CITY OF CHICAGO
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60610
(312) 744-4111 (Voice)/(312) 744-1088 (TTY/TDD)

IN THE MATTER OF	)	
	)	
Patti Feinstein,	)	
Complainant,	)	
and	)	Case No. 02-E-215
	)	
Premiere Connections, LLC, and	)	Date of Order: January 17, 2007
Michael Yergin,	)	Date Mailed: February 5, 2007
Respondent.	)	

FINAL ORDER ON LIABILITY & REMEDIES

TO: Patti Feinstein
900 W. Erie
Chicago, Il. 60611

Michael Yergin
Premiere Connections
3219 E. Wickieup
Phoenix, Arizona 85050

YOU ARE HEREBY NOTIFIED that, on January 17, 2007, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter. The Commission orders Respondents, jointly and severally, to pay damages in the amount of $44,413 plus interest from June 30, 2002, and to pay the City of Chicago total fines of $1,000. The findings of fact and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100(14) and 250.150, a party may obtain review of this Final Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time.

Pursuant to Reg. 250.210, compliance with this Final Order shall occur no later than 31 days from the date of the order. However, in light of the delay in mailing, the Commission *sua sponte* grants Respondents an extension of time to March 2, 2007 to comply.[1]

CHICAGO COMMISSION ON HUMAN RELATIONS
Clarence N. Wood, Chair/Commissioner

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[1]Payment of fines are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number. Payments of damages and interest are to be made directly to the Complainant. See Reg. 250.220 for information on seeking enforcement of an award of relief.

City of Chicago
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(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF	)	
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Patti Feinstein	)	
COMPLAINANT,	)	Case No. 02-E-215
AND	)	
	)	Date of Ruling: January 17, 2007
Premiere Connections, LLC, and	)	
Michael Yergin,	)	
RESPONDENT.	)	

FINAL RULING ON LIABILITY AND RELIEF

Complainant Patti Feinstein ("Complainant" or "Ms. Feinstein") filed a complaint with the Chicago Commission on Human Relations ("the Commission" or "CCHR") alleging sexual harassment by Respondent Michael Yergin, owner of Respondent Premiere Connections, in violation of Chapter 2-160 of the Chicago Human Rights Ordinance ("CHRO" or "the Ordinance"). Respondents denied the sexual harassment.

After an investigation, the Commission found substantial evidence that the Ordinance had been violated and ordered conciliation. When that proved unsuccessful, the case was set for Administrative Hearing and assigned to a Hearing Officer. An Administrative Hearing was held on January 10 and 11, 2006. Complainant appeared *pro se.* Respondents appeared and were represented by counsel at the Administrative Hearing. Based on the evidence introduced at that hearing,[1] the Hearing Officer issued his First Recommended Decision including recommended Findings of Fact ("FOF") and Conclusions of Law ("COL")[2] as well as recommendations for relief. Respondents' counsel withdrew on September 29, 2006, and Respondents submitted their Objections *pro se.* Respondents filed timely Objections to the Hearing Officer's First Recommended Decision.[3] Complainant did not file a reply. The Hearing Officer issued his Final Recommended Decision on January 4, 2007.

FINDINGS OF FACT

1. Complainant Patti Feinstein has a B.F.A. degree from University of Toledo. Prior to her employment with Respondent Premiere Connections LLP ("Premiere" or "Respondent

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[1] Prior to the hearing, the Hearing Officer sustained objections to admission of all but page 23, lines 23-24 and page 48, lines 1-3 of C. Ex. E (the transcript of the Order of Protection Hearing), all of C. Ex. L but not to C. Ex. K. [Tr. 4-8], and also R. Exs. 7, 10 and 11. [See Tr. 103-108 and the discussion of the Hearing Officer's evidentiary rulings in this Final Ruling].

[2] Abbreviations used in this Ruling are as follows: Tr. means transcript. C. Ex. means Complainant's Exhibit. R. Ex. means Respondent's Exhibit. H. Ex. means Hearing Officer's exhibit. Resp. Obj. means Respondent's Objections to the First Recommended Decision.

[3] Respondents filed lengthy Objections. Many of these Objections are specifically discussed below. Respondents' other arguments were considered although this Ruling does not reference each one.

Premiere"), she was employed as the assistant to a forensic psychiatrist at Health and Law Resource. She also had four years prior employment by dating services companies performing sales, matchmaking, and other duties. [Tr. 22-4].

2. Respondent Premiere was a dating service catering to an elite clientele, owned and operated by Respondent Michael Yergin ("Mr. Yergin" or "Respondent Yergin"). Respondent Premiere had more employees working for it in 2000 than in 2002. The only male working there was Mr. Yergin. [Tr. 24-6, 118).

3. Mr. Yergin is an author and at the time of the hearing operated several companies, including American Connections, LLC. [Tr. 283].

4. In September 2000, Complainant was hired by Premiere as a salesperson, earning $300 per week plus commissions. [Tr. 25-6]. Her job was to make sales presentations and close sales, from both appointments and phone calls. In September 2000, Premiere's offices were at 62 W. Huron in Chicago. Seven people were employed there, including Kim Lerch, who acted as the manager. Leads for sales came from a singles event company. [Tr. 28-9].

5. Ms. Feinstein and other sales employees at Premiere were responsible for selling three sales packages, which differed in the number of introductions to potential dates promised and cost between $2,795 and $4,995. Premiere also sold memberships, often at heavily discounted prices. [Tr. 29-31].

6. Ultimately, Ms. Feinstein also performed matchmaking duties for Premiere. Those duties involved selecting someone who fit the description of someone a member wanted to meet and then trying to arrange a meeting. [Tr. 31-2]. Kim Lerch and another salesperson also performed matchmaking duties. [Tr. 33-4].

7. Ms. Feinstein ceased her employment with Premiere without notice on April 13, 2001.[4] [Tr. 35-6, 127-8, 132-3, 136, 215-18; R. Ex. 9].

8. Ms. Feinstein resumed her employment with Premiere in November, 2001, because Mr. Yergin asked her to work at the Schaumburg office (where she thought most of the appointments were being set up) and offered her the task of taking over the matchmaking department. Her salary was to be $750 per week plus commissions of 10% on sales and 7% on information calls, with a $1,000 per week guarantee. Her new position was as director of member services, which included dealing with difficult clients, supervising matchmaking services, and doing a radio show. [Tr. 36-41]. She also received a sign-on incentive of $2,500 for coming back to Premiere. [Tr. 142].

9. When she began working for Premiere for the second time, Ms. Feinstein worked out of both the Schaumburg and Chicago offices and then was relocated to the Chicago office on March 11, 2002, where she had the same duties. [Tr. 40]. During the period from November 2001 to July,

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[4] Initially Ms. Feinstein testified that the reasons she left her employment with Premiere were a lack of appointments and a disagreement over losing commission if a customer cancelled a sales transaction. She believed there was no policy authorizing a loss of commission in the event of a cancellation. However, on cross-examination, she indicated that while this dispute came up, she left because she had gotten another job. [Tr. 35-6, 127-8, 132-3, 136, 215-18].

2002, Premiere was not profitable. [Tr. 144].

10. During a trip to Phoenix in the last week of February 2002 to discuss her concerns about the radio program, she got to know Mr. Yergin on a more personal basis. When they returned to Chicago, they began a dating relationship that lasted until June 30, 2002. Both Ms. Feinstein and Mr. Yergin testified that he was more interested in maintaining the relationship than she was, although they differ about who started it. He acknowledged that at some point during the relationship, he was in love with her. [Tr. 42-3, 185, 307-09, 311].

11. During that dating relationship, Mr. Yergin moved the matchmaking operations from Schaumburg to Chicago so that Ms. Feinstein would be closer to where Mr. Yergin lived.[5] Ultimately everyone moved from that office because there were no appointments being set up there. [Tr. 145, 147, 149-52].

12. In the early stages of their relationship, Ms. Feinstein wrote two letters to Mr. Yergin. These letters contain a mock profile card of herself, the kind that would be used in the business they were in. In these letters, Ms. Feinstein expresses a strong personal attachment to Mr. Yergin and a desire to have a permanent relationship with him. [R. Ex. 2; Tr. 167-204].

13. On a trip to Phoenix in April, at dinner at Morton's in Scottsdale, when she discussed ending the relationship, Mr. Yergin first said that "if you ever leave me, I'm going to kill you" and then he paused and said, "No, I'll have you killed." She returned to Chicago. [Tr. 43, 157].

14. After she came back to Chicago, Ms. Feinstein attempted to end the relationship in a non-threatening way being sensitive to Mr. Yergin's feelings. She had multiple conversations with him at his apartment from April to June 2002. In these conversations, she communicated that it was not a good idea to continue this relationship because she was married and they worked together. [Tr. 47].

