



**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF** )  
 )  
**Perla Sanchez,** )  
**Complainant** )  
 )  
**and** )  
 )  
**Arrowsmith Shoes,** )  
**Respondent** )

**CHARGE NO.:** 2002 CF0289  
**EEOC NO.:** 21BA 12221  
**ALS NO.:** 12073

**RECOMMENDED ORDER AND DECISION**

This matter comes before me pursuant to an order of default entered by the Commission against Respondent on April 23, 2003. A public hearing on damages only was held on July 23, 2003 at which Respondent did not appear. While Respondent was given an opportunity to participate in this matter, it did not do so and Complainant waived the filing of any brief on her own behalf. Complainant’s counsel has submitted a petition for attorney’s fees and costs and, again, Respondent has filed no response. This matter is now ready for decision.

**Statement of the Case**

Complainant was discharged from her employment with Respondent on June 26, 2001. The charge in this case was submitted to the Department of Human Rights on August 1, 2001. In it, Complainant alleged that she was sexually harassed by her supervisor and then discharged from her employment with Respondent because she opposed the harassment in violation of the Human Rights Act. Respondent failed to participate in the investigation of the charge by the Department of Human Rights and the Department submitted a petition to the Commission to schedule a hearing on damages in light of Respondent’s default. In response to the petition of the Department, the Commission issued its order of default on April 23, 2003 as noted above.

### **Findings of Fact**

1. Complainant, Perla Sanchez, filed her Charge No. 2002 CF0289 with the Illinois Department of Human Rights on August 1, 2001, alleging that Respondent, Arrowsmith Shoes, discharged her for opposing sexual harassment in the workplace.
2. On April 23, 2003, the Commission entered an order declaring Respondent in default in accord with the petition filed by the Department of Human Rights.
3. A public hearing on damages was scheduled for July 23, 2003 and it took place as scheduled on that date.
4. Complainant was present with her attorney at the public hearing on July 23, 2003 and Respondent did not appear.
5. Complainant became unemployed on June 26, 2001 and has remained unemployed through the date of the public hearing. However, she does not seek reinstatement, so her award for back pay will end as of the date of this ROD. Relevant calculations based on this finding of fact are found below and are incorporated in these findings.
6. Due to the loss of her employment, Complainant also suffered emotional distress in excess of that to be expected as a result of a violation of the Human Rights Act.

### **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 5/103(B) and 5/2-101(B).
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. In accord with the default order entered on April 23, 2003, Respondent is liable for a violation of the provisions of the Illinois Human Rights Act that prohibit sexual harassment and retaliation.

4. Based on the default of Respondent and its failure to effectively dispute or oppose any of the requests made by Complainant with regard to an award for back pay, emotional distress and attorney's fees and costs, Complainant is entitled to an award for each of these elements of loss in order to be made whole.

### **Discussion**

#### *A. Damages*

Back Pay -- The first element of damages to be considered is Complainant's request for back pay. Because she has been unemployed from the date of discharge to the present, she is entitled to receive back pay from the discharge date to the date of this recommended order. While the calculation of back pay is always somewhat speculative, the task is made even more difficult when a respondent has deliberately failed to provide information through the discovery process that would make the task more direct. It is the Commission's general principle that any ambiguity in this process be resolved in favor of a prevailing complainant due to the finding of liability against the respondent. Clark v. Human Rights Comm'n, 141 Ill.App.3d 178, 183, 490 N.E.2d 29, 95 Ill.Dec. 556 (1<sup>st</sup> Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way.

At the time of her termination from employment with Respondent, Complainant was receiving \$6.50 per hour for a 35-hour workweek. This is \$227.50 per week or \$985.83 per month during 2001. Her total back pay for six months of unemployment in 2001 is \$5,914.98.

Complainant testified that she would have received raises of fifty cents per hour in each of 2002 and 2003. Thus, her weekly salary in 2002 would have been \$245.00, or a monthly salary of \$1,061.67. Therefore, her back pay for 2002 is \$12,740.04. For 2003, her weekly salary would be \$262.50, or a monthly salary of \$1,137.50. Her back pay for ten months in 2003 is \$11,375.00. The total back pay award recommended for Complainant is \$30,030.02.

