



City of Chicago
COMMISSION ON HUMAN RELATIONS
 740 N. Sedgwick, 4th Floor, Chicago, IL 60654
 312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF

Leroy J. Collins,
Complainant

v.

Five Star Food and Liquor and Ferass
 Mustafa a/k/a Frank Mustafa,
Respondents

Case No. 11-E-68

Date Mailed: January 30, 2014

TO:

Marshall J. Burt
 77 W. Washington St.
 Suite 1306
 Chicago, IL 60602

Fadi Y. Rafati
 Rafati, Ward & Assoc. P.C.
 Attorney for Respondents
 22 W. Washington St., 15th Fl.
 Chicago, IL 60602

FINAL RULING ON LIABILITY AND RELIEF

I. BACKGROUND

On September 20, 2011, Leroy Collins filed a Complaint with the City of Chicago Commission on Human Relations against Five Star Food and Liquor, alleging that its owner, Ferass Mustafa a/k/a Frank Mustafa harassed and discharged him because of his race in violation of Chapter 2-160 of Chicago Municipal Code. After an investigation, on April 18, 2013, the Commission entered an Order Finding Substantial Evidence.

On April 24, 2013, the Commission issued an Order Appointing Hearing Office and Commencing Hearing Process and, in that Order, set a Pre-Hearing Conference date of May 21, 2013. The Order stated that “[f]ailure to comply with orders and regulations can result in substantial penalties pursuant to Subpart 235 of the Commission’s regulations, including dismissal of the complaint, an order of default against a respondent, fines, and costs including attorney fees.”

After Respondents failed to appear for the Pre-Hearing Conference, on May 21, 2013, a Notice of Potential Default was issued by the hearing officer. Neither the Respondents nor their counsel filed any response to the Notice of Potential Default. On July 2, 2013, a pre-hearing status conference was held. Complainant appeared personally and reported that he had spoken with Respondent Ferass Mustafa who informed him he was aware of the conference but Respondents did not appear, nor did Respondents contact the hearing officer or the Commission to inform anyone

that they would not be present. On July 3, 2013, a Default Judgment against Respondents was issued.

The Order of Default means that Respondents are deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations including defenses concerning the Complaint's sufficiency. As further set forth in Commission Regulation 235.320, an administrative hearing was held only to allow Complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Complainant could rely on his Complaint to establish his *prima facie* case or present additional evidence. Respondents were notified that they could not contest the sufficiency of the complaint or present any evidence in defense, but could present evidence as to whether the relief sought by Complainant was reasonable and supported by the evidence provided by Complainant.

On August 6, 2013, an administrative hearing was held. Complainant and his witness were present. Complainant was represented by counsel. Respondents again did not appear, nor did they inform the hearing officer or the Commission that they were unable to appear.

II. FINDINGS OF FACT¹

1. Complainant Leroy Collins is a 53-year-old African-American resident of the City of Chicago (T. 9). Mr. Collins has been married to Lavern Collins for twenty-seven (27) years (T. 10).

2. Mr. Collins, who has an 11th grade education, began working as an unarmed security guard for Respondent Five Star Liquors, located at 935 West 87th Street, Chicago, Illinois in October of 2008 (T. 10-11). Between October 2008, and September 2011, the Complainant's customary hours of work were from 5:00 p.m. to 1:00 a.m., Monday through Thursday and from 5:00 p.m. to 2:00 a.m., Friday through Saturday (T. 11).

3. Mr. Collins salary during this time was \$13.00 per hour (T. 11). Therefore, for a 50 hour week, with 10 hours calculated at time and a half, Mr. Collins earned \$715.00 gross.

4. Respondent Ferass Mustafa, also known as Frank, is the owner of Five Star Food and Liquor, and was Mr. Collins' immediate supervisor. Mr. Mustafa is Arab and is not African-American (T. 15).