15. During this period, while Ms. Feinstein was trying to end her personal relationship with Mr. Yergin, her job duties did not change, although as of March she did not take a salary above her weekly guarantee of $1,000 because of her personal relationship with Mr. Yergin. [Tr. 267]. On June 30, 2002, she had a telephone conversation with him in which she told him she was ending their dating relationship. He said that he would take that as her resignation. She said she was not resigning and would be at work the next day. He persisted in saying ending their relationship was in effect her resignation. [Tr. 50-1].

16. Ms. Feinstein went to work the next day, where she talked to Janet Fleming, who was vice president of Premiere, about what had happened. Then she had to go to the Schaumburg office for an emergency appointment, but the person never appeared. On the next day, Ms. Feinstein called in sick and said she would take the week off without pay, something that had been proposed to employees the week before due to slow business. Ms. Fleming said she was going to call Mr. Yergin. Ms. Feinstein did not believe Ms. Fleming had the authority to discharge her without first

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[5] Mr. Yergin contended that the Schaumburg office was being closed at this time because of a lack of business, not because of his personal relationship with Ms. Feinstein. [Tr.295-96]. For reasons stated below, on issues where there is a difference between Mr. Yergin's testimony and Ms. Feinstein's testimony and no other independent evidence, the Hearing Officer credits Ms. Feinstein's testimony. *See* FOF #17-8 and pp. 20-4 *infra*.

obtaining permission from Mr. Yergin. Ms. Fleming then called her back and said that Mr. Yergin wanted her gone. Later that day, Ms. Fleming called and said Mr. Yergin had said he would not give her a paycheck for salary owed unless she wrote a letter of resignation. After thinking about it, Ms. Feinstein asked Ms. Fleming for her help in composing the letter of resignation and Ms. Fleming dictated it to her. She then e-mailed the resignation letter to Respondent Premiere. She wrote the letter because she wanted to leave on the best possible terms and needed the $1,700 paycheck. Later Ms. Fleming called and said that Mr. Yergin still did not want to give her the payroll check because he was mad at her for breaking up. [Tr. 54-8, 207-12, 220-1, 291, 296; R. Ex. 4].[6]

17. Although Mr. Yergin claimed at the hearing that Ms. Feinstein's separation from Premiere had nothing to do with the breakup of their personal relationship, at the Order of Protection hearing based on his petition, he testified under oath that the breakup of their relationship had something to do with her separation from employment. [*Compare* Tr. 314-15, 318, 328-29 with Tr. 356-57 and C. Ex. E, p. 48]. Thus on the critical issue in this case, whether the breakup of the personal relationship between Mr. Yergin and Ms. Feinstein was involved in her separation from employment, Mr. Yergin's prior statement under oath was a direct admission as to that relationship and also a significant challenge to his credibility. [Tr. 356-57 and C. Ex. E, p. 48].

18. Although Mr. Yergin testified at the hearing that he and Ms. Feinstein had a dating relationship, previously he had denied that relationship in his Verified Response to the Complaint. After being confronted with that denial, Mr. Yergin responded with inconsistent answers including, "I would not characterize what Patti and me had as a quote, unquote, normal dating relationship" and "[i]t was some form or fashion of a dating relationship." He also tried to explain the inconsistency by referencing former President Clinton's explanations about his relationship with Monica Lewinsky. [*Compare* Tr. 307-11, 342 with Tr. 343-45, 363-64 and Verified Response to ¶8 of the Complaint].[7]

19. Janet Fleming, as vice-president of Premiere, had considerable authority to run the day-to-day operations of Premiere. She and Ms. Lerch, before her, typically had authority to make hiring and termination decisions, but that did not mean that someone could be hired or fired at

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[6] The statement of Ms. Fleming, as testified to by Ms. Feinstein, is an admission against Respondent Premiere but not Mr. Yergin, because Respondents, after consultation between Mr. Yergin and his attorney, stipulated that Ms. Fleming was an agent of Premiere with the power to act on behalf of the company and that her statements constituted admissions on behalf of Premiere. [Tr. 208-12]. Mr. Yergin's testimony regarding her responsibilities was consistent with that stipulation. [Tr. 290-96]. Respondents later contradicted this stipulation and testimony. Resp. Obj. at 1-6. Mr. Yergin contended at the hearing that he did not ask Ms. Fleming to terminate Ms. Feinstein's employment or seek her resignation and that in fact Ms. Fleming called him upset that Ms. Feinstein had left work in the middle of the day. [Tr. 314-15, 318, 328-29]. Respondents object to the failure of the Hearing Officer to find the language of the resignation letter to be significant. Resp. Obj. at 3-4. The Hearing Officer recommended that Mr. Yergin' testimony on these issues not be credited but that Ms. Feinstein's testimony, including that she felt forced to write this letter even though she had been discharged, should be credited. *See* FOF #17-8 and pp. 20-4 *infra*.

[7] In his Objections, Mr. Yergin blamed previous counsel for this misstatement and a desire to leave litigation options open. Resp. Obj. at 6-7. However, because this evidence was not introduced at the hearing, it cannot be used to support Objections. *Williams v. Banks*, CCHR No. 92-H-169 (Mar. 15, 1995); *Stovall v. Metroplex et al.*, CCHR No. 95-PA-19/28 (Nov. 20, 1996).

Premiere without Mr. Yergin's approval. In addition, Mr. Yergin established all policies and ran every aspect of the company. [Tr. 116-7, 129-30, 296-99].[8]

20. On July 16, 2002, having previously returned her business files to Premiere, Ms. Feinstein went to the Chicago office to get her personal belongings and to give Ms. Fleming a letter written to Mr. Yergin indicating her rights under the Illinois Wage Payment and Collection Act to receive her final paycheck. After reading the letter, Ms. Fleming refused to accept it but Ms. Feinstein later mailed it to the office. [Tr. 60-1; C. Ex. B]. On or about July 22, 2002, Ms. Feinstein sent another letter to Mr. Yergin asking to have a copy of her personnel file mailed to her. [Tr. 62; C. Ex. C].

21. On August 6, 2002, Ms. Feinstein called Mr. Yergin's cell phone and indicated that she would take action to enforce her rights to her paycheck. He indicated that he would give her the check, which was made available to her later in the day but in an amount that was $700 less than what she believed she was due. [Tr. 62-4; C. Exs. D and G]. Premiere never made up the difference. [Tr. 86-7]. Later that day, Mr. Yergin left a message that he was going to take out an Order of Protection against her and that he was going to open some websites with sexually derogatory references to Ms. Feinstein. Mr. Yergin did in fact initiate domain name registrations with sexually derogatory references to Ms. Feinstein. [Tr. 65-6; C. Ex. H]. These pages can be accessed by the public. [Tr. 264-65]. Ms. Feinstein was horrified at seeing these domain name registrations and remained upset about them for a year. [Tr. 266-67]. She believed that they could be accessed by the public. [Tr. 272-73].[9]

22. Ms. Feinstein was served with an Order of Protection notice and appeared in court in late August 2002 for a hearing. The Order of Protection sought by Mr. Yergin was denied. In a portion of the transcript of the hearing admitted into evidence without objection, Mr. Yergin testified that he made two police reports about Ms. Feinstein allegedly harassing him. Ms. Feinstein testified in the Administrative Hearing in this case that he did so in order to get her arrested as part of her breaking up with him. Mr. Yergin also completed a form to initiate the Order of Protection process in which he alleged that he and Ms. Feinstein had a child together, but he acknowledged at the Order of Protection hearing that this assertion was not true. [Tr. 67-72; C. Ex. E, p. 42, lines 8-13, p. 51, lines 6-15]. In this case, he testified that he made an error in checking the wrong box in a template form. [Tr. 336-37].

23. On October 29, 2002, Mr. Yergin called Ms. Feinstein and left several messages. (Ex. A]. In the last of these messages, he indicated that business was good, although he disputed the

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[8] Ms. Feinstein and Mr. Yergin differed to some extent on Ms. Fleming's power to hire and fire in terms of whether she, as opposed to Mr. Yergin, actually informed the employee about the termination. [See, e.g., Tr. 296-66]. It is not necessary to resolve this dispute because the Hearing Officer recommended crediting Ms. Feinstein's testimony that it was Mr. Yergin who made the decision to terminate Ms. Feinstein, not Ms. Fleming. *See* FOF #17.

