

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF)	
)	
JESSE MANSKER,)	
)	
Complainant,)	Charge No. 1999SF0356
)	ALS No. S11202
AND)	EEOC No. 21B990715
)	
PINNACLE LIMITED PARTNERSHIP)	
d/b/a SPRINGFIELD HILTON and)	
MICHAEL MONTGOMERY)	
)	
Respondents.)	

ORDER AND DECISION

April 7, 2004

The Commission by a panel of three:
Commissioners David Chang, Spencer Leak, Sr., and Sakhawat Hussain presiding.

On review of the recommended orders of Michael R. Robinson, Administrative Law Judge.

For Complainant: Mary Lee Leahy
Leahy Law Offices

For Respondent, Pinnacle Limited Partnership:
John A. Kauerauf
Sorling, Northrup, Hanna, Cullen and Cochran, Ltd.

Illinois Human Rights Commission: James E. Snyder, General Counsel,
Matthew Z. Hammoudeh, Asst. General Counsel.

This matter comes before the Commission pursuant to a Recommended Order and Decision issued by Administrative Law Judge Michael R. Robinson and exceptions filed thereto.

On review of Judge Robinson's recommendations, the public hearing record and the exceptions and response filed by the parties and for the reasons set forth herein, the recommendations of Judge Robinson are sustained in part and modified in part.

The findings of the Recommended Order and Decision are sustained, subject to the following modifications:

The recommendation to dismiss the Complainant against Respondent Hilton is not accepted. We enter a finding of liability against Respondent Hilton. Respondent Hilton and Respondent Montgomery are jointly and severally liable to the Complainant.

The damage award is modified from \$10,000 as recommended by Judge Robinson to \$20,000 in emotional distress damages.

I. Nature of the Case

Jesse Mansker (Complainant) worked for Pinnacle Limited Partnership d/b/a Springfield Hilton (Respondent Hilton). Michael Montgomery (Respondent Montgomery) also worked for Respondent Hilton. The Complainant was discharged from employment. He filed a charge of civil rights violation against Respondent Hilton and Respondent Montgomery, claiming that he had been the victim of unlawful sexual harassment.

II. Proceedings

Following a public hearing Judge Robinson issued a Recommended Liability Decision and a Recommended Order and Decision.

Judge Robinson found that the Complainant established a prima facie case of sexual harassment with respect to his claim against Respondent Montgomery. Judge Robinson found that Montgomery made a series of sexual propositions to the Complainant that altered his work environment.

Judge Robinson also found that the Complainant failed to establish a prima facie case of sexual harassment against Respondent Hilton. He failed to show that Respondent Hilton's management was aware of Montgomery's conduct.

Judge Robinson recommended that the complaint against Respondent Hilton be dismissed with prejudice; and that the complaint against Montgomery be sustained. He recommended that Respondent Montgomery be ordered to pay the Complainant \$10,000 in emotional damages.

The Complainant filed exceptions to these recommendations and Respondent Hilton filed a response to the exceptions.

III. Findings.

In reviewing an Administrative Law Judges' findings of fact, the Commission will adopt the Judge's findings unless they are contrary to the manifest weight of the evidence presented at the hearing, 775 ILCS 5/8A-103(E)(2). The Commission reviews a question of law *de novo* and is empowered to modify, reverse, or sustain the Judge's recommendations, in whole or in part, 775 ILCS 5/8A-103(E).

a) Liability as to Respondent Hilton

Sexual harassment is:

"[A]ny unwelcome sexual advances or requests for sexual favors or *any conduct of a sexual nature when* (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) *such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment,*" 775 ILCS 5/2-102(D) (emphasis added).

An employer is responsible for sexual harassment by non-employees or its non-managerial non-supervisory employees if the employer becomes aware of the conduct and fails to take reasonable corrective measures," 775 ILCS 5/8A-102(D).

The Complainant takes exception to the recommendation of dismissal of Respondent Hilton. He argues that the findings are against the manifest weight of the evidence. The Complainant argues that the manifest weight of the evidence shows that Respondent Hilton knew of the sexual harassment and failed to take reasonable corrective measures.

Respondent Hilton did not take actions to correct the working environment. The question is whether Respondent Hilton failed to act despite notice, or failed to act because it did not have notice.

We find that Respondent Hilton had notice of a sexual harassment and a hostile work environment.

The record indicates that Respondent Montgomery engaged in extensive inappropriate behavior while at work. Judge Robinson found that Respondent Montgomery made many sexual remarks to the Complainant while at work, over a sustained period of time.