Emotional Distress -- Complainant also requests compensation for the emotional distress she suffered due to the unlawful conduct of Respondent. It has long been established that the Commission's statutory authority to award a prevailing complainant his or her actual damages includes the ability to award monetary damages for emotional distress. Village of Bellwood v. Illinois Human Rights Comm'n, 184 Ill.App.3d 339, 355, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1<sup>st</sup> Dist. 1989). Here, Complainant testified that she became deeply depressed after her discharge, eventually resulting in medical treatment at a hospital and referral for psychiatric care after a suicide attempt. She now takes the depression medication Zoloft. Complainant also noted in her testimony that she also was sexually molested when she was a child.

It is apparent from the record that Complainant suffered a severe and profound emotional reaction to the sexual harassment and subsequent discharge she suffered while employed 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 Human Rights Act. Harris and Vinylgrain Industries of Illinois, Ill. H.R.C. Rep. (1996CA1087, August 1, 2001). The effects of the unlawful acts of Respondent were further magnified because of Complainant's personal history as a victim of sexual molestation as a child. The Commission has found that the perpetrator of a civil rights violation takes his or her victim in the condition in which she or he is found, to include the heightened susceptibility of the victim to emotional distress due to her mental state brought about by previous similar victimization. Under Commission precedent, the "eggshell skull" principle is applicable to the measure of emotional distress damages. Palumbo and Palos Community Hospital, Ill. H.R.C. Rep. (1996CA0145, January 10, 2000).

Accordingly, I find that Complainant is entitled to an award for emotional distress. She has suggested the amount of \$50,000.00 as the appropriate compensation for the level of emotional distress she suffered. This request is, of course, uncontroverted by Respondent and the lack of

response alone justifies an award in the amount requested. I do find, however, that even in a contested matter, the conduct of Respondent described by Complainant as aggravated by her personal history would support a significant award for emotional distress.

Attorney's Fee and Costs – Complainant is represented by a law firm in this matter and is therefore entitled to an award in the amount of her counsel's fair and reasonable fee. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, multiplied by the number of hours expended in doing so. The standard for determining the proper fee award by the Commission is found in Clark and Champaign National Bank, 4 Ill. H.R.C. Rep. 193 (1983).

Similarly to the other elements of this matter, Respondent chose not to respond to the petition for fees. The Commission case of Baker and Village of Niles, Ill. H.R.C. Rep. (1999CA0319, April 29, 2002) is only the most recent in a long line of cases holding that if the respondent does not contest the particulars of a petition for fees and costs, all issues related to the petition are waived. This petition is well supported by the affidavits of all firm attorneys who participated in this matter and by the affidavit of another attorney who is versed in the community standard for fees charged in matters of this kind. Complainant's counsel, Caffarelli & Siegel, Ltd., is claiming rates of \$190.00 per hour for the two name partners, Alejandro Caffarelli and Marc Siegel, in 2003, \$180.00 per hour in 2002 and \$170.00 per hour in 2001. Further, they claim a rate of \$120.00 per hour for the work of associate Bradley Manewith in 2003. These rates appear reasonable in any event, but will be accepted on the basis of Respondent's waiver alone. The petition further notes that these lawyers spent a total of 46.25 hours on this matter which, when multiplied by the appropriate hourly rates, results in a total fee request of \$8,287.50. All of the tasks listed in the petition appear reasonable on their face, but again will be accepted because they are uncontested by Respondent. Therefore, the full amount of \$8,287.50 should be awarded to

Complainant for her attorney fees. Counsel did not request reimbursement for costs of any kind and none are included in this recommendation.

Other elements of the award, as permitted by the cited sections of the Act and the Commission's procedural rules, or otherwise not requiring additional analysis, are specified in the recommendation summary below.

### **Recommendation**

It is recommended that the default entered against Respondent be affirmed, that Respondent accordingly be found liable for a violation of the Human Rights Act as alleged in the charge, and that Complainant be awarded the following relief:

- A. That Respondent pay Complainant back pay in the gross amount of \$30,030.02 for the period June, 2001 through October, 2003;
- B. That Respondent pay Complainant interest on all elements of this award contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)) and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules, to accrue until payment in full is made by Respondent;
- C. That Respondent pay to Complainant the amount of \$50,000.00 for emotional distress;
- D. That Respondent pay to Complainant the amount of \$8,287.50 for her attorney fees;
- E. That any public contract currently held by Respondent be terminated forthwith and that Respondent be barred from participating in any public contract for three years in accord with Section 8-109(A)(1) and (2) of the Human Rights Act. 775 ILCS 5/8-109(A)(1) and (2).
- F. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees be referred to the Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent; and,

- G. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation.

HUMAN RIGHTS COMMISSION



ENTERED:

November 4, 2003

BY: \_\_\_\_\_

DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

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