

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>LISA LEGNER,</b>	)	<b>CHARGE NO: 2000 CF 2441</b>
	)	<b>EEOC: 21 BA 01 1861</b>
<b>Complainant,</b>	)	<b>ALS NO: 11574</b>
	)	
<b>and</b>	)	
	)	
<b>VIA BELLA RESTAURANT,</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

On July 3, 2001, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Lisa Legner. The Complaint alleged that Respondent, Via Bella Restaurant, created a hostile work environment that substantially interfered with Complainant's ability to perform her job in that she was sexually harassed while on the job.

This matter was set for a Public Hearing for the first time on September 4, 2001, at 9:30 a.m., but was subsequently rescheduled for September 12, 2001, at 10:00 a.m. Notice was sent to counsel of record for Complainant and Respondent. On September 12, 2001, both Complainant and Respondent failed to appear for the Public Hearing. On September 12, 2001, an Order was entered setting a status date for September 27, 2001, at 3:00 p.m. On September 27, 2001, attorney for Complainant appeared, while Respondent or their counsel failed to appear as ordered. On September 27, 2001, an Order was entered continuing the matter to October 10, 2001, at 1:30 p.m.

On October 10, 2001, Complainant's Counsel presented himself to the Commission, while Respondent or their counsel failed to appear again. On October 10, 2001, an Order of Default was entered against Respondent for failing to Appear or otherwise Answer the Complaint.

For unknown reasons, Respondent failed to file a Verified Answer to the Commission's Complaint and failed to appear for the scheduled Public Hearing or the scheduled status hearings. Despite being served with notice and with copies of orders requiring attendance, Complainant never responded or appeared before the Commission.

Because Respondent failed to appear or file an answer, a default order was entered against it. Subsequently, a hearing to prove up Complainant's damages was held on January 8, 2002. Complainant appeared with her counsel, while Respondent failed to appear at all. The parties were given the opportunity to file briefs after the hearing, but neither party took advantage of the opportunity and the time for filing such briefs has passed. According, the matter is now ready for decision.

### **FINDINGS OF FACT**

The findings of fact are based upon the case file for this matter. The facts marked with asterisks are facts which were alleged in the Complaint in this matter. Those facts were admitted as a result of Respondent's failure to file an Answer.

1. This matter was set for a Public Hearing for the first time on September 4, 2001, at 9:30 a.m., but was subsequently rescheduled for September 12, 2001, at 10:00 a.m. Notice was sent to counsel of record for Complainant and Respondent.

2. On September 12, 2001, both Complainant and Respondent failed to appear for the Public Hearing.

3. On September 12, 2001, an Order was entered setting a status date for September 27, 2001, at 3:00 p.m.
4. On September 27, 2001, attorney for Complainant appeared, while Respondent or their counsel failed to appear as ordered.
5. On September 27, 2001, an Order was entered continuing the matter to October 10, 2001, at 1:30 p.m.
6. On October 10, 2001, Complainant's Counsel presented himself to the Commission, while Respondent or their counsel failed to appear again. On October 10, 2001, an Order of Default was entered against Respondent for failing to Appear or otherwise Answer the Complaint.
7. Respondent hired Complainant on March 2, 1997, to work in the carry-out department.\*
8. Through out her employment with Respondent, Complainant performed her duties in a manner consistent with Respondent's standards.\*
9. Complainant was sexually harassed during the period of November 1999, and continuing daily through April 8, 2000 by Respondent's employees Alvero Galvez, Uriel Rosales and Alberto Delgado.\*
10. Complainant found Galvez', Rosales' and Delgado's conduct unwelcome and informed them of the same.\*
11. Complainant informed Dawn Marotta, Server Manager, of the sexual harassment, but that Respondent took no action to remedy the same.\*
12. Complainant made \$4,714.00 in salary for the year 1999. Complainant also made \$3,452.00 in salary for the period of January 1, 2000 to April 7, 2000.

13. Complainant is presently a full time student at Northern Illinois University. Complainant is seeking \$4,700.00 in back pay.

14. Complainant was deeply depressed as a result of Respondent's actions. She could not sleep and kept crying for a period of time. She does not trust men and feels uncomfortable around them and hates to wear revealing clothing because she does not want them to look at her. She is also afraid to pass by men for fear that they may touch her. She also experience an eating disorder as a result of the harassment.

15. The Complainant should be compensated in the amount of \$15,000.00 for the emotional distress caused by Respondent's actions.

16. Complainant's counsel, John D. Landry, was waived attorney fees in this matter.

#### **CONCLUSION 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)(c), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent’s failure to appear at the September 12, 2001 scheduled Public Hearing and their failure to appear at the September 27, 2001 and October 10, 2001 status hearings have resulted in unreasonable delay in these proceedings justifying the entering of an order for default against the Respondent.

4. Because of the failure to appear and answer the Complaint in this matter, Respondent has admitted the allegations of the Complaint, in that the conduct complained

of created a hostile, intimidating, and offensive work environment that substantially interfered with Complainant's ability to perform her job, and Respondent sexually harassed Complainant, in violation of Section 2-102(D) of the Act.

5. Because of the failure to file a motion for attorney fees, John D. Landry, has waived his right to any attorney fees in this matter.