Abbas Zolghadr was supervisory and management personnel. Respondent Hilton is vicariously liable to the extent of Zolghadr's knowledge of the work environment, (Respondent Montgomery's actions). Respondent Hilton is directly liable for "hostile environment" sexual harassment to the extent to which Zolghadr was a participant in that environment, *Board of Directors, Green Hills Country Club v. Human Rights Comm'n* (1987), 162 Ill.App.3d 216, 113 Ill.Dec. 216, 514 N.E.2d 1227.

Clearly Zolghadr knew there was a problem between Respondent Montgomery and the Complainant well before the Complainant was discharged. Zolghadr testified that he believed the problem to stem from something other than sexual harassment. As Respondent Hilton's manager, he chose to address the problem through mildly sexual terms: marriage and kissing.

Judge Robinson found that on one occasion Zolghadr told the Complainant that he and Respondent Montgomery should "kiss and make up". On another he suggested that they should get married. Respondent Hilton's management was aware of tension in the

working environment and chose to address the situation in mildly sexual or romantic terms.

Based on those findings we believe Zolghar was aware of the hostile environment. We believe he was also active in the perpetuation of a hostile environment.

Judge Robinson did not believe the Complainant's testimony that, Zolghadr said the Complainant and Respondent Montgomery should go home and have sex. We believe the Complainant's testimony is consistent with Zolghadr's other descriptions of how the dispute between these two subordinate employees should be addressed: kissing and marriage.

The finding that this remark was not made is against the manifest weight of the evidence. On review of the record we find that Zolghadr did make this remark.

The record indicates that Respondent Montgomery made sexual remarks to other employees. Anita Perkins, Respondent Hilton's Human Resources Manager, testified and discussed her report on Montgomery's conduct. Her report indicated that Respondent Montgomery made sexual comments to Warren Anderson and Larry Hemingway.

Perkins reported that Warren Anderson, Larry Hemingway and the Complainant each told her that Respondent Montgomery had made sexual comments to them. From this she concluded that there was no evidence of sexual harassment.

This report indicates that Montgomery's conduct was pervasive and little investigation was required to find several employees who were aware of Respondent Montgomery's behavior. It makes Zolghadr's claim of ignorance all the more difficult to believe.

b) Emotional Damages

Judge Robinson's recommendation of an award for "emotional damages" is modified. The Act does not authorize "emotional harm" or "mental suffering" damages, but we believe this was an error of terms. The Act authorizes the Commission to award damages for emotional distress, and we modify Judge Robinson's recommendation on that issue.

The term "actual damages" in the context of the Act contemplates compensation for emotional harm and mental suffering, *Arlington Park Race Track Corp. v. Human Rights Comm'n.*, (1990) 199 Ill. App. 3d 698, 557 N.E.2d 517, 145 Ill. Dec. 747. An award of damages under such circumstances must be kept within reasonable parameters, *Village of Bellwood Fire & Police Comm'rs v. Human Rights Comm'n.*, (1989) 184 Ill.App.3d 339, 541 N.E.2d 1248.

In determining the reasonable parameters of an award for emotional damages the Commission considers the totality of circumstances. We consider the nature of the violation that caused the injury, *ISS International v. Human Rights Comm'n.*, (1995) 272 Ill.App.3d 969, 651 N.E.2d 592, 209 Ill. Dec. 414, *Blakemore and Interparking Corp.*, IHRC, 1999CP2688.

Judge Robinson found that the Complainant convincingly testified that he suffered emotional distress as a result of sustained sexual harassment. The Complainant sought mental health treatment as result of the harassment. In light of the totality of circumstances of record, and the guidance of the Appellate Court we find damages in the amount of \$20,000.

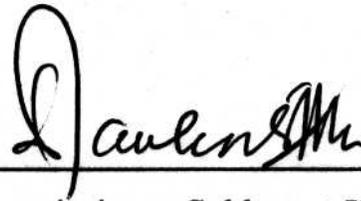
IT IS HEREBY ORDERED THAT:

The Recommended Order & Decision issued in this case is sustained in part and modified in part and is incorporated herein as our Order & Decision.

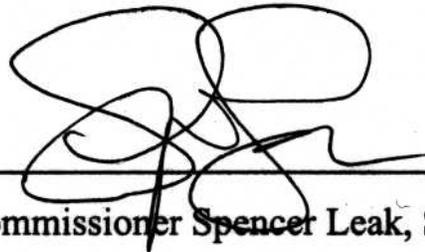
This is a final order. The parties may seek rehearing of this Order & Decision by the full Human Rights Commission en banc pursuant to 775 ILCS 5/8A-103 (F).

STATE OF ILLINOIS
Entered this 7th day of April 2004.

HUMAN RIGHTS COMMISSION



Commissioner Sakhawat Hussain



Commissioner Spencer Leak, Sr.



Commissioner David Chang

(Panel C, Commissioners Hussain, Leak and Chang)