▶	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/13/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
C. S.,	)	
	)	**Charge No.: 2005CN3659**
Complainant,	)	**EEOC No.: N/A**
	)	**ALS No.: 05-312**
and	)	
	)	
ERNEST LOVE,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on July 20, 2006, after the Commission entered a Default Order against the Respondent on August 24, 2005. Complainant appeared *pro se*. Respondent did not appear. This matter is now ready for disposition.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Consistent with public policy favoring the protection of victims of sexual harassment, Complainant is identified herein only by her initials.

Findings of Fact

The following findings of fact were derived from the record file in this case and from the events and evidence presented at the damages hearing.

1. Complainant filed Charge Number 2004CN3659 with the Illinois Department of Human Rights (the "Department") on June 9, 2004.

2. The charge alleges that Respondent, Mr. Ernest Love, sexually harassed Complainant from late March 2004 until early May 2004.

3. On July 25, 2005, the Department's Chief Legal Counsel entered a Default Order against Respondent.

4. On July 26, 2005, the Department filed a Petition for Hearing to Determine Complainant's Damages.

5. On August 24, 2006, the Commission entered a Default Order and referred the matter to the Administrative Law Section for a hearing on damages.

6. On November 1, 2005, an order was entered that set this matter for a status hearing on February 22, 2006.

7. On February 22, 2006, neither Complainant nor Respondent appeared. An order was entered that set this matter for a status hearing on April 6, 2006.

8. On April 6, 2006, Complainant appeared *pro se.* Respondent neither called nor appeared. An order was entered that set this matter for a status hearing on May 17, 2006.

9. On May 17, 2006, on order was entered that set this matter for a public hearing on damages for July 20, 2006.

10. On July 20, 2006, Complainant appeared *pro se*. Respondent failed to appear. Complainant presented her case on damages.

11. Complainant was an employee of Maxwell's on 76th Street and Respondent was in a managerial type position.

12. Beginning on or about late March 2004 and continuing through early May 2004, Respondent engaged in sexually harassing conduct toward Complainant.

13. The sexual harassing conduct included repeated sexual advances, as well as sexual invitations using explicit and offensive sexual remarks.

14. Respondent told Complainant she had a big butt and he could set his coffee on her ass.

15. Respondent also touched Complainant's butt and said he wanted to suck her nipples off and eat her pussy.

16. Respondent stated that he wanted go into the office so he could fuck Complainant on the desk.

17. Complainant offered her money to have sex with him and play with her breasts.

18. While Respondent told Complainant that he can put his penis in her vagina, he was masturbating in front of her.

19. Respondent masturbated in front of Complainant other times.

20. Respondent told his friends that he was having sex with Complainant, causing them to come to her window and say: "Hey, you are the one Mr. Love is having sex with."

21. On several occasions, Respondent would call Complainant his "bitch" or his "MFB."

22. Complainant considered these acts unwanted and unsolicited.

23. Complainant repeatedly told Respondent to stop.

24. After Complainant asked Respondent to stop, Respondent continued with his sexually harassing conduct.

25. Complainant also reported the acts to Respondent's management, including Sammie Sutton and Frank Torres.

26. Even after such reports, Respondent failed to stop with his sexually harassing conduct.

27. Complainant felt hurt and disrespected by Respondent's conduct. She cried. She felt embarrassed and humiliated.

28. Complainant did not want to have her significant other touch her, and eventually she could not carry on with her significant other.

29. When with her significant other, Complainant felt some guy looking at her. She felt ashamed.

30. Complainant felt tense and tired. When she went to work she felt like a ton was on her that was holding her down. She felt pressure going to work because she had to listen to Respondent's offensive comments and be subjected to his actions while she was trying to work and take care of customers.

31. Complainant called family meetings to discuss Respondent's conduct. During those meetings, Complainant cried.

32. Complainant talked to her minister about Respondent's sexually harassing conduct. She prayed and tried to stay focused on not speaking back so she could keep her job.

33. Complainant also spoke to several police officers about Respondent's offensive conduct.

34. After losing her job, Complainant was afraid of going on job interviews. When she did go, she felt afraid to talk and was cognizant of her actions.

35. Complainant still feels hurt. She feels like something has been taken away from her that she cannot get back.

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, 775 ILCS 5/1-103(B) and 5/2-101(B).

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

3. In accordance with the Commission's August 24, 2005 Default Order, Respondent is in violation of the Illinois Human Rights Act that prohibits sexual harassment.

4. Complainant has demonstrated emotional suffering as a result of Respondent's actions of such magnitude that she is entitled to an award of emotional distress damages in the amount of $30,000.00.

5. In light of the findings of liability against Respondent, the Commission should order Respondent to cease and desist from any sexually harassing conduct.

