



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

**IN THE MATTER OF:**

Mirta Barrera  
**Complainant,**

v.

American Dental Associates, Ltd., and Dr. Dhiraj  
Sharma  
**Respondents.**

**Case No.:** 13-E-60

**Date of Ruling:** July 9, 2015

**Date Mailed:** August 4, 2015

**TO:**

Kevin Vodak  
Rabya Khan  
CAIR-Chicago  
17 N. State St., Ste. 1500  
Chicago, IL 60602

Timothy Eavenson  
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Oakbrook Terrace, IL 60180

## FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on July 9, 2015, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondents violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondents:

1. To pay Complainant \$7,000 in emotional distress damages and punitive damages of \$5,000, for total damages in the amount of \$12,000, plus interest on that amount from January 30, 2013, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$1,000.<sup>1</sup>
3. To comply with the orders for injunctive relief stated in the enclosed ruling.
4. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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<sup>1</sup>**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

**Payments of damages and interest** are to be made directly to Complainant. **Payments 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 Docket Clerk for Adjudication and including a reference to this case name and number.

**Interest on damages** is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this 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. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

### **Attorney Fee Procedure**

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **September 1, 2015**. Any response to such petition must be filed and served on or before **September 15, 2015**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630(b) and (c).

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**RULING ON LIABILITY AND RELIEF**

**I. PROCEDURAL HISTORY**

On September 20, 2013, Complainant Mirta Barrera filed a complaint against Dr. Dhiraj Sharma and American Dental Associates alleging that Respondents had discriminated against her in employment. Specifically, Complainant alleged that she is a Muslim and she wears a hijab<sup>1</sup>, a religious hair covering, as part of her Muslim faith. C., par. 1.<sup>2</sup> Complainant alleged that Respondent Sharma told her that she should not wear her hijab to work because it “would make the patients uncomfortable.” C., par. 4. Complainant further alleged that Respondents had unlawfully terminated her from her position with American Dental Associates because Complainant wore her hijab to work. C, par. 9.

On October 25, 2013, Respondents filed a joint Response to the Complaint. In their Response, Respondents admitted that Complainant’s employment with American Dental Associates was terminated, but Respondent Sharma denied instructing Complainant not to wear her hijab to work. R., par. 4.<sup>3</sup> Respondents’ Response stated Complainant’s employment was terminated due to Complainant’s unexplained absence after her request for a raise had been denied. R., par. 8, 9.

On August 7, 2014, the Commission issued an Order Finding Substantial Evidence, ordering the matter to proceed to an administrative hearing. On August 15, 2013, the Commission issued an Order Appointing Hearing Officer and Commencing Hearing Process. The pre-hearing conference was scheduled for September 24, 2014. The Order specified that Requests for Production of Documents was due on September 16, 2014.

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<sup>1</sup> During the hearing of this matter, witnesses, including Complainant referred at times to the hijab as a “scarf.” The hearing officer used the term “hijab” throughout.

<sup>2</sup> “C” refers to Complainant’s Complaint.

<sup>3</sup> “R” refers to Respondents’ joint Response. This document was signed by Respondents’ attorney and in places contradicts the testimony of Respondent Sharma and his employees. For example, the Response states that the office manager made the decision to discharge Complainant, while Respondent Sharma’s testimony is clear that he made the decision and ordered his subordinate to discharge Complainant.

On September 15, 2014, Complainant filed a Request for Production of Documents to Respondents.

On September 24, 2014, a pre-hearing conference was held. Both parties were represented by counsel. Respondents' counsel said it had not filed a Request for Production and was informed the deadline had passed. A hearing was set for October 21, 2014. Pre-hearing memoranda from both parties were due on October 7, 2014. Complainant's Pre-Hearing Memorandum was filed on October 7, 2014.<sup>4</sup>

On October 7, 2014, Respondents asked for an extension of time within which to respond to Complainant's Request for Production and to file their Pre-Hearing Memoranda. The hearing officer reluctantly granted the extension to October 13, 2014, allowing Complainant to file an amended Pre-Hearing Memorandum up to October 17, 2014.

Respondents filed their joint Pre-Hearing Memorandum on October 15, 2014, two days beyond the deadline. Complainant filed an Amended Pre-Hearing Memorandum on October 17, 2014.

On October 21, 2014, a hearing was held in this matter. Complainant and Respondents were both represented by counsel. At the hearing, Respondents attempted to put on a witness, Kristy Pawlowski, whom Respondents had not disclosed on the pre-hearing memorandum witness list. Tr.119.<sup>5</sup> Complainant objected to allowing the testimony of that witness and the witness was not allowed to testify. Tr. 120.<sup>6</sup>

At the close of the hearing, the hearing officer asked for post-hearing briefs to be filed within 28 days of the Commission's receipt of the transcript. The deadline for the post-hearing briefs was set for February 11, 2015, by an Order issued on January 13, 2015.<sup>7</sup> Complainant's Post-Hearing Brief was filed on February 11, 2015; Respondents did not file a post-hearing brief.