[9] Respondents attempt to challenge this testimony in their Objections by focusing on the fact that these domain name registrations were not web pages. Resp. Obj. at 10. They claim that "they are not accessible to the public in any meaningful way." That does not change the fact that Ms. Feinstein testified unequivocally on cross-examination that she believed that they could be accessed by the public. [Tr. 272-73].

accuracy of that statement at the hearing. [Tr. 354]. In response to questions from his attorney, Mr. Yergin also stated that the gross sales between September 11, 2001 to the end of 2002 were $80,000-$100,000 per month. When asked if his net profits increased during that period, his said, "I would have to look at the K-1's [which were not introduced into evidence] and check. I honestly don't know." He also stated that the first major hit financially on the business was the events of September 11, 2001, and the other negative was Ms. Feinstein's separation because she was so productive. [Tr. 287-89].[10]

24. After her termination, Ms. Feinstein was unable to find substitute employment although she sought employment at dating services like Selective Search and It's Just Lunch. She then worked for Visa for a short time[11] and ultimately opened her own dating service company in November 2002. [Tr. 79, 82-3; 241-2; R. Ex. 3]. The first newspaper article referencing this business appeared one month later and the first radio spot mentioning it was November 19, 2002. [Tr. 236-40; R. Ex. 3]. She did not earn money in that business in 2002 or 2003. [Tr. 84-6]. In the first six months of 2002, she had earned $33,713 from her employment at Premiere. [Tr. 80; H.O. Ex. A].[12] Her only income between the time she was terminated from Premiere until the end of 2003 was $6,905 she earned from Visa. [Tr. 85, 246-47, 263; R. Ex. 12; H.O. Ex. 1]. She also received unemployment compensation of $3,465 in January 2003. [Tr. 244-46; R. Ex. 6].

25. Ms. Feinstein did not perform any work for Premiere after her termination. [Tr. 249-50, 252].[13] When she sought jobs at other dating services, she was told that Premiere had a bad reputation in the dating service industry and her association with her made her unlikeable. [Tr. 255]. Ms. Feinstein did not have a subsequent personal relationship with Mr. Yergin although he contended that they continued to see each other. [Tr. 250, 323-24].

26. Ms. Feinstein suffered emotional distress as a result of the Order of Protection proceeding in that she could not function. She felt the most terrified that she had felt in her life. After she was served with the Order of Protection, she left the state for 3 weeks prior to the hearing.

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[10] In objecting to the damages award, Mr. Yergin argued that "he is by nature, an optimistic person, and he would not have admitted to even his closest associate, and certainly not to a hostile former employee, that the business was failing." Resp. Obj. at p. 18-9. He also claimed that his answer about the gross sales was a "guess." Resp. Obj.at 19. However, these explanations are in effect new testimony that is not permitted in post-hearing Objections. *See* cases cited in fn. 6 *supra*.

[11] Ms. Feinstein testified that she worked for Visa and a sister company on a commission-only sales job, but received no commissions in 2002. [Tr. 83-84]. She testified that she did receive $6,305 in commissions in 2003, but by that time "I really poured myself into the other business." [Tr. 85-86].

[12] In the First Recommended Decision, the Hearing Officer mistakenly noted in this footnote that Mr. Yergin testified that Ms. Feinstein's salary for 2002 was $80.000. Respondent has objected because the testimony referred to Ms. Fleming's salary. [Tr. 356 and Resp. Obj. at 3.] Respondent also stated that this was a minor point. In any event, Ms. Feinstein's back pay award was not based on the erroneous $80,000 salary amount.

[13] Mr. Yergin testified that after July 2002, Ms. Feinstein did various tasks for Premiere–including negotiating with the telephone company–and that he paid her for it. [Tr. 322-23]. However, there was no other evidence to support this claim. [Tr. 330]. For reasons stated above, the Hearing Officer recommends crediting the testimony of Ms. Feinstein on this point.

She continued to be in fear of Mr. Yergin after the Order of Protection hearing because of threats made to her and her attorney in the lobby outside of the courtroom and the fact that he followed her and her attorney. She felt anxiety and could not sleep through the night. [Tr. 67,90--8].

27. At the time of the hearing, Premiere did not have any employees except Mr. Yergin but he used subcontractors. Premiere has not had employees since January or February of 2003. At the time of the hearing, Premiere had an office lease at 401 S. Michigan (shared office space with low rent) and offices in Naples and Phoenix, Arizona–in Mr. Yergin's house there. [Tr. 284-85]. One reason for decreased revenues was that Ms. Feinstein was no longer employed at Premiere after late June 2002. [Tr. 287-89]. After Ms. Fleming left Premiere, Mr. Yergin's son and his girlfriend ran the business for six or seven months, but Mr. Yergin did not know when Ms. Fleming left her employment with Premiere. [Tr. 292-93, 322].

CONCLUSIONS OF LAW

1. Section 2-160-040 of the CHRO prohibits sexual harassment in the workplace. Sexual harassment is defined as any "unwelcome sexual advances or requests for sexual favors or 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; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the 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 work environment." Section 2-160-20(l), Chicago Municipal Code.

2. Reg. 340.100 of the Rules and Regulations of the CCHR ("CCHR Rules and Regs" or "Reg. __") provides that "[i]n determining whether alleged conduct constitutes sexual harassment, the Commission will review the record as a whole and the totality of the circumstances, such as the nature of the alleged sexual advances, conduct or statements and the context in which the alleged incidents occurred." In determining whether alleged conduct constitutes sexual harassment, the Commission analyzes the alleged harassing conduct from the perspective of the reasonable woman. *Barnes v. Page*, CCHR No. 92-E-1 (Sep. 23, 1993) at 20.

3. To prove a case of *quid pro quo* sexual harassment, Complainant needs to prove by a preponderance of the evidence that she was subjected to unwelcome conduct of a sexual nature and that submission to that conduct became a condition of employment or that submission or rejection of that conduct was used to make an adverse employment decision. *Scadron/Zuberbier v. Martini's of Chicago & Jones*, CCHR No. 94 -E-195/196 (Feb. 19, 1997); *Hackett v. Judeh Brothers, Inc. et al*, CCHR No. 93-E-111 (Jan. 18, 1995).

4. Complainants may prove discrimination by producing direct or circumstantial evidence of an intent to discriminate. To show discrimination by direct evidence in a contested disparate treatment case, a complainant may rely on statements by managers which show that the adverse employment decision was taken because of the complainant's protected group status. *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Oct. 18, 2000) citing *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997); and *Richardson v. Chicago Area Council of Boy Scouts of America*, CCHR

No 92-E-80 (May 21, 1996).[14] There is no dispute that there was a sexual relationship between Complainant and Mr. Yergin and that initially it was welcomed by Complainant. [FOF ##9-10]. Complainant has proven by a preponderance of the evidence, by direct evidence, that in April 2002, the sexual relationship became unwelcome and, when she finally informed Mr. Yergin on June 30, 2002 that she was terminating it, he caused her to be discharged and refused to pay all the wages she was due. [FOF #14, 15, 17, 21].

5. Actions taken after employment has ceased will be treated as adverse employment actions for which the actors are liable when they are part of a course of continuing discrimination or retaliation and when such actions can harm the Complainant's employment prospects. *Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 155 (3rd Cir. 1999); *Prosser v. American Chemical Inc.*, 935 F.3d 322, 331 (D.C.Cir. 1991); *Gonzalez v. Bratton*, 147 F.Supp.2d 180, 198 (S.D.N.Y. 2001). Here the creation of the derogatory domain name registrations with explicit sexual references to Ms. Feinstein had the potential to harm Ms. Feinstein's employment prospects given her occupation in the dating industry and hence such actions can constitute a violation of the Ordinance. *Id.* However, Mr. Yergin's actions in pursuing an Order of Protection, however improper, were not so related to Ms. Feinstein's job prospects and therefore do not, as such, violate the Ordinance.

6. Two elements which complainants must establish by a preponderance of the evidence to make out a case of sexual harassment based on a hostile environment are that they were subjected to unwelcome conduct of a sexual nature and that the conduct had the purpose or effect of substantially interfering with their work performance or creating an intimidating, hostile or offensive work environment. *Bray v. Sandpiper Too et al*, CCHR No. 94-E-43 (Jan. 10, 1996). Here the sexual relationship between Complainant and Mr. Yergin was consensual and did not occur at the workplace, and there was no evidence that Mr. Yergin's conduct had the purpose or effect of substantially interfering with Complainant's work performance or creating an intimidating, hostile or offensive work environment, at least until she sought to end the relationship. *Id*; *Hackett v. Judah Brothers, Inc. et al*, CCHR No. 93-E-111 (Dec. 21, 1994). In this context, a claim for sexual harassment based on a hostile work environment theory cannot be sustained. See *Reed v. Strange*, CCHR No. 92-H-139 (Oct. 19, 1994).

7. Respondent Yergin was Ms. Feinstein's ultimate supervisor at Premiere, and because he made the decision to terminate her after she ended their sexual relationship, Premiere is responsible for his actions. Reg. 340.110.