Discussion

In accordance with the Commission's Default Order, this matter proceeded to a damages only public hearing. Complainant testified on his own behalf, as well as calling two witnesses, her father (Mr. Swanigan) and her friend (Mr. Chester). Complainant also moved into evidence Exhibit 1 and Exhibit 2 which are notarized statements prepared by Mr. Swanigan and Mr. Chester, respectively.

Emotional Distress

It is apparent from the record that Complainant suffered a severe emotional reaction to the sexual harassment by Respondent. The degree of emotional distress was significantly over and above that which would be expected from "the mere fact of a civil rights violation" and is therefore compensable under the Illinois Human Rights Act**.** **Harris and Vinylgrain Industries of Illinois**, ___ *Ill. HRC Rep.* ___, *(1996CA1087, Aug. 1, 2001).*

Complainant was clearly pained by Respondent's disrespectful conduct toward her. After describing that Respondent's friends would come to her work window and tease her about the sexual comments Respondent had made about her, as well as when

the Respondent masturbated in front of her and offered her money to lie down with him, Complainant testified: “I mean that hurts. That’s embarrassing. I told him you are disrespecting me.” (Tr. at 11).

Respondent’s conduct also had a significant impact on Complainant’s sexual relationship with her partner and her feelings about sex. Complainant testified: “Well, it got to the point where I would go home and share with my significant other, and its like, you know, sometimes I don’t want him to touch me, you know, and then I go to work and I’m like I’m all tense and I’m tired. And on the other hand I need a job, and I got to deal with this, because I need a job to provide for me and my daughters. And it’s like a ton on me on one side that’s holding me down but I have to do it. And this is my point was me keep asking. It got to the point that I couldn’t carry on with my significant other.” (Tr. at 11). Complainant further stated: ”I couldn’t - I see some guy looking at me or whatever, it like something just - has just been taken away from me. And it gets so now that, you know, I’m like, okay, you know why you looking at me, I just feel ashamed. I just feel ashamed.” (Tr. at 11-12). Complainant later testified: “It’s hurt – I can’t really describe it. It is a hurting feeling. It hurts. And to think now this it hurts now, it hurts now. It hurts.” (Tr. at 12).

Complainant also felt so upset about the Respondent’s conduct that she talked to her family on several occasions. (Tr. at 10, 12, 14 and 15). Complainant’s father testified that his daughter was emotional during the family meetings. (*See also* Ex. C-2). In addition, Complainant testified that she had spoken to her minister about Respondent’s sexually harassing conduct and prayed to keep focused so she could keep her job. (Tr. at 12). The fact that Complainant also reported Respondent’s sexually harassing conduct to several police officers indicated the level of distress she felt. (Tr. at 13). Regarding job interviews after losing her job a Maxwell’s on 76th Street, Complainant testified: “But this caused me to – I guess to go look for a job, to be aware

of things and so afraid of what to say, how to say it." (Tr. at 19). Complainant also testified that: "It has caused me to should I go or should I not go out, you know, to look for a job or what should I do, just sitting there. It's – I don't know how to really – I don't know how to really explain it. It's hurtful. It's painful. The damages caused – I mean it's – something taken away from me. I don't know how to say this. Something that's taken away from me and I can't get it back. You know, I can't grab it back." (Tr. at 20).

In determining the recommended award for emotional distress damages, I have considered the following: (1) the time period of the sexually harassing conduct was approximately five weeks; (2) the conduct was repeated several times over the five week period; (3) there was only one act of physical contact; (4) there was more than one act of masturbation by the Respondent in front of the Complainant; (5) Complainant sought counseling from her minister; (6) Complainant reported the offensive acts to several police officers; (7) Complainant sought help from her family members; (8) Complainant was subjected to further sexual harassment from others due to Respondent's public disclosure of his alleged sex with Complainant; (9) Complainant's sexual relationship with her significant other was impacted; and (10) Complainant had difficulty in pursuing other job opportunities because of Respondent's acts.

In addition, it was clear to me that Complainant was extremely pained by the Respondent's conduct. During her testimony, Complainant repeated over and over again of her hurt and feelings of being disrespected.

Accordingly, after reviewing Commission cases, I recommend an award for emotional distress damages in the amount of $30,000.00

Cease and Desist

Since a Default Order has been entered and there has been a finding of liability against the Respondent, it is recommended that Respondent be ordered to cease and

desist from sexually harassing conduct in the future. *See* **Magraff and Alexopolis**, ___ *Ill. HRC Rep. ___, (1990CN0209, Nov. 8, 1993*).

Recommendation

It is recommended that the Commission:

(1) award emotional distress damages in the amount of $30,000.00;

(2) order Respondent to cease and desist from any sexually harassing conduct in the future.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 6th, 2006