5. Throughout Mr. Collins' employment, Mr. Mustafa subjected him to a regular torrent of vile, racist comments, meant to demean and debase him. Among other remarks, Ferass Mustafa called Mr. Collins, "Black Motherfucker," "Bitch ass nigger," "boy," "malt head," and "malt mouth" (T. 15). According to Mr. Collins, Ferass Mustafa referred to him as a "nigger" on a continual basis throughout the work day (T. 16). These remarks intensified as Mr. Mustafa drank. They were made in the presence of other employees and customers (T. 17).

6. Mrs. Collins testified that on occasion, Mr. Collins would telephone her from work and let her listen to Mr. Mustafa's racial invectives. She heard him call her husband, "black motherfucker" and "bitch ass motherfucker" (T. 39).

¹ The Commission has made certain typographical and editorial corrections to the Findings of Fact which are not intended to change the substance of the hearing officer's findings.

7. Mr. Collins asked Mr. Mustafa to “please stop” on many occasions, but to no avail. Mr. Collins looked for other work but could not afford to voluntarily leave his job.

8. On September 16, 2011, Mr. Mustafa discharged Mr. Collins. The hearing officer found that Mr. Collins’ discharge was motivated by his race. Mr. Mustafa, who had been drinking, told Mr. Collins that he wanted him to carry a gun in the store. Mr. Collins was not licensed to carry a gun and told that to Mr. Mustafa. Mr. Mustafa said, “You black motherfucker. You can’t do nothing” (T. 20). “Boy, you ain’t shit. I should have fired your ass” (T. 21).

9. Mr. Collins told Mr. Mustafa that he, Mustafa, had been drinking too much and that all Mr. Collins wanted to do was to just go home. Mr. Mustafa responded, “You’re not only going home. You’re fired” (T. 21-22).

10. Approximately one year later, in August of 2012, Mr. Mustafa contacted Mr. Collins and offered to rehire him. (Tr. 23) Mr. Mustafa was about to go to jail and wanted someone who knew the neighborhood to work security in his absence. Mr. Collins, who had been unable to find other employment, felt that he had no choice but to return. The payments on Mr. Collins’ house were two months behind and he needed employment. So he returned (T. 26).

11. Almost immediately, the racial harassment resumed, this time instigated by Mr. Mustafa’s brother, Murray Mustafa, who was managing the store during his brother’s incarceration (T. 27). Murray Mustafa and the other employees treated Mr. Collins like garbage (T. 28).

12. On September 20, 2011, Mr. Collins filed his complaint with the Chicago Commission on Human Relations alleging racial harassment and discriminatory discharge (Complainant’s Exhibit 1).

13. In June of 2013, after Mr. Mustafa’s incarceration when he had returned to work, Mustafa received a letter from the Chicago Commission (T. 31). Mr. Mustafa confronted Mr. Collins. Mr. Collins testified that Mustafa said, “You’re still going through with this shit, this case? You’re a bitch. You’re a pussy. Bitch ass nigger doing this shit. I thought we had agreement, I give your job back; you squash everything” (T. 32).

14. Then, Mr. Mustafa turned around and said, “Since you still want to go proceed with this paperwork here, you’re fired (T. 32).

15. Mr. Collins testified that Respondents’ actions made him feel like he was less of a man and could not defend himself. Mr. Collins stated, “I was treated like garbage when other people were around” (T. 17). When Mr. Collins would leave the store, he would become so discouraged about his situation that he would call his wife from the car so that he would not have to discuss his experiences when he arrived at home. Mr. Collins testified that the racist harassment “tore up” his relationship with his family (T. 19). The hearing officer found Mr. Collins’ testimony to be candid and poignant.

16. Mr. Collins testified that when he was fired in September 2011, everything appeared hopeless (T. 33).

17. Mrs. Collins testified that her husband got to the point where the harassment made him feel like throwing up, but he was unable to do so. He could not eat. He would return from work at 3:00

a.m. and when she went to work at 6:00 a.m., Mr. Collins would still be sitting up talking about how he had been treated in the store that day (T. 40).