8. An employment discrimination victim "is presumptively entitled to full relief." *Blacher v . Eugene Washington Youth & Family Svcs.,* CCHR No. 95-E-261 (Aug. 19, 1998) quoting *Hutchison v. Amateur Electronic Supply Inc.*, 42 F.3d 1037, 1044 (7th Cir. 1994) citing *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975). "The purpose of a back pay award is to make the discriminatee `whole,' meaning that is should put the claimant in the position he or she

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[14] Respondents have accurately cited *Szkoda v. IHRC*, 302 Ill.App.3d 532, 541-42, 706 N.E.2d 962 (1st Dist. 1998) for the proposition that the *McDonnell Douglas* burden shifting analysis applies to *quid pro quo* sexual harassment claims. Resp. Obj. at 23. However, as that case notes in conformance with Commission decisions, the burden shifting analysis does not apply in direct evidence cases like this one, where the adverse employment action is directly tied to the termination of the sexual relationship. [FOF #14, 15 , 17].

would have been in respecting salary, raises, sick leave, vacation pay, pension benefits and other fringe benefits, but for the discriminatory act." *Blacher, supra,* CCHR No. 95-E-261 quoting *Clark v. Human Rights Commission*, 141 Ill.App.3d 178, 490 N.E. 2d 29, 33 (1st Dist. 1986). "Back pay should be awarded even though a precise amount cannot be determined, and ambiguities should be resolved against the discriminating employer, since the employer's wrongful act gave rise to the uncertainty." *Id; Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998).

9. "Once a [complainant] has established the amount of damages she claims resulted from her employer's conduct, the burden of going forward shifts to the [respondent] to show that the [complainant] failed to mitigate damages or that the damages were in fact less than the [complainant] asserts." *Blacher, supra*, quoting *Hutchison, supra* at 1044; see also *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000) (Respondent has burden to prove Complainant's failure to mitigate) and *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (July 18, 2001) (same).[15] A complainant fails to mitigate adequately and therefore is entitled to neither back pay nor front pay "to the extent [s]he fails to remain in the labor market, fails to accept substantially similar employment, fails diligently to search for alternative work, or voluntarily quits alternative work without good reason." *Reilly v. Cisneros*, 835 F.Supp. 96, 99 (W.D.N.Y. 1993), aff'd 44 F.3d 140 (2nd Cir. 1995) quoting *N.L.R.B. v. Madison Courier, Inc.*, 354 F.2d 170, 174, n.3 (2nd Cir. 1965), *cert. denied*, 384 U.S. 972 (1966).

10. As to the remainder of 2002, Respondents failed to prove by a preponderance of the evidence that they were not obligated to pay Ms. Feinstein back pay either because she failed to mitigate damages or because Premiere was essentially out of business and not employing persons who performed the duties she previously performed at Premiere for the period for which she sought back pay. [FOF ##23-5]. See *Blacher*, CCHR No. 95-E-261 (Aug. 19, 1998); *Clark v. Human Rights Commission*, 141 Ill.App.3d 178, 490 N.E. 2d at 33.

11. Premiere and Mr. Yergin are each individually and severally liable for violations of the Ordinance and damages due to Ms. Feinstein. Although Respondent Yergin was not Ms. Feinstein's actual employer, he was the owner and agent of her employer, Premiere. [FOF ##2, 18]. As such, the language of the Chicago Human Rights Ordinance makes him liable because it prohibits discriminatory discharge by any "person"–not only by any "employer." Section 2-160-030, Chicago Municipal Code. See *Austin v. Harrington*, CCHR No. 94-E-237 (Oct. 22, 1997) and *Hackett v. Judeh Brothers, Inc. et al*, CCHR No. 93-E-111 (Dec. 21, 1994).

12. In determining the amount of back pay, the fact that Ms. Feinstein received unemployment compensation does not automatically lead to reduction of her damages award, as her obligation is to reimburse the State of Illinois but not Respondents. *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (Nov. 17, 1993).

13. In awarding compensatory damages for emotional distress, the Commission considers

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[15] Respondents' reliance on *Szkoda v. IHRC*, 302 Ill.App.3d at 541-42, 706 N.E.2d 962 to argue that the burden does not shift back to them with respect to their affirmative defenses related to back pay (*see* Resp. Obj. at 23) is misplaced, as that case does not apply to the burden of proof for such damages defenses.

the vulnerability of the complainant, the egregiousness and duration of the discrimination and the duration and severity of the emotional distress. *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000). In *Griffiths*, the Commission noted that emotional distress awards of less than $5,000 were awarded when:

a. There was negligible or merely conclusory testimony concerning mental distress;
b. The discriminatory conduct consisted of discrete acts which took place over a brief period of time;
c. There was no prolonged effect of the discriminatory conduct;
d. There was no medical treatment and/or a paucity of physical symptoms;
e. The discriminatory conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress;
f. The complainant was not unusually fragile due to past experiences or pre-existing condition; or
g. The conduct involved refusal to rent, rather than harassment, or an attempt to evict or refusal to sell.

Griffiths, citing *Sheppard v. Jacobs*, CCHR No. 94-H-162 (July 16, 1997), quoting *Nash/Demby v. Sallas & Sallas Realty,* CCHR No. 92-H-128 (May 17, 1995).

14. Punitive damages are appropriate when the respondent's action "is shown to be motivated by evil motives or intent or when it involves a reckless or callous indifference to the... protected right of others." *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998), quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983) (case under 42 U.S.C. §1983) and *Blacher*, CCHR No. 95-E-261 (Aug. 19, 1998). "The purpose of an award of punitive damages in these kinds of cases is 'to punish (the defendant) for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" *Houck v. Inner City Horticultural Foundation, supra*; *Smith v. Wade, supra* at 54; *Restatement (Second) of Torts* §908(1) (1979).

DISCUSSION AS TO LIABILITY

The only real issue regarding liability for *quid pro quo* sexual harassment as a violation of the CHRO is whether Ms. Feinstein is to be believed regarding her testimony that after she broke off her relationship with Mr. Yergin, he first told her that her termination of their sexual relationship was tantamount to a resignation of her employment and then caused her to be terminated. If true, there really is no question that such conduct violates the Ordinance. See COL #1-4. Thus, along with a consideration of evidence concerning which there is no credibility issue, the resolution of the credibility of Ms. Feinstein and Mr. Yergin is critical to the outcome of the liability determination.

Mr. Yergin's and Ms. Feinstein's testimony was in conflict over several key factual issues, including (1) whether he threatened her physically when she first informed him that she wanted to break up with him; (2) whether she finally ended their relationship on June 30, 2002, and whether his response was to tell her that ending the relationship was tantamount to resigning; (3) whether she called in sick on July 2, 2002, and whether on that day Mr. Yergin instructed Ms. Fleming to cause her to be terminated; and (4) whether Ms. Fleming was instructed by Mr. Yergin to have Ms. Feinstein write a letter of resignation in order to receive her last check. In recommending a

resolution to the second and third issues, the Hearing Officer correctly noted that he need not simply rely on a credibility as to the testimony of the parties at the hearing, because Mr. Yergin's testimony at his Order of Protection hearing that the termination of Ms. Feinstein's employment was connected to the end of their personal relationship is both an admission and direct evidence of *quid pro quo* sexual harassment. [FOF #17].

It is well established that the Hearing Officer and then the Board of Commissioners must weigh the credibility of the witnesses, choose among conflicting factual inferences, and weigh the evidence. *Bray v. Sandpiper Too et al.*, CCHR No. 94-E-43 at 8 (Jan. 10, 1996); see also *Sanders v. Onnezi*, CCHR No. 93-H-32 (March 16, 1994); *Tyson v. Jones and Laughlin Steel Corp.*, 958 F.2d 756 (7th Cir. 1992). Moreover, the Commission can disregard the testimony of any witness if it is determined that the witness is not telling the truth. *Bray* and *Sanders, supra.;* see also *Little v. Tommy Gun's Garage, Inc.*, CCHR No. 99-E-22 (Jan. 23, 2002).[16]

As to liability decisions, the Board of Commissioners is required to adopt the final recommendation of the Hearing Officer if it is not contrary to the evidence presented at the Administrative Hearing. Reg. 240.620(a). In particular, the Board of Commissioners will not re-weigh the Hearing Officer's recommendation as to witness credibility unless it is against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996). This means the Board will not re-weigh credibility or set aside proposed findings of fact merely because another interpretation is possible. *Wiles v. The Woodlawn Org. & McNeal*, CCHR No. 96-H-1 (Mar. 17, 1999). The Hearing Officer, who was present when testimony was taken, is often in the best position to assess the demeanor of witnesses, one of the factors to be considered in assessing credibility. See *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997).

With respect to Ms. Feinstein, the Hearing Officer determined that she testified forthrightly and consistently, except about the reason for her first separation from Premiere in 2001, although she was frequently argumentative on cross examination. [See FOF #7 and Tr. e.g. 119, 121, 136-38, 151, 155, 177].