On April 6, 2015, the hearing officer issued her Recommended Ruling on Liability and Relief. No objections have been received.

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<sup>4</sup> Complainant submitted five documents with her Pre-Hearing Memorandum. Three of these documents were introduced into evidence at the hearing. The other two (the Commission's Investigation Summary and Investigator's notes) were not. These documents were not reviewed by the hearing officer prior to issuing her Recommended Ruling on Liability and Relief to the parties. Hearing Officers are barred from reviewing the Commission's investigative files unless offered into evidence and accepted by the hearing officer at the hearing. CCHR Reg. 240.307(c).

<sup>5</sup> CCHR Reg. 240.130(a).

<sup>6</sup> CCHR Reg. 240.130(b).

<sup>7</sup> The transcript had been received by the Commission earlier, but inadvertently was not sent to the hearing officer.

## II. FINDINGS OF FACT

### **Complainant Mirta Barrera**

1. Complainant Mirta Barrera is a Muslim woman of Mexican national origin and Hispanic ancestry. C., par. 1. As part of her faith, Complainant normally wears a religious head covering, or hijab, whenever she leaves her house. C, par. 1; Tr. p. 12. Complainant's hijab covers her hair, but not her face. Tr. p. 12.

2. Complainant converted to Islam in 2009. Tr. p. 12. She and her brother are the only converts to Islam in her family. Tr. p. 13. Complainant has worn a hijab when out in public since 2004 when she began practicing the Muslim faith. Tr. pp. 12, 63. Complainant wore her hijab before she declared her Shahada, a public recitation of the statement of Muslim faith<sup>8</sup>, in 2009. Tr. p. 63. Her brother has not forced her to wear a hijab. Tr. p. 13.

3. Complainant passed the GED (General Education Development) test in 2004. Tr. p. 13.

4. Before Complainant worked at Respondents' offices, Complainant had worked at three other dental offices as a dental assistant. Tr. p. 13. From 2004 to 2006, Complainant worked at Douglas Dental Center in Waukegan; this position ended when she moved to Chicago. Tr. pp. 14, 64. Complainant wore her hijab while working at Douglas Dental Center without any problems. Tr. p. 14.

5. From 2006 to 2010, Complainant worked as a dental assistant at the Garfield Ridge Dentistry office. Tr. p. 15. Complainant wore her hijab while working at Garfield Ridge Dentistry without any problems. Tr. p. 15. She resigned from Garfield Ridge Dentistry in 2010 because her ex-fiancé was stalking her. Tr. p. 91. Complainant's ex-fiancé was a practicing Muslim. Tr. p. 92. Complainant had begun to wear her hijab before she met her ex-fiancé; he did not care if she wore a hijab or not. Tr. pp. 93.

6. Prior to starting to work at Respondents' office in January 2013, Complainant worked at Bright Dental for about 8 months. Tr. p. 16. Complainant resigned from Bright Dental because they required her to travel a lot and she did not like to travel. Tr. pp. 17, 64. She wore her hijab while working at Bright Dental without any problems. Tr. p. 17.

### **Respondents Dhiraj Sharma and American Dental Associates**

7. Respondent Dhiraj Sharma is a general dentist and sole owner of American Dental Associates. Respondent Sharma has owned American Dental Associates for 20 plus years and is the President and Secretary of the company. R.P.S.<sup>9</sup>; Tr. p. 138.

8. Respondent American Dental Associates has seven locations, including one at 5342 S. Archer Avenue and one on Central Avenue, both in Chicago. R.P.S.; Tr. p. 141.

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<sup>8</sup> Retrieved March 24, 2015, from [www.wikipedia.org/wiki/Shahada](http://www.wikipedia.org/wiki/Shahada)

<sup>9</sup> "R.P.S." refers to Respondents' Joint Position Statement filed on October 25, 2013.

9. Respondent American Dental Associates employs 16 dental professionals, about one-third of whom identifies as Muslim. R.P.S. Respondent Sharma is Hindu. Tr. p. 156. Respondents provide Muslim employees a private room for prayer; employees adjust their work schedules accordingly. R.P.S.

10. Respondent Sharma said that Myrna (no last name provided), in consultation with Surya<sup>10</sup>, the office manager, developed schedules for the dental assistants from January 2013 to March 2013. Tr. p. 140-141. Neither Myrna or Surya were proffered as witnesses by Respondents. Respondent Sharma did not develop schedules. Tr. p. 141. Respondent Sharma was involved in hiring dental assistants. Tr. 141.