18. Mrs. Collins testified that she tried to get her husband to quit working for Respondents. Mrs. Collins credibly testified that during their marriage her husband “always had one or two jobs, sometimes three. “He always worked and supported his family” (T. 41). Mrs. Collins testified that after Mr. Collins was discharged in September 2011, the bills began piling up and he got “kind of quiet.” Mrs. Collins stated that she knew that “it made him feel less than a man. You can’t support your family, and he was raised to support his family” (T. 41).

19. Between September 2011, and August 2012, Mr. Collins diligently looked for employment. He made phone calls and searched the internet for openings. Mr. Collins submitted a list of jobs he searched for during the time period, without success (Complainant’s Exhibit 2).

20. During Mr. Collins re-employment period, Respondents’ harassment caused Mr. Collins to lose sleep and caused tension between him and his wife. Mrs. Collins did not want Mr. Collins to return to work for Five Star and would tell him to leave his job. But Mr. Collins felt that he should endure this treatment so that he could pay the bills (T. 29). Mr. Collins told his wife that if he quit working the family could end up homeless.

21. After being discharged a second time, Mr. Collins felt worthless. Mr. Collins stated, [E]very time I get back up, I get put back down” (T. 33).

22. As of August 6, 2013, Mr. Collins remains unemployed.

23. Between September 16, 2011, and August 3, 2012, Mr. Collins was unemployed for forty-six (46) weeks. The hearing officer found that Mr. Collins would have earned \$32,890 working at Five Star Food and Liquors during this time period had he not been discharged because of his race.

24. Between June 1, 2013, and September 27, 2013, Mr. Collins was unemployed for an additional seventeen (17) weeks. The hearing officer found that Mr. Collins would have earned \$12,155 working at Five Star Food and Liquors during this time period had he not been discharged because of his race.²

25. The hearing officer found that it is impracticable to believe that Mr. Collins would be able to return to his employment at Five Star Food and Liquors, given the poisonous nature of the environment there and the Respondents’ demonstrated willingness to retaliate against him.

II. APPLICABLE LEGAL STANDARDS

1. Section 2-160-030 of the Chicago Human Rights Ordinance (“Ordinance”) makes it unlawful for any person to “directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual’s...sex...age...[or] national origin.” Section 345.100 of the Commission’s Regulations states that “harassment on the basis of actual or perceived membership in a Protected Class is a violation of the Ordinance” and that “an employer has an affirmative duty

² The record is unclear regarding the exact date that Complainant was discharged a second time by Ferass Mustafa. The hearing officer determined that Complainant’s last day of employment was June 1, 2013.

to maintain a working environment free of harassment on the basis of membership in any class protected by the Ordinance.”

2. Regulation 345.110 defines harassment as “slurs and other verbal or physical conduct relating to an individual’s membership in a protected class...when this conduct: (a) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (b) has the purpose or effect of unreasonably interfering with an individual’s work performance; or (c) otherwise adversely affects an individual’s employment opportunities.”

3. Reg. 345.120 states that an employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of membership in a Protected Class (see Reg. 100(26) above) regardless of whether the specific acts complained of were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

III. CONCLUSIONS OF LAW

1. The City of Chicago Commission on Human Relations has proper jurisdiction over the parties and over the subject matter of the Complaint.

2. Mr. Collins was subjected to unlawful racial harassment throughout his employment with Five Star Food and Liquor by Ferass Mustafa and others employed by Five Star Food and Liquor in violation of Section 2-160-030 of the Chicago Human Rights Ordinance (“Ordinance”).

3. On September 16, 2012, the Complainant was terminated from his employment by Ferass Mustafa, the owner of Five Star Food and Liquor, because of his race in violation of Section 2-160-030 of the Ordinance.

4. Ferass Mustafa is a “person” pursuant to Chapter 2-160-030 of the Ordinance and is subject to its provisions.

5. Mustafa is personally liable for his discriminatory conduct.

6. Five Star Food and Liquor is vicariously liable for the actions of Mr. Mustafa since he was Collins’ supervisor and was the owner of Five Star Food and Liquor.

ANALYSIS

The Order of Default means that Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations in the Complaint including defenses concerning the Complaint’s sufficiency. Commission Regulation 235.320. The Hearing Officer need only determine whether the Complainant has proved a *prima facie* case and whether damages have been proven. *Manzanares v. Lalo’s Restaurant*, CCHR No. 10-P-18 (May 16, 2012).

To establish a *prima facie* case of racial harassment, Complainant must show that (1) he was subjected to unwelcome conduct of a racial nature; and (2) the conduct was severe or pervasive

enough to render his working conditions intimidating, hostile or offensive. *Jones v. Lagniappe– A Creole Cajun Joynt, LLC, et al.*, CCHR No. 10-E-40 (Dec. 19, 2012).

The Complainant must establish that the conduct in question is both objectively offensive to an employee in the Complainant's situation and that it is subjectively offensive to the Complainant himself. *Escobedo v. Homak Mfg. Co., Inc.*, CCHR No. 93-E-7, at 6 (May 15, 1996), quoting *Saxton v. America Tel. & Tel. Co.*, 10 F.3d 526, 533 (7th Cir. 1993); *Osswald v. Yvette Wintergarden e. al.*, CCHR No. 93-E-93 at 11 (July 19, 1995), 2010 WL 3840321 (Chi.Com.Hum.Rel.).

To determine if an environment is sufficiently hostile or abusive, we look at "all the circumstances," including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Alexander v. 1212 Restaurant Group et al.*, CCHR No. 00-E-110 (Oct. 15, 2008), aff'd Cir. Ct. Cook Co. No. 09 CH 16337 (Feb. 19, 2010).

Complainant's testimony has compellingly satisfied his burden of proving that he was subjected to extensive unwelcome conduct in the form of slurs and other verbal conduct related to his race. Complainant testified that Ferass Mustafa, owner of Five Star Food and Liquor, repeatedly called him "Black Motherfucker," "Bitch ass nigger," and "boy." Many of these comments were made in front of other employees and customers. Complainant also sufficiently testified that Mustafa's conduct was pervasive enough to render his working environment intimidating, hostile, or offensive. Complainant testified that Mustafa's conduct intensified as he drank and on one occasion when Mustafa had been drinking told Complainant that he wanted him to carry a gun in the store. Complainant's testimony is sufficient to establish a *prima facie* case of harassment based on his race.

In any discrimination case which alleges disparate treatment in employment based on a protected class, a complainant may establish his or her case by direct evidence or indirect evidence of the necessary discriminatory intent. *Luckett v. Chicago Dept. of Aviation*, CCHR No. 97-E-115 (Oct. 18, 2000). To prove a discriminatory termination using the direct evidence method, Complainant must show that "(1) [his] employer made an unequivocal statement of discriminatory animus as a reason for taking the discriminatory action, or (2) circumstantial evidence, such as making statements or taking actions, together form the basis for concluding that the actions were motivated by discriminatory animus." *Id.*; see also *Griffiths v. DePaul Univ.*, CCHR No. 95-E-224 (Apr. 19, 2000), holding that 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."

Complainant presented sufficient evidence by the direct method to prove that his discharge was motivated by his race. On September 16, 2011, when Mustafa discharged Complainant, he told Complainant, "You black motherfucker. You can't do anything... You're fired." Mustafa's statements establish that he was discharging Complainant based on his race.

IV. RELIEF

Under the Chicago Municipal Code, Section 2-120-510(l), the Commission may award a prevailing Complainant the following forms of relief:

[A]n order ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant, to hire, reinstate or upgrade the

complainant with or without back pay or provide such fringe benefits as the complainant may have been denied ... to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission ...; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Damages

1. Out-of-Pocket Losses: Lost Wages

The Commission has long held that a complainant may recover damages for out-of-pocket losses even without written documentation of such damages as long as the complainant can testify to the amount of damages with certainty. *Horn v. A-Aero 24 Hour Locksmith Service et al*, CCHR No. 99-PA-032 (July 19, 2000); *Williams v O'Neal*, CCHR No. 96-H-73 (June 8, 1997); *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996); *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995); *Khoshaba v. Kontalonis*, CCHR No. 92-H-171 (Mar. 16, 1994). However, compensatory damages for out-of-pocket losses or emotional distress should not be awarded when they cannot be shown to have been caused by the discriminatory conduct or foreseeable to the respondents. *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al*, CCHR No. 99-H-39/53 (Apr. 18, 2001).

Complainant testified that his salary was \$13.00 per hour to work ten hours a day, calculated at time and a half for a 50 hour week. This amounts to \$715.00 per week. The hearing officer found that between September 16, 2011, and August 3, 2012, when Complainant returned to work for Respondents, he would have earned \$32,890.

Further, the hearing officer found that from June 1, 2013, when Complainant was discharged a second time, through September 27, 2013, Complainant would have earned \$12,155 during this period. However, the Commission has held that back pay runs from the date of discrimination until such time as the complainant fully mitigates the damages, is offered reinstatement, or the final ruling is issued. *Jones v. Lagniappe – A Creole Cajun Joynt, LLC, et al.*, CCHR No. 10-E-40 (Dec. 19, 2012); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002), citing *Steward v. Campbell's Cleaning Services et al.*, CCHR No. 96-E-270 (June 18, 1997). Therefore, the Commission has recalculated Complainant's back pay during this period, based on the estimated weeks from Complainant's last day of employment on June 1, 2013, through the date of this final order on January 15, 2014. This amounts to 32.5 weeks. At \$715 per week, this results in gross pay of \$23,237.

Front pay may be awarded in lieu of reinstatement, where a determination is made that reinstatement would be impracticable. See e.g., *Jones v. Lagniappe* CCHR No. 10-E-40 (Dec. 19, 2012); *Steward v. Campbell's Cleaning Services*, CCHR No. 96-E-270 (June 18, 1997). Here, the hearing officer found that it would be impracticable for Complainant to return to his employment at Five Star Food and Liquor given the poisonous nature of the environment and Respondents' demonstrated willingness to retaliate against Complainant. The hearing officer further determined that Complainant's diligent efforts to mitigate his damages have proved unsuccessful. Additionally, given the precarious state of the economy and the difficulties that a 53 year-old security guard

without a high school diploma would be expected to have in finding replacement employment, the hearing officer found that Complainant will lose at least two years of additional future income as a result of his discriminatory discharge in September of 2011. Therefore, in lieu of reinstatement, the hearing officer recommended that Complainant be awarded \$74,360 in additional front pay to make him economically whole.

With regard to Complainant's discharge on June 1, 2013, the hearing officer found that Respondents clearly terminated Complainant's employment a second time in retaliation for his pursuing his claims before the Commission. Since no subsequent claim of retaliation was ever filed by Complainant, the hearing officer did not recommend any specific damages related to the effects of that discharge. Additionally, the hearing officer determined that the subsequent loss of this job was not attributable to Complainant's own actions; however, Complainant's back pay and front pay associated with the initial discharge, continued to accrue when he once again lost his employment.

Accordingly, the Commission concurs with the hearing officer's approach and approves the recommended award of \$56,127 in back pay and \$74,360 in front pay to Complainant.

2. Emotional Distress

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.*, CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky*, CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell*, CCHR No 01-H-101 (Apr. 6, 2003); *Marable v. Walker*, 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner*, 563 F. 2d 159, 164 (5 Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior, and (2) the complainant's reaction to the discriminatory conduct. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR N. 97-E-93 (Oct. 21, 1998) at 13-4; *Nash and Demby, supra*; and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the more recent discussion of the applicable standards in *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

In addition, "The Commission does not require 'precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.*, CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003), *aff'd in part and vacated in part on other grounds*, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

The record demonstrates that during Complainant's employment, Mustafa directed repeated and highly insulting race based comments to Complainant, which created a hostile and offensive work environment. Complainant and his wife presented evidence in the form of their testimony that

from October 2008, through the present, almost five years, Complainant suffered ongoing emotional trauma related both to his daily harassment on the job and then, to the consequential effects of his discriminatory discharge. Complainant testified that he had trouble sleeping, felt helpless, and felt like less of a man. Complainant also testified that he felt “treated like garbage” in the presence of other employees and customers. The hearing officer found that during the hearing, the level of emotional turmoil and its lingering effects on Complainant were evident, as Complainant struggled at times to compose himself while testifying about the emotional effects of the harassment.