The Hearing Officer credited Ms. Feinstein's testimony on the issues described above, particularly the central factual issue that, when she finally ended her personal relationship with Mr. Yergin, he caused her employment to be terminated. [FOF ##15-8]. Although he noted minor concerns affecting Ms. Feinstein's credibility, the Hearing Officer determined that Mr. Yergin's credibility was severely undermined on central issues in this case for several reasons.

First, the admission by Mr. Yergin's testimony under oath at the Order of Protection hearing regarding the nexus between the breakup of their personal relationship and her termination was

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[16] This case law is the response to Respondents' argument that by finding he lacks credibility, the burden of proof has been shifted to Respondents. Resp. Obj. at 11-2. That simply is not so. Complainant had the obligation to prove her case through credible evidence. The Hearing Officer found that on the key disputed issues, her testimony and other evidence, such as the admissions of Mr. Yergin, were sufficient to meet her burden of proof. In finding that Mr. Yergin lacked credibility on the key disputed issues, the Hearing Officer was not concluding that Respondents had to meet any burden of proof, only that the testimony offered did not prevent Complainant from meeting her burden of proof due to his lack of credibility.

directly at odds with his testimony on this point at the Administrative Hearing on the critical factual issue in the case. Similarly Mr. Yergin, while admitting that the relationship existed during a portion of his testimony at the Administrative Hearing, denied the relationship in his Verified Response in this case and in other portions of his testimony at the Administrative Hearing. His attempts to explain that denial by contradicting himself on cross examination and by later making references to President Clinton's verbal dance about his relationship with Monica Lewinsky with subsequent admissions also harmed his credibility. [FOF #18].

Additionally, Mr. Yergin contradicted himself with previous testimony regarding the length of his relationship with Ms. Feinstein. On the one hand, he testified at the August 2002 Order of Protection hearing that he and Ms. Feinstein had a relationship that lasted for a few weeks; but in this Administrative Hearing he testified that it went on for a much longer time, even after her employment ended. [Tr. 345-46]. The Hearing Officer also determined that Mr. Yergin's credibility was harmed by his manner of testifying, in that he was frequently argumentative, gave answers that were unresponsive to questions being asked of him–some by his own attorney–and offered contradictory testimony in attempting to explain away admissions. [Tr. 303, 309-12, 315, 336, 337, 341, 348 and FOF#17-8, 23].

The Hearing Officer also determined that Mr. Yergin's credibility was harmed by evidence other than Ms. Feinstein's testimony. For example, Ms. Feinstein's assertion that she wrote the resignation letter as a means of getting her final check was buttressed by letters written to Ms. Fleming after her employment had ended and by the date and amount of the check given to her over one month after her employment ended; if she had simply resigned as Respondents have claimed, there should have been no problem in getting her last check. The amount that she was owed is established by C. Ex. G, but she was not paid that amount. [FOF ##20-1].

Mr. Yergin's attempts to explain away his inconsistent statements caused further damage to his credibility. [FOF #17-8]. Respondents' Objections often confirm that determination. For example, with respect to the denial in his Verified Response that he and Ms. Feinstein had a dating relationship, he tried this explanation:

> Then at the hearing before the Commission, he simply did not know what to say. When faced with the possible inconsistency, he did what may witnesses do under the "hot lights" of interrogation–he said the first thing that came to his mind.

Resp. Obj. at 8; see also FOF #17-8, 23. Given all of this, the Hearing Officer was left with the impression that Mr. Yergin will say whatever he thinks is advantageous at the moment without regard for whether it is true. See *Belcastro v. 860 N. Lake Shore Drive Trust*, CCHR No. 95-H-160 (Feb. 20, 2002).[13]

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[13]Mr. Yergin's credibility was also undermined by his conviction for a crime of moral turpitude, federal mail fraud, although the length of time that has elapsed since that conviction, almost ten years, makes it something to which the Hearing Officer and the Commission have not given great weight in deciding that Mr. Yergin was not credible in his testimony about issues cited in the findings of fact which were in dispute between him and Ms. Feinstein. *Id.*

In summary, the Hearing Officer found that Mr. Yergin's credibility was seriously undermined by prior statements under oath at odds with testimony given at the Administrative Hearing and that his attempts to explain away those inconsistencies only underscored the finding that he lacked credibility. The Board of Commissioners does not find Hearing Officer's conclusions to be against the manifest weight of the evidence, and so adopts his recommended findings as to credibility.

Given these credibility determinations, evidence of admissions as stated above, and the findings of fact that result, it is clear that Ms. Feinstein's termination from employment was due to her breakup with Mr. Yergin and consequently establishes a classic case of *quid pro quo* sexual harassment as to Ms. Feinstein's discharge. [COL #1-4]. Similarly, Respondents' refusal to pay Ms. Feinstein all the money she was due as commission was directly related to the *quid pro quo* harassment and Respondents are liable for that violation as well. *Id.* The Commission thus finds Respondents liable for *quid pro quo* sexual harassment as to both actions.

Whether Respondents' conduct toward Ms. Feinstein that occurred after she was discharged subjects them to liability for violating the Chicago Human Rights Ordinance raises another set of issues. Courts have held that employers and persons who take adverse actions against a terminated employee are liable if there are actions are continuing acts of discrimination and have the potential to harm the terminated employee's future job prospects. [COL #5]. Here, Mr. Yergin's creation of the derogatory domain name registrations had the potential to do just that–harm Ms. Feinstein's job prospects because of the specific business (the dating industry) she was in. Such conduct violates the Chicago Human Rights Ordinance.

Nevertheless, the Commission has determined that it cannot find a separate violation of the Ordinance with respect to the creation of the derogatory domain names, because that conduct was not alleged by Complainant in her Complaint and she filed no Amended Complaint adding such an allegation. See *Vasilatos v. Chicago Bureau of Parking et al.*, CCHR No. 95-PA-60/61 (May 30, 1996), where the Commission ruled that it could not reopen a case on request for review where the events relied on were not covered by the complaints. The Commission disagrees with the Hearing Officer's reasoning that this issue was waived at the Administrative Hearing and that the Complaint should be liberally construed to include this conduct because it is actionable as part of a continuing violation and as a reasonable inference from the other allegations of the Complaint.

The cited precedent of *Adams v. Chicago Fire Dept.*, CCHR No. 92-E-72 (Oct. 14, 1993) was not a case involving failure to plead a particular discrete incident; rather, the pertinent holding concerned the pleading of a claim of harassment based on source of income. Although the respondent in *Adams* argued that only one incident was alleged in the complaint to support the harassment claim, the Commission found that the complaint had actually alleged several examples of incidents of harassment, which were sufficient to set forth the scope of the claim. Only one claimed violation was involved, albeit based on a cumulation of multiple incidents as is the typical nature of a harassment claim.

The Chicago Human Rights Ordinance calls for imposition of a fine of $100-$500 "for each offense." Thus in order to impose a separate fine and award other relief specifically for the conduct of creating derogatory domain names, that must be found to constitute a separate offense, not–as in

a harassment claim–one of several examples of incidents that cumulate into one offense. For the other two recommended violation findings–the employment termination and the failure to pay full compensation owed–each action on which the finding is based was adequately pleaded as well as sufficiently discrete to constitute a separate offense.

The creation of the domain names may, as the Hearing Officer concluded, be potentially treatable as a separate offense. But it must be adequately pleaded so that Respondents had adequate notice of the nature and scope of Complainant's claim. Although the Complaint was fairly detailed and did include allegations concerning Mr. Yergin's conduct in seeking an Order of Protection, the Complaint did not mention the domain names at all. The Commission does not believe that the allegations of the Complaint support an inference that the scope of Complainant's claims as alleged in the Complaint included the conduct with respect to domain names. It is not sufficiently similar to the other conduct alleged in the Complaint.

The Commission agrees with the Hearing Officer that Mr. Yergin's pursuit of an Order of Protection in the Domestic Relations Division of the Circuit Court of Cook County, Illinois, even if frivolous and reprehensible, is not sufficiently connected to Ms. Feinstein's future job prospects to constitute a violation of the Ordinance. [COL #5 and cases cited therein]. For that reason, Respondents cannot be held liable for having violated the Ordinance with respect to his seeking of an Order of Protection.

The Commission also agrees with the Hearing Officer that Respondents are not liable on a hostile work environment theory. No sexually derogatory statements or actions against Ms. Feinstein were alleged to have occurred at the workplace (or elsewhere in the context of performing work for Respondents). Ms. Feinstein's relationship with Mr. Yergin was not conducted at the workplace and did not interfere with her work until she ended the relationship and was terminated. [FOF #10-21]. In these circumstances, no claim under a hostile work environment theory of sex harassment is supported. COL #6 and *Reed v. Strange*, CCHR No. 92-H-139 (Oct. 19, 1994).