11. American Dental Associates had a diverse patient base, which included many Muslim men and women, including a few who wear hijabs. R.P.S. Respondent Sharma could not remember any patient ever expressing discomfort about wearing a hijab to the office. Tr. p. 148.

12. From January 2013 to March 2013, Respondent Sharma practiced dentistry at the Archer Avenue location every Tuesday and Thursday. Tr. p. 141. He rarely was present in that office on other days. Tr. p. 142.

13. During the time Respondent Sharma has owned American Dental Associates, he never had a complaint of discrimination. Tr. p. 139.

#### **Application to and Hiring by Respondent American Dental Associates**

14. Complainant interviewed with Respondent American Dental Associates on January 25, 2013. C. par. 2, Tr. p. 20.

15. Prior to interviewing at American Dental Associates on Friday, January 25, 2013, Complainant had sought work on the same day at several dental offices located near Respondents' office on Archer Avenue in Chicago. Tr. 18-20. Complainant was not interviewed at any of those offices even though one of the offices had a notice that they wanted an assistant. Tr. p. 20-21. Complainant was wearing her hijab at the time. Tr. p. 20.

16. Prior to seeking employment with American Dental Associates on January 25, 2013, Complainant removed her hijab. Tr. pp. 20-21. Complainant removed her hijab because she believed the other dental offices were telling her they had no jobs because she was wearing her hijab. Tr. pp. 21, 67, 84. Complainant knew no one from American Dental Associates prior to working there; her fear of discrimination was based on her experience while applying to other offices. Tr. p. 69.

17. Complainant spoke to the office manager, Surya, when she entered the American Dental Associates Archer Avenue office on January 25, 2013. Tr. p. 21. Surya told Complainant they were hiring, and then asked Complainant to complete an application and to wait for an interview with Respondent Sharma. Tr. 22.

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<sup>10</sup> At the hearing, Complainant was unsure of the spelling of the office manager's name, but indicated to the court reporter it was spelled "Syrea." In documents filed with the Commission, Respondents spelled the name "Surya." R, par. 7. "Surya" is used in this Order.

18. After Complainant completed the application, she had an interview with Respondent Sharma. Tr. p. 22. Complainant met with Respondent Sharma alone. Tr. p. 22. Respondent Sharma asked Complainant about her background and work ethic, and then hired Complainant the same day. Tr. p. 23-24, p. 143.

19. Respondent Sharma knew from Complainant's background that she had experience; he hired her and told her there was a 30-day trial period. Tr. pp. 143, 156. Respondent Sharma told Complainant that she would be assigned to the Archer Avenue office and another office on Cicero Avenue. Tr. pp. 23, p. 65. Respondent Sharma did not tell Complainant which dentists she would assist; Complainant told Respondent Sharma that her only experience was with general dentistry. Tr. pp. 23, 65. The offices had both general dentists and oral surgeons. Tr. p. 76.

20. Respondent Sharma did not reveal during the interview that he was both a doctor and owner of Respondent American Dental Associates. Tr. pp. 23-24.

21. Complainant did not discuss her religious affiliation during the interview with Respondent Sharma. Tr. pp. 24, 68. Respondent Sharma noted that Complainant was not wearing her hijab during the interview. Tr. p. 144. Respondent Sharma estimated that the interview lasted one minute. Tr. p. 144.

#### **Employment with American Dental Associates**

22. Complainant began working for Respondent American Dental Associates on Monday, January 28, 2013. C. par. 3, Tr. pp. 24, 144. She worked full-time, five days a week, from 9:00 a.m. to 7:00 p.m. Tr. p. 24-25.

23. Complainant was generally assigned to work with a general dentist, periodontist or hygienist. Tr. pp. 26, 85. She was a second dental assistant. Tr. p. 66. There was always another "main" assistant working with her. Tr. p. 67.

24. During her employment, Complainant received no oral information or documents from Respondents regarding any process to report discrimination, or to request an accommodation for religious practices. Tr. p. 34-35.

25. Complainant did not file any complaints against Respondents while she was working at the office. Tr. p. 74.

26. During Complainant's employment, she was paid \$10 per hour by Respondents. Tr. p. 56; Cp. Exh. 2.

#### **Initial Days of Employment with American Dental Associates**

27. When Complainant arrived at Respondent American Dental Associates' Archer Avenue office on Monday, January 28, 2013, she was not wearing her hijab. Tr. p. 26.

28. When she arrived for her first day of work, Complainant asked Surya about wearing her hijab. Tr. pp. 27, 68. Complainant asked because she always wears her hijab and wanted to wear it at work; she asked Surya because Surya was the office manager. Tr. p. 27.