Given all of this evidence, the hearing officer found that Complainant’s emotional injuries merit a significant award of \$50,000 in emotional distress damages. The Commission approves and adopts this recommendation as consistent with the emotional distress damages awarded in similar employment discrimination cases before the Commission. For example, in *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010), the Commission awarded \$75,000 for emotional distress to an employee who was repeatedly harassed and “outed” about his sexual orientation by a supervisor for at least a year. Complainant testified that he was unable to sleep and had anxiety when coming into the office. After working for Respondents, Complainant suffered from severe depression, which caused him to see a therapist and was prescribed three medications for his mental ailments.

In *Johnson v. Fair Muffler Shop*; CCHR No. 07-E-23 (Mar. 19, 2008), the Commission awarded \$20,000 for emotional distress in another case where a manager directed racially derogatory epithets toward the complainant over a period of six months, then discharged him without legitimate reasons after he complained to the owner. Johnson testified credibly that this discrimination made him feel “less than a human being, caused problems eating and sleeping for a month, caused him to undergo anger management therapy after taking his anger out on his wife, and required him to be separated from his wife while searching for another job in a different state. See also *Mullins v. AP Enterprises, LLC*, CCHR No. 03-E-164 (Jan. 19, 2005), awarding \$20,000 for emotional distress to an employee who was fired after her employer found out she had undergone mental health treatment.

Also, in *Alexander v. 1212 Restaurant Group et al.*, CCHR No. 00-E-110 (Oct. 15, 2008), aff’d Cir. Ct. Cook Co. No. 09 CH 16337 (Feb. 19, 2010), the Commission awarded \$35,000 in emotional distress damages to a complainant subjected to harassment by company owners and employees in the form of continuing derogatory comments about his perceived sexual orientation over a period of a year. His testimony about the impact described stress related diarrhea, nausea, and loss of sleep, and was supported in part by the testimony and records of his treating physician.

3. Punitive Damages

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to award punitive damages when a respondent acts with actual malice, wilfully, or with such gross negligence as to indicate a wanton disregard of the complainant’s rights.

Punitive damages are appropriate when a respondent’s action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, “the purpose of an award of punitive damages in these kinds of cases is ‘to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.’” See also Restatement (Second) of Torts

§908(1) (1979).

In determining the amount of punitive damages to be awarded, the “size and profitability [of the respondent] are factors that normally should be considered.” *Soria v. Kern*, CCHR No. 95-H-13 (July 18, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 22, 1993) at 18. However, “neither Complainants nor the Commission have the burden of proving Respondent’s net worth for purposes of...deciding on a specific punitive damages award.” *Soria, supra* at 17, quoting *Collins & Ali v. Magdenovski*, CCHR No. 91-H-70 (Sept. 16, 1992) at 13. Further, “If Respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances.” *Soria, supra* at 17.

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent’s history of discrimination, any attempts to cover up the conduct, and the respondent’s attitude towards the adjudication process including whether the respondent disregarded the Commission’s procedures. *Brennan v. Zeeman*, CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.*, CCHR No. 97-H-187 (Jan. 20, 1999).

The Commission finds that the standards cited above compel an award of punitive damages in this case. Most importantly, Respondents’ behavior is easily characterized as willful, wanton, and carried out in reckless disregard of Complainant’s rights.