In summary, the Commission finds liability for *quid pro quo* sexual harassment by Respondents for their conduct of (1) causing Complainant's termination from employment and (2) failing to pay her the total commission owed, in both instances because Complainant discontinued an initially-consensual sexual relationship with Respondent Yergin.

REVIEW OF INTERLOCUTORY ORDER AND EVIDENTIARY RULINGS

Respondents objected to the interlocutory order of the Hearing Officer dated November 14, 2005, claiming that "the Hearing Officer essentially denied the Respondents all meaningful opportunity to obtain discovery from Complainant regarding the basis of her claims and Respondents' defenses." Resp. Obj. at 32. The Hearing Officer recommended that this Objection be overruled.

Respondents also objected to two evidentiary rulings, one allowing portions of the transcript of the Order of Protection hearing to be admitted and one allowing evidence of Mr. Yergin's federal fraud conviction to be used only for purposes of impeachment. [Tr. 341]. The Hearing Officer recommended that both Objections be overruled.

As explained below, the Commission agrees with and adopts the Hearing Officer's recommendations as to these issues.

A. Discovery Issues

Respondents served Complainant with Requests to Produce Documents and Proposed Interrogatories on or about September 29, 2005. Respondents did not file a motion to obtain permission to serve interrogatories as required by Reg. 240.435. At the Pre-Hearing Conference held on November 10, 2005, Respondents for the first time sought to compel responses to their discovery requests by oral motion. Reg. 240.456 requires a party to file a motion to compel within 7 days after the failure to comply, a deadline that Respondents missed. The Hearing Officer denied the motion because it was made orally in an untimely manner and also because he believed that considering and granting the motion would have unnecessarily delayed the hearing. [Order of November 14, 2005, ¶4].

In their Objections, Respondents did not address that their motion was untimely and made only orally, although Reg. 240.456 certainly contemplates that such a motion be made in writing, as the Hearing Officer indicated in the November 14, 2005 Order. See *Fischer v. Teacher Acad. for Mathematics and Science*, CCHR No. 96-E-164 (Mar. 18, 1999).

Upon motion by Respondents, the Administrative Hearing in this case was continued twice. Between the date of the Pre-Hearing Conference and the Administrative Hearing, the Hearing Officer conducted a status conference at which Complainant agreed to produce certain tax records, which Respondents were allowed to introduce at the hearing. [Respondents' 12/30/05 Motion to Submit Second Amended Exhibit List for Administrative Hearing at p. 1-2]. Respondents made various requests to amend their exhibit list, leaving the Hearing Officer under the impression that they had delayed reviewing the Commission's file until after the Pre-Hearing Conference. [Respondents' December 20, 2005 Motion to Amend Exhibit List at 2-3]. In any event, Respondents had ample time to prepare for the Administrative Hearing and opportunity to make appropriate pre-hearing motions.

In their Objections, Respondents did not point to any information they did not have which would have been admissible evidence at the Administrative Hearing. Given all of this and the failure of Respondents to comply with the procedural requirements set forth in the Commission's discovery regulations, the Hearing Officer recommended that this Objection be denied, and the Commission agrees. See *Fischer v. Teacher Acad. for Mathematics and Science*, *supra*, and *Robinson v. Crazy Horse Too*, CCHR No. 97-PA-89 (May 6, 1999).

B. Evidentiary Rulings

Respondents objected to the introduction of portions of Mr. Yergin's testimony from the Order of Protection Hearing, renewing their original objections filed by them on December 5 and 30, 2005. [Tr. 3-4]. That Objection is overruled, as the Hearing Officer carefully restricted the use of that transcript to the admission that Ms. Feinstein's termination was connected to her ending of their personal relationship and to impeachment in response to Mr. Yergin's testimony at the

Administrative Hearing in this matter. [FOF #17, Tr. 337-39; 345-46, 357; C.Ex. E]. In their Objections, Respondents have not cited any case law that makes the admission of that limited evidence improper. Clearly, the use of prior sworn testimony as admissions and for impeachment of inconsistent testimony at this Commission's hearing is appropriate. Therefore, the Hearing Officer's recommendation that the Commission overrule this Objection is adopted.

With respect to the use of Mr. Yergin's federal fraud conviction, the case law is clear that such a conviction for a crime of moral turpitude is admissible to attack credibility. See, e.g., *People v. Montgomery*, 47 Ill.2d 510, 516, 268 N.E. 2d 695 (1971); *Stokes v. City of Chicago*, 333 Ill.App.3d 272, 278, 775 N.E.2d 72, 76-7 (1st Dist. 2002). In addition, the Hearing Officer made clear that he did not give much weight to this conviction in making an assessment of Mr. Yergin's credibility, due to the length of time between the conviction and the testimony. See p. 24-5 *supra*. Therefore, the Commission adopts the Hearing Officer's recommendation that this Objection be overruled as well.

RELIEF

A. Fines for Ordinance Violations

Section 2-160-120 of the CHRO provides that a fine not exceeding $500 shall be levied for any violation of the provisions of the Ordinance. The Hearing Officer recommended that the Commission order Respondents to pay total fines of $1,500 at $500 each for the three violations of discharging Ms. Feinstein, refusing to pay the full compensation owed to her, and creating derogatory domain name registrations. The Hearing Officer concluded that the conduct was sufficiently egregious to justify the maximum fine for each action. [FOF #10-22].

As discussed above, the Commission finds that only two violations occurred: the employment termination and the failure to pay the full compensation owed at termination. Therefore, the Commission imposes the maximum fine of $500 for each violation, for total fines of $1,000.

Respondents raised three objections to the fines in their Objections. Resp. Obj. at 25-6. Those which relate to the derogatory domain name registrations are now moot given the Commission's determination that this conduct was not adequately pleaded as a separate violation by Complainant.

Respondents' also objected to amounts of the fines, arguing that their actions in terminating Complainant and refusing to pay her the compensation owed were not serious enough to warrant the maximum fine and the Hearing Officer did not make sufficient findings to support the amounts. Resp. Obj. at 26-7. First, the Commission has decided several cases in which respondents have been fined the maximum statutory amount for discharging an employee in violation of the Ordinance. See, e.g., *Pearson v. NJW Personnel,* CCHR No. 91-E-126 (Sep. 16, 1992); *Wehbe v. Contacts & Specs et al.,* CCHR No. 93-E-232 (Nov. 20, 1996); *Houck v. Inner City Horticultural Foundation, supra*; *Claudio v. Chicago Baking Co.,* CCHR No. 99-E-76 (July 17, 2002); *Martin v. Glen Scott Multi-Media,* CCHR No. 03-E-34 (Apr. 21, 2004); *Mullins v. AP Enterprises et al.,* CCHR No. 03-E-164 (Jan. 19, 2005).

Moreover, as noted below in the discussion of punitive damages, the Hearing Officer did find that Respondents' conduct was willful and egregious, done with intent to injure Complainant and in reckless disregard of her rights. This finding, with which the Commission agrees, supports imposition of the maximum fines for the two violations found.

B. Back Pay

Ms. Feinstein has sought the $700 unpaid from her last paycheck in June 2002, plus back pay for the second half of 2002 and all of 2003. [Tr. 378]. Her W-2 Form from 2002 shows that in the first six months of that year, she earned $33,713 from Premiere. Her guaranteed weekly salary was $1,000, for $52,000 per year. Ms. Feinstein had no other earnings in 2002 and received $6,905 (from work for Visa) in 2003. She also received an unemployment insurance payment in January 2003 [FOF #8, 21, 23-24; H.O. Ex. A].

Respondents offered several defenses to a back pay award at the Administrative Hearing. First, they sought to establish that Premiere was a failing business and had no employees after Ms. Feinstein's departure, so even if Ms. Feinstein had not been terminated, she would not have been employed by Premiere in 2003. Second, they argued that because Ms. Feinstein started her dating service company at the end of 2002, she must have made money in the company during 2003. Third, they argue that she did not make a diligent work search. Respondents have the burden of persuasion on each of these claimed defenses to back pay. [COL #8-9 and cases cited therein].

As to the health of the business, Respondents offered no records or testimony to pinpoint when it last employed persons of Ms. Feinstein's level of responsibility. Mr. Yergin could not state when Ms. Fleming left Premiere, but even after that, his son ran the business for six months and he continued to do work for it. [FOF #27]. In addition, Mr. Yergin left a message for Ms. Feinstein in late October 2002 stating that Premiere was doing well financially, and he testified at the Administrative Hearing in response to a question from his own attorney that it was grossing over $80,000 per month through the end of 2002. [FOF #23].