### **DISCUSSION**

This matter was set for a Public Hearing for the first time on September 4, 2001, at 9:30 a.m., but was subsequently rescheduled for September 12, 2001, at 10:00 a.m. Notice was sent to counsel of record for Complainant and Respondent. On September 12, 2001, both Complainant and Respondent failed to appear for the Public Hearing. On September 12, 2001, an Order was entered setting a status date for September 27, 2001, at 3:00 p.m. Part of the Order read, "Both parties must appear; the failure of either party to appear may result in the dismissal or default of this matter."

On September 27, 2001, attorney for Complainant appeared, while Respondent or their counsel failed to appear as ordered. On September 27, 2001, an Order was entered continuing the matter to October 10, 2001, at 1:30 p.m. The Order also read that, "The Respondent failing to appear in person or by counsel, the Commission noting that Respondent, to the date hereof, has failed to Appear, Answer or otherwise plead with respect to the Complaint filed herein...IT IS HEREBY ORDERED: that the failure of Respondent to appear at such time may result in an Order of Default." On October 5, 2001, Complainant filed with the Commission a Certificate of Service showing that she served Respondent with a copy of the September 27, 2001 Order on October 3, 2001.

On October 10, 2001, Complainant's Counsel presented himself to the Commission, while Respondent or their counsel failed to appear again. On October 10, 2001, an Order was entered which read in part, that "Respondent failing to appear in person or by counsel, it appearing from the record notice of proceedings were heretofore given to Respondent as set within Complainant's Certificate of Service as filed with the Commission...IT IS HEREBY ORDERED: that Respondent, Via Bella Restaurant, be and is hereby held in default for its failure to Appear, Answer or otherwise plead with respect to the Complaint filed herein."

Respondent failed to appear for the scheduled Public Hearing and failed to appear for the scheduled status hearings. At this point, Respondent has taken no action to Appear, Answer or otherwise plead in this case. Respondent has ignored orders directing them to appear in front of this Commission. The Respondent has also failed to respond to the Commission's warning that an Order of Default would be entered against them if they failed to appear before the Commission.

Respondent's failure to Appear, Answer or otherwise plead with respect to the Complaint filed with the Commission has unreasonably delayed the proceedings in this matter, and it appears that Respondent has failed to notify the Commission as to the reason why they have failed to appear. As a result, it is appropriate to hold Respondent in default in this matter. As a result of the failure to respond to the Complaint, Respondent has admitted the allegations of the Complaint. Bielecki and Illinois Family Planning Council, 40 Ill. HRC Rep. 109 (1988).

Accordingly, a finding of liability against Respondent is appropriate. Thus, the record shows that Complainant began working for Via Bella restaurant sometime in

January of 1997 as a part-time employee. Complainant first worked as a phone girl, then as a coat room girl, and eventually as a server starting in 1999 until April 7, 2000. During the time Complainant worked as a server, several employees of Respondent by the names of Alvero Galvez, Uriel Rosales and Alberto Delgado sexually harassed her in that they made sexual advances to her, made extremely offensive sexual remarks to her, which included threats of rape, and touched on her breasts, buttocks, thighs and vagina. The Complainant found the employees' conduct to be unwelcome and informed them of same. Complainant informed Dawn Marotta, Server Manager for Respondent, of the sexual harassment, but that Respondent took no action to remedy the problem.

It is clear that Respondent's actions were unwelcome touching and sexual advances and they had the effect of creating an extremely hostile work environment for Complainant. There is no question that Respondent's actions constituted sexual harassment as defined by the Act. Moreover, there is no question that Respondent's actions caused significant and long lasting harm to Complainant. That harm requires a significant award to make Complainant whole.

Because Complainant could not continue to work at Via Bella's restaurant after her experience with Respondent, Respondent should be held responsible for her loss of income. At the time of her forced resignation, Complainant was earning about \$4,700.00 a year. Complainant took off and later became a full-time college student. Respondent should be required to compensate Complainant for her loss in pay in the requested amount of \$4,700,00.

Furthermore, Complainant suffered considerable emotional distress. Complainant was deeply depressed as a result of Respondent's actions. She could not sleep and cried

for a long period of time. She also had a distinct fear of men and became uncomfortable in the way she dressed. Complainant has requested an award of \$15,000.00 for her emotional distress. By the standards of Commission case law, the request is reasonable. See Wheeler and Richard Liebovitz, County Clerk, Rock Island County, \_\_\_ Ill. HRC Rep. \_\_\_, (1991CF0460, October 29, 1997), where \$15,000.00 was granted in a sexual harassment case in which there was no medical evidence introduced. Respondent has also failed to appear in this matter or to contest the amount requested by Complainant for emotional damage.

Finally, Complainant is entitled to the reasonable attorney fees she incurred in prosecuting this matter. Complainant's counsel, John D. Landry, has not filed a petition for attorney fees in this matter, as per the order entered on June 21, 2002. Therefore, it is deemed that attorney John D. Landry has waived his fees.

### **RECOMMENDATION**

Based upon the foregoing, the record establishes that Respondent sexually harassed Complainant. Accordingly, it is recommended that an order be entered awarding the following relief:

A. That Respondent pay to Complainant the sum of \$4,700.00 for lost back pay;

B. That Respondent pay to Complainant the sum of \$15,000.00 as compensation for the emotional distress suffered by Complainant as a result of Respondent's actions;

C. That no attorney fees be awarded to Complainant.

D. That Respondent cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
NELSON E. PEREZ  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: October 7, 2002