The hearing officer found the conduct of owner Ferass Mustafa to be shocking and out of the ordinary, and recommended punitive damages equaling three times the awarded compensatory damages. The Commission agrees, approves, and adopts this recommendation. Mustafa engaged in repeated and flagrant disregard of Complainant’s right to work under conditions free of ongoing slurs and derogatory comments about his race. This kind of treatment of an employee is precisely what the Chicago Human Rights Ordinance and punitive damages are designed to punish and deter. The Board condemns the callous, discriminatory treatment of Complainant, and by this increased award emphasizes to Mustafa and similar employers that it continues to regard such conduct as an egregious violation of an employee’s human rights. See *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Aug. 18, 2010), *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Sept. 25, 2002), and *Osswald v. Yvette Wintergarden Restaurant et al.*, CCHR No. 93-E-93 (July 19, 1995).

B. Interest

Section 2-120-510(1), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violation of the Chicago Human Rights Ordinance or the Chicago Fair Housing Ordinance. Pursuant to Commission Regulation 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually. Although the hearing officer did not make a specific finding as to the violation date, the hearing officer did find that Complainant was first discharged by Respondents on September 16, 2011. See Findings of Fact #8. Additionally, in his Complaint, Complainant identified the date of the last incident of claimed discrimination as September 16, 2011. Thus, the Commission finds that the incident which most clearly communicated to Complainant that his rights under the Ordinance were being violated occurred on September 16, 2011, and interest should be calculated from that date.

C. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance requires a fine against a party found in violation of the ordinance of not less than \$100 and not more than \$1,000. The hearing officer recommended the maximum fine of \$500 against each Respondent. Effective December 21, 2103, the maximum fine allowed for violations of the Ordinance is \$1,000. In view of the egregiousness of the violation, the Commission agrees with the recommendation to impose the maximum fine against each Respondent, and so imposes a fine of \$1,000 each against Ferass Mustafa and Five Star Liquor, for total fines of \$2,000.

D. Attorney Fees and Costs

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay all or part of a prevailing complainant's reasonable attorney fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order, and the hearing officer recommended it in this case. *Hall v. Becovic*, CCHR No. 94-H-39 (Jan. 10, 1996), *aff'd Becovic v. City of Chicago et al.*, 296 Ill. App. 3d 236, 694 N.E.2d 1044 (1st Dist. 1998); *Soria v. Kern*, *supra* at 19.

Accordingly, attorney fees and costs are awarded with the amount to be determined by further ruling of the Commission pursuant to the procedures stated in CCHR Reg. 240.630.

E. Recommended Enforcement

The hearing officer further recommended that, in the event that Respondents fail to comply with the orders for relief in this matter within the time frames established, the Commission should file a complaint in its name with the Department of Business Affairs and Consumer Protection / Local Liquor Control Commission (BACP) seeking the revocation of the Respondents' business license. The Commission agrees that action of this nature is appropriate when a licensed business which has been adjudicated in violation of the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance fails without good cause to take the actions ordered to remedy the violation.

The Commission does not enter an order implementing the recommendation at this time, viewing it not as a recommended action to be taken by Respondents but rather a recommendation for action by the Commission and the City of Chicago. However, the recommendation will be considered should the Commission determine pursuant to Reg. 250.220 that there are grounds to seek judicial enforcement of all or part of its final orders in this matter.

V. SUMMARY AND CONCLUSION

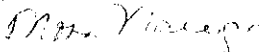
The Commission orders finds Respondents Five Star Food and Liquor and Ferass Mustafa liable for race discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Respondents jointly and severally shall pay the following damages to Complainant:
 - a. Back pay of \$56,127.
 - b. Front Pay of \$74,360.

- c. Emotional distress damages of \$50,000.
 - d. Punitive damages of \$541,461.
 - e. Pre- and post-judgment interest on the foregoing damages starting from September 16, 2011.
- 2. Each Respondent shall pay a fine of \$1,000 to the City of Chicago, for a total of \$2,000 in fines for violation of the Human Rights Ordinance.
 - 3. Respondents shall pay reasonable attorney fees and costs to Complainant's attorney in an amount to be determined pursuant to CCHR Reg. 240.630 and further orders of the Commission.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Mona Noriega, Chair and Commissioner
Entered: January 15, 2014