The fact that Ms. Feinstein testified that the business was not "profitable" was not sufficient, in light of the rest of the evidence, to show that Premiere's doors were about to close or would have closed even if she had remained an employee, especially in the remainder of 2002. [FOF #9]. In his objections, Respondents once again attempted to explain away Mr. Yergin's statements but offered no evidence to cause the Hearing Officer to question the validity of these recommended findings. [See Resp. Obj. at 19-20 and compare with Tr. 287, 293; FOF #23-4].[15]

Another problem for Respondents in asserting this defense is that Mr. Yergin acknowledged that Ms. Feinstein was a productive employee. [FOF #23]. To allow Respondents to succeed on a defense that the business was no longer successful after terminating her in violation of the Ordinance

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[15] Although Respondents attempt to explain away Mr. Yergin's testimony as a guess (Resp. Obj. at 19), at the hearing they failed to offer any business or tax records to show what kind of financial condition Premiere was in. In essence, they ask the Hearing Officer and Commission not to credit Mr. Yergin's own testimony about gross receipts and his message to Ms. Feinstein in October 2002 that business was good, but then question why the Hearing Officer has concluded that he lacks credibility.

would be would allow them to rely on their discriminatory conduct to avoid responsibility for making Respondent whole. See, e.g., *Lathem v. Department of Children and Family Services*, 172 F.3d 786, 794 (11th Cir. 1999) (Employer cannot rely on employee's disability that prevented employee from seeking work when its discriminatory conduct caused the disability); *Kulling v. Grinders for Industry, Inc.*, 185 F.Supp.2d 800 (E.D. Mich.2002) (same).

Ms. Feinstein testified that in 2003 she received a relatively small amount of earnings ($6,905) for commission sales work she had commenced in 2002, and directed her efforts at trying to build her own dating service business, but she did not earn money in that business until 2004. She also testified that it was hard to find work in the dating service business because Premiere had a bad reputation, and that led her to start her own business. [FOF ##24-5]. Ms. Feinstein's testimony was credible on these points. Respondents offered no evidence to contradict her testimony.

Based on the evidence summarized above, the Hearing Officer recommended that Ms. Feinstein be awarded back pay as follows:

1. A total of $34,413 for the last six months of 2002, consisting of $33,713 as the same amount she earned in salary and commission in the first six months of 2002 as reported on her W2 Form, plus $700 for the unpaid portion of her last paycheck.

2. $52,000 for 2003, based on her weekly guaranteed salary of $1,000 minus the $6,905 in earnings received during that year, for a total recommended back pay award of $81,208[16]. FOF ##23-4; COL ##7-10.

Respondents argue in their Objections that Ms. Feinstein was not successful in 2002 and 2003 in obtaining and keeping employment with high enough wages. Resp. Obj. at 20. Respondents made several other Objections regarding the amount of back pay, including (1) the claim that Complainant made less in subsequent employment relieves Respondents of any liability for back pay; (2) because Respondents were told only after the Finding of Substantial Evidence that Complainant could be awarded back pay for a violation of the Ordinance related to her termination, they should not be liable; and (3) that no back pay should be awarded because (confusing back pay with front pay) the Commission's Damage Rulings Summary[17] makes clear that front pay is rarely awarded. Resp. Obj. at 20-1, 27. These Objections are lacking in merit based on Commission case law. [COL ##8-12].

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[16] The Hearing Officer stated in his Final Recommended Decision that the total recommended back pay award was $81,208, although due to a typographical error, this backpay amount was listed as $82,208 in the First Recommended Decision. The Commission calculated the total recommended back pay as $79,508. However, the correct recommended total need not be determined at this point in light of the Commission's decision awarding back pay only for 2002.

[17] The Damage Rulings Summary, recently updated and renamed Board Rulings Digest, is a Commission publication that summarizes rulings of the Board of Commissioners awarding relief after finding an ordinance violation. It is merely an index or digest designed to provide general information to the public about decisions relevant to awards of relief, and not itself an ordinance, regulation, or citable precedent. Moreover, the observation that a remedy may be rarely awarded (which was made in the context of defining front pay) does not mean the remedy should not be awarded in a particular case.

Respondents also objected to the amount of the back pay award on the ground that the Hearing Officer did not consider the worsening business conditions and that Ms. Feinstein's guarantee was only $1,000 per week. They note that she testified that she did not receive her guarantee in many instances in 2002. [Resp. Obj. at 28]. Actually this last claim is misleading. Ms. Feinstein was asked the percentage of weeks during employment in 2002 when she only made her $1,000 guarantee–that is, the percentage of weeks where her commissions were less than $1,000. [Tr. 257]. Her response was between 20-50%, which of course means that in at least half of the weeks of the first half of 2002, she made more than her guarantee of $2,000. That is consistent with the amount of earnings reported in her W-2 Form for that period. [Tr. 257; H.O. Ex. A]. That evidence fully supports the award for 2002. As for 2003, the Hearing Officer reasoned that he erred on the safe side by recommending only her guaranteed salary because there were no higher comparable figures for 2003 similar to the W-2 Form for 2002.

As the Hearing Officer noted, to establish a failure by Complainant to mitigate her damages due to lost wages, Respondents had to show that Ms. Feinstein failed to make a diligent work search, quit suitable employment, left the labor market, or lost a job due to misconduct. [See COL #8-12].

In reviewing the parties' positions and the Hearing Officer's recommendations, the Commission accepts the Hearing Officer's recommended back pay award of $34,413 for 2002 but finds that no additional back pay should be awarded for 2003. By 2003, Complainant had launched her own dating service business. She was not in the "labor market" in the sense of conducting a search for substitute employment, even though she continued some commission sales work commenced in 2002 which produced only minimal earnings. The Hearing Officer found that she opened her business in November 2002, that the first newspaper article referencing it appeared one month later, and that the first radio spot mentioning it occurred on November 19, 2002. FOF #24. The Hearing Officer further found that Complainant received an unemployment compensation payment in January 2003 (FOF #24), presumably for claims prior to that date. But there was no evidence of any later unemployment compensation received, which might have supported an inference that Ms. Feinstein was conducting a job search as required to receive ongoing unemployment compensation.

The Commission believes it is not unusual or unforeseeable that Ms. Feinstein would not have net earnings from her new business in 2003, the first full year of operation. However, that circumstance does not call for a back pay award. In making the choice to start her own business, Ms Feinstein focused her attention on development of that business rather than on seeking substitute employment, looking instead to future earnings as her business became established.

Although Ms. Feinstein had some modest earnings from employment with Visa in 2003, the amount and duration is not inconsistent with the other evidence that by 2003, Ms. Feinstein was investing her energies in the development of her own business rather than in seeking substitute employment, after having made efforts to find employment with other dating services in 2002 but experiencing rejection because of the negative reputation of Premiere. FOF #24.

The evidence is persuasive that, had Ms. Feinstein been able to continue her employment with Premiere through the end of 2002, she would have earned an amount comparable to what she

earned in the first half of that year. Mr. Yergin himself testified that at that point the business was grossing at least $80,000 per month, and he also admitted that Ms. Feinstein was a productive employee. It is less clear what the state of the business would have been in 2003, even if Complainant's employment had continued. However, that issue need not be addressed in light of the Commission's determination that by 2003 Ms. Feinstein was no longer seeking substitute employment.

C. Damages for Emotional Distress

Ms. Feinstein sought $10,000 in damages for emotional distress. Much of the testimony regarding Complainant's emotional distress related to the impact of the Order of Protection filing and hearing. [Tr. 89-96, 266-67]. For reasons stated above, this conduct did not violate the Ordinance and therefore cannot as such be the basis for a damages award. Complainant also stated that she was upset for a year after finding out about the derogatory domain name registrations. [FOF #24]. Again for the reasons stated above, the Commission does not award relief based on that conduct because of the inadequate pleading.

The Hearing Officer recommended an emotional distress damages award of $7,500, finding that Ms. Feinstein was a reasonably vulnerable Complainant in that she was being discharged by her boss because she broke off their relationship, then was denied her last paycheck and subjected to the derogatory domain name registrations. He noted several relevant prior decisions beginning with *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000), where the Commission awarded $8,000 in emotional distress damages based largely on that complainant's vulnerability as a pregnant woman discharged for that reason, when the duration of the emotional distress was found to be one month. In *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998), the Commission awarded $5,000 for emotional distress flowing from a discharge explicitly based on sexual orientation where that complainant's symptoms were significant and the emotional distress exacerbated due to previous discriminatory conduct. In *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004), the Commission awarded $2,000 in a similar *quid pro quo* sexual harassment case resulting in termination but with no direct threats. Finally, the Hearing Officer noted that the Seventh Circuit has upheld an award of $50,000 for emotional distress arising from the discriminatory denial of rental housing accompanied by a death threat and racial epithet. *Littlefield v. McGuffey*, 954 F.3d 1337, 1348 (7th Cir. 1992). The Hearing Officer based his $7,500 recommendation on his determination that Ms. Feinstein was somewhat less vulnerable than Griffiths, that there was less evidence of physical symptoms compared to those suffered by Houck, but the discrimination was more egregious than what Houck or Griffiths suffered.

In their Objections, Respondents cited cases in which the reason for the compensatory damages award was long term sexual harassment or testimony about symptoms of emotional distress such as difficulty in sleeping. Resp. Obj. at 29-31. Respondents also challenged the recommended award by rearguing credibility and attempting to diminish the impact of the death threat. Resp. Obj. at 30.[18]

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[18] Respondents attempt to explain away the impact of the death threat by contending that since Ms. Feinstein saw Mr. Yergin on various occasions after the death threat, she really must not have been afraid of him or taken the threat seriously. Resp. Obj. at 30. The Hearing Officer considered that explanation speculative.

The Commission agrees with the Hearing Officer that death threats and sudden loss of employment and income are inherently distressing and support some award for emotional distress in this case. However, it is the Commission's view that the evidence does not support an award of emotional distress damages higher than $2,500.

Ms. Feinstein did testify that she was fearful for a period after her termination due to recalling Mr. Yergin's previous threat to kill her if she left him occurred when she attempted to break off her relationship on an occasion prior to June 30, 2002. [Tr. 89-90]. She testified that hear fear based on this threat persisted until about December 2002 [Tr. 90] and was exacerbated by Mr. Yergin's conduct in the context of a court appearance in which he said he was "going to get" her and "stalked" her and her attorney "for a period of an hour and a half." [Tr. 94]. When asked by the Hearing Officer to describe how her distress was manifested, she responded that is was "by your standard case of major anxiety"; that she had trouble getting her thoughts together, which rendered her less articulate than usual while appearing on "the news" to promote her business; that she would awaken early and feel "panicky"; and that symptoms of a kidney problem which flares up under stress appeared during that period. [Tr. 97-98].

The Hearing Officer's findings of fact included that Ms. Feinstein suffered emotional distress as a result of the Order of Protection proceeding in that she could not function. She felt the most terrified that she had felt in her life. After she was served with the Order of Protection, she left the state for 3 weeks prior to the hearing. She continued to be in fear of Mr. Yergin after the Order of Protection hearing because of threats made to her and her attorney in the lobby outside of the courtroom and the fact that he followed her and her attorney. She felt anxiety and could not sleep through the night. FOF #26. The Commission accepts the Hearing Officer's recommendation that Mr. Yergin's conduct in seeking an Order of Protection cannot be the subject of relief from the Commission because that alone did not violate the Chicago Human Rights Ordinance. However, the Commission can and has considered how Mr. Yergin conducted himself personally toward Ms. Feinstein in the context of those proceedings (threatening and following her), as reinforcing the reasonableness of her fear of bodily injury or other harm during that period.

Nevertheless, the evidence of emotional distress in this case is relatively minimal. Applying the *Nash/Demby* standards cited with approval in *Griffiths* and other subsequent cases, Complainant's distress was of relatively short duration. She testified to some physical symptoms, as one would expect to flow from experiencing these types of Ordinance violations accompanied by the threats, but they were not of an unusual or extensive nature. The Commission does not regard Ms. Feinstein as particularly vulnerable or fragile compared to other employees experiencing adverse job actions. The discriminatory actions were discrete and took place over a relatively short period of time. In employment discrimination cases with this level of evidence, the Commission typically awards some emotional distress damages but not a large amount. *Hackett v. Judeh Brothers, Inc. et al.*, CCHR No. 93-E-111 (Jan. 18, 1995 and Oct. 22, 1997) ($2,000); *Brooks v. Hyde Park Realty Co., Inc.*, CCHR No. 02-E-116 (Dec. 17, 2003) ($2,000); *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004) ($2,000).

D. Punitive Damages

Ms. Feinstein sought $10,000 in punitive damages. As the Hearing Officer pointed out,

"The purpose of an award of punitive damages in these kinds of cases is 'to punish (the defendant) for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" *Houck v. Inner City Horticultural Foundation*, 97-E-93 quoting *Smith v. Wade*, 461 U.S. at 54; COL #13. Here Mr. Yergin's conduct in threatening physical harm to Ms. Feinstein if she sought to terminate their relationship and then causing her to be terminated as well as withholding payment of the compensation due to her was egregious conduct that was undertaken knowingly, with intent to injure, and in reckless disregard for her rights under the Ordinance. Given these facts and Commission case law, the Hearing Officer recommended a punitive damages award of $7,500, citing *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 ($10,000 in punitive damages because of repeated and long term sexual harassment); *McCall v. Cook Country Sheriff's Office et al*, CCHR No. 92-E-122 (Dec. 21, 1994) (in sexual harassment case, $9,000 and $6,000 in punitive damages against two individual respondents).

Respondents' only challenge to the punitive damages recommendation in their Objections was to again challenge the Hearing Officer's findings of fact. Resp. Obj. at 31-2. These Objections have been rejected as explained above.

The Hearing Officer noted that many of the positions taken by Mr. Yergin in Respondents' Objections only underscored the need for the amount of punitive damages awarded here as a deterrent, such as Resp. Obj. at 26 (the sticks and stones language with respect to the domain sites) and the contradictory positions taken by Mr. Yergin in attempting to explain away his prior testimony or the impact of his actions as cited above. The Hearing Officer made it clear that a Respondent who challenges factual findings or conclusions of law should not have to fear that by so doing he or she will be adding support to the punitive damages award by failing to show remorse. However, many of Mr. Yergin's comments do reinforce the conclusion of the Hearing Officer that he failed to appreciate the gravity of the harm he caused. Punitive damages awards are designed to address such circumstances.

The Commission agrees with the Hearing Officer that Respondents' conduct toward Ms. Feinstein was egregious. It was done with intent to injure her and in reckless disregard of her rights. Even though Mr. Yergin's frivolous pursuit of an Order of Protection and juvenile conduct of creating derogatory domain names are not found to be violations of the CHRO, these actions do illustrate a lack of appreciation of the seriousness of the *quid pro quo* sexual harassment which did occur and the need to impose punitive damages to punish such conduct and deter it in the future. A $7,500 award strikes an appropriate balance between the awards in the *Ordon* and *McCall* cases noted above.

E. Pre- and Post-Judgment Interest

Section 2-120-510(l) of the Chicago Municipal Code provides for payment of interest on damages awarded to complainants. Pursuant to Commission Reg. 240.700, the Commission awards pre- and post-judgment interest at the prime rate, adjusted quarterly, and compounded annually from the date of the Ordinance violation. The Hearing Officer recommended that interest be awarded

starting from June 30, 2002, the approximate date of the first incident of harassment.[19] However, his recommendation referred only to pre-judgment interest. In recent years, the Commission has routinely awarded pre- and post-judgment interest on its awards of monetary relief, e.g. *Steward v. Campbell's Cleaning Servs. et al.,* CCHR No. 96-E-170 (June 18, 1997); *Griffiths v. DePaul University,* CCHR No. 95-E-224 (Apr. 19, 2000); *Trujillo v. Cuauhtemoc Rest.,* CCHR No. 01-PA-52 (May 15, 2002). It appears that the failure to include post-judgment interest in the recommendation was a mere oversight. The Commission sees no reason not to award the full amount of interest authorized and so awards both pre- and post-judgment interest from June 30, 2002.

CONCLUSION

In summary, the Commission rules as follows:

1. The Commission finds that Respondents Premiere Connections LLC and Michael Yergin have violated the Chicago Human Rights Ordinance in the form of *quid pro quo* sexual harassment by (a) terminating Complainant's employment then (b) paying less than the full amount of compensation owed, after Complainant discontinued a consensual sexual relationship with Respondent Yergin.

2. Respondents' Objections to the Interlocutory Order of November 14, 2005 and to the Hearing Officer's Evidentiary Rulings are overruled.

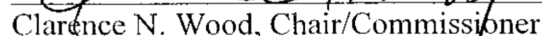
3. Complainant is awarded $34,413 in back pay; $2,500 in damages for emotional distress, and $7,500 in punitive damages, for total damages of $44,413, plus pre- and post-judgment interest dated from June 30, 2002.

4. Respondents are fined $500 for each of the two violations stated above, for total fines of $1,000.

5. Respondents are jointly and severally liable for the foregoing damages and fines.

6. As Complainant was not represented by counsel, no attorney fees are awarded.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: 
Clarence N. Wood, Chair/Commissioner

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[19] In the First Recommended Decision, the date for commencement of pre-judgment interest was stated as April 15, 1999. Respondents properly objected to that, as it was incorrect. Resp. Obj. at 32. The June 30, 2002 date is used because that is when Mr. Yergin informed Ms. Feinstein that her ending of their dating relationship was tantamount to a resignation. See FOF #15.