Milholic often referred to as "Lucky Chucky", was "hung like a horse."

6. At one point in time between March 2000 and June 2000, Milholic asked Complainant how it felt to be an "old woman" sitting with all younger men.

7. As a result of Milholic's conduct, Complainant experienced trouble sleeping and obtained samples of medications from her physician to help with her sleeping problems. Complainant also missed one day of work because of sexual comments made to her by Milholic.

8. In June of 2000, Respondent Meijer, Inc. terminated Complainant from her position due to an incident that was unrelated to Milholic's conduct towards Complainant.

9. On September 28, 2000, Complainant filed a Charge of Discrimination, later perfected on October 18, 2000, alleging that Respondents, Meijer Inc. and Brian Milholic, violated the sexual harassment provisions of the Illinois Human Rights Act. The Charge also asserted that Respondent Meijer Inc. harassed Complainant on account of her age.

10. On April 12, 2002, the Department of Human Rights, after several agreed upon extensions of time, filed a Complaint on behalf of Complainant, alleging both sexual harassment and harassment based on age.

11. Respondents Meijer Inc. and Milholic each signed a postal slip indicating receipt of the instant Complaint.

12. On May 29, 2002, an Order was entered which noted that Respondent Milholic had yet to file a responsive pleading and gave him until June 12, 2002 to file a responsive pleading.

13. Respondent Milholic was given another extension of time to and including September 13, 2002 in which to file a responsive pleading.

14. On September 6, 2002, Complainant filed a status report indicating that she had reached in principle a settlement agreement with Respondent Meijer Inc. Complainant's motion for voluntary dismissal of the portion of her Complaint against Respondent Meijer Inc. was granted on November 19, 2002.

15. On September 16, 2002, an Order was entered which indicated that Respondent Milholic appeared to be in default and directed the parties to file either a motion for default judgment or a motion seeking leave to file a late answer on or before October 4, 2002.

16. On September 20, 2002, Complainant filed a motion for default judgment against Respondent Milholic due to his failure to file a responsive pleading in this matter.

Milholic did not file a response to this motion and did not file a motion seeking leave to file a responsive pleading instanter.

17. On November 7, 2002, an Order was entered which held Complainant's motion for default in abeyance pending resolution of a question as to the Commission's subject matter jurisdiction to consider the instant Complaint against Respondent Milholic. Specifically, the Complaint appeared to be untimely since it had been filed well after the 365-day deadline for filing complaints with the Commission, and the allegations of the Complaint indicated that only Respondent Meijer Inc. had agreed to the final extension of time prior to the Department having filed the instant Complaint.

18. Subsequent to the November 2, 2002 Order, the Department of Human Rights filed a motion seeking leave to file an amended Complaint to clarify which party sought extensions of time for the Department to conduct its investigation prior to filing the instant Complaint. Complainant also filed a jurisdictional brief indicating that the Commission had jurisdiction even without the Department's obtaining its final extension of time from Respondent Milholic.

19. On April 11, 2003, an Order was entered which agreed with Complainant's contention that the Complaint was timely and granted the motion for default judgment and set this matter for a hearing on damages.

20. As a result of Milholic's sexual harassment, Complainant suffered emotional damages in the amount of \$10,000.

21. At all times pertinent to this Complaint, Complainant was represented by Deborah Frank Feinen. Ms. Feinen expended a total of 45.90 hours representing Complainant in this matter. The reasonable number of hours expended in this case is 45.90 hours.

22. At all times pertinent to this Complaint, Ms. Feinen charged clients \$125.00 per hour. The reasonable hourly fee in this case is \$125.00 per hour. Accordingly, the reasonable amount of attorney fees in this matter is \$5,737.50 (45.90 hours times \$125.00).

23. Complainant incurred costs in this matter amounting to \$43.98 stemming from expenses relating to photocopying and mailing charges. The reasonable amount of costs is \$43.98.

### **Conclusions of Law**

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent Milholic is an “employee” as that term is defined under the Human Rights Act.

3. As a consequence of the default order entered on April 11, 2003, all of the allegations contained in Complainant’s Charge of Discrimination pertaining to Respondent Milholic are deemed admitted.

### **Discussion**

On April 11, 2003, I entered an Order finding Respondent Milholic in default on the issue of liability due to his failure to file a responsive pleading to the instant Complaint in spite of giving Respondent Milholic at least two opportunities to do so. Accordingly, Milholic’s failure to file a responsive pleading requires that I deem as admitted the allegations contained in the instant Complaint. (See, section 5300.640(f) of the Commission’s Procedural Rules, 56 Ill. Admin. Code, Ch. XI, §5300.640(f).) Moreover, the allegations in the Complaint indicate that throughout a four-month period in 2000, Respondent Milholic subjected Complainant to a stream of sexually offensive verbal comments regarding women’s breasts and other parts of the female anatomy. The allegations also refer to instances where Milholic inquired about the penis size of Complainant’s boyfriend and about Complainant’s willingness to perform oral sex on her boyfriend. As such, the admitted

allegations are sufficient to establish a claim of sexual harassment based on a hostile work environment.

As to her claim for damages, Complainant focused upon the sexual harassment component of her case when testifying that Milholic's conduct made her very upset and worried about coming into work.<sup>1</sup> Specifically, Complainant asserted that Milholic's behavior caused her to experience trouble sleeping and made her cry at times before and after work. She further indicated that she altered the way she dressed for work by wearing only baggy sweatshirts and jeans because she did not want to bring her physical appearance to the attention of Milholic. Finally, Complainant maintains that she began to gain weight as a result of Milholic's conduct towards her.

While it is clear that Complainant endured some emotional damages, she did not establish emotional damages in the requested amount of \$50,000. Specifically, aside from obtaining some sleeping pills for her sleeping problems, the record contained no evidence that Complainant had sought or will be seeking psychiatric care for her emotional distress. Similarly, Complainant made no allegation that she was physically threatened or feared for her personal safety because of Milholic's conduct. (Compare with **Herrin and Bethalto Depot**, \_\_\_ Ill. HRC Rep. \_\_\_ (2000SF0561, March 13, 2002), where the complainant received \$20,000 in emotional damages after establishing that she feared for her personal safety as a result of the harasser's conduct that included, among other things, an exposure of his penis to her.) Indeed, there is no constructive discharge allegation in this Complaint, and Complainant readily admits that she left Respondent Meijer Inc. for reasons unrelated to Milholic's conduct towards her. Accordingly, for all of the above reasons, and because there was no physical component to the sexual harassment, I find that Complainant is entitled to \$10,000 in emotional damages.

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<sup>1</sup> While Complainant also alleged that she was harassed on account of her age, that count pertained only to Respondent Meijer Inc.

As for Complainant's request for attorney fees, I note that Complainant seeks compensation for 45.9 hours of her attorney's time at a billing rate of \$125.00 per hour. While Complainant's attorney has not attached any supporting affidavits indicating that \$125.00 per hour is a reasonable rate given her experience and background, I note that the rate seems reasonable from my own experience with attorneys from the Champaign area who have litigated matters before the Human Rights Commission. Indeed, Respondent Milholic has not registered an objection as to either the proposed rate or number of hours spent on the case, and thus the full amount of the requested fees (i.e., \$5,737.50) will be awarded. Complainant also seeks \$43.98 in costs associated with mailing and photocopying charges. Respondent Milholic has not objected to this request, and the request otherwise seems reasonable. Accordingly, Complainant will be awarded \$43.98 in costs.

#### **Recommendation**

For all of the above reasons, I recommend that:

1. The April 11, 2003 Order of default judgment against Respondent Milholic be **sustained**.
2. Complainant receive \$10,000 in emotional damages.
3. Complainant receive \$5,737.50 in attorney fees.
4. Complainant receive \$43.98 in costs.
5. Respondent Milholic cease and desist from discriminating on the basis of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 20TH DAY OF FEBRUARY, 2004