29. Surya said that it was okay for Complainant to wear her hijab, but she would talk to Respondent Sharma about it and get back to Complainant. Tr. pp. 28, 68.

30. After talking with Surya on January 28, 2013, Complainant went to the washroom, put on her hijab, and wore it while working that day. Tr. pp. 27, 68. No one at the office commented on Complainant's hijab that day. Tr. p. 69.

31. On the next day, Complainant talked with Surya in the front of the office about Surya's conversation with Respondent Sharma. Tr. p. 28. Surya told Complainant that Respondent Sharma had instructed Surya to inform Complainant not wear her hijab. Tr. pp. 28, 71. Complainant told Surya that she never took off her hijab and continued working while wearing her hijab. Tr. p. 29.

32. Respondent Sharma said Surya talked with him about Complainant wearing her hijab and he told Surya it was a personal choice. Tr. p. 145. When asked if Surya had instructed Complainant not to wear her hijab, Respondent Sharma said that he was not aware of such instruction. Tr. p. 147.

33. Neither party called Surya as a witness.

34. The hearing officer found that Surya informed Complainant that Respondent Sharma told her not to wear her hijab.

#### **Conversation with Respondent Sharma and Complainant about wearing her hijab to work**

35. On January 30, 2013, at the end of the day, Complainant had a conversation with Respondent Sharma regarding her wearing her hijab. Tr. p. 29.

36. Complainant did not ask for a meeting with Respondent Sharma after her conversation with Surya. Tr. p. 30. Respondent Sharma saw Complainant walking into the front of the office and began to speak to her. Tr. p. 30. No one else was present. Tr. p. 30.

37. Complainant said Respondent Sharma told her that the office was a professional environment and she should keep her religion at home. C. par. 4, Tr. pp. 31, 72. Complainant stated that Respondent Sharma said, "everything was in her head," and noted that other female Muslim employees, including Dr. Moussa, did not wear a hijab to the office. C. par. 4, Tr. pp. 31, 72. Complainant stated that Respondent Sharma said that she would make some patients uncomfortable. Tr. pp. 31-32. Complainant told Respondent Sharma that not a lot of Muslim girls wear the hijab but that was a choice, and a choice she had made. Tr. p. 31. This was the only conversation Complainant had with Respondent Sharma about her wearing a hijab. Tr. p. 75.

38. Respondent Sharma did not recall the specifics of the conversation with Complainant. R. par. 4, Tr. p. 155. He did not recall the conversation occurring the first week that Complainant was employed, but thought it occurred in mid-February, 2013. R. par. 4, Tr.



pp. 145, 155. Respondent Sharma said he recalled saying that it was Complainant's personal belief "to go this way or that way." Tr. p. 146. He recalled saying that he prayed in his office as his personal belief, and also gave Complainant the example of Dr. Moussa, who does not wear a hijab in the office. Tr. pp. 146, 155. This contradicts the Response filed by Respondents, where Respondent Sharma denied using Dr. Moussa as "an example." R. par. 5. Respondent Sharma did not recall whether he said that patients might be uncomfortable, but did not "think" he said that to Complainant. Tr. p. 155. Respondent Sharma did not specifically deny stating that it would make patients uncomfortable in the Response to Complainant's Complaint. R. par. 4. When asked by his counsel whether or not Surya told Complainant not to wear her hijab at work, Respondent Sharma's response was "not that I know of." Tr. p. 147.

39. Respondent Sharma recalled no other conversations with Complainant about wearing her hijab to work. Tr. pp. 149, 153.

40. At the hearing, Respondent Sharma had no opinion about whether Complainant should wear a hijab. Tr. p. 156.

41. Respondent Sharma's religious affiliation is Hindu; he told Complainant he was Hindu during this conversation. Tr. pp. 156-157.

42. Respondent Sharma recalled seeing Complainant wearing her hijab after the first few weeks of her employment, but then she took it off and he did not see her wear it again until mid-February to the best of his knowledge. Tr. p. 149. In contrast to this statement, Respondent Sharma stated in his Response that Complainant began wearing her hijab to work days after this conversation, and wore it on and off during her employment. R. par. 7.

43. After the conversation with Respondent Sharma, Complainant said she was really angry, but continued working. Tr. p. 33. Complainant took off her hijab after the conversation with Respondent Sharma because she had bills to pay and was scared of losing her job. C. par. 6, Tr. p. 33. After the conversation with Respondent Sharma, Complainant would wear her hijab outside the office, but take it off when she came to work. Tr. pp. 34, 84. Complainant said she felt naked without her hijab. Tr. p. 33.

44. The hearing officer found that Complainant spoke to Respondent Sharma during the first week of her employment with American Dental Associates. The hearing officer found that Respondent Sharma told Complainant that it was a professional office and that other Muslim employees did not wear a hijab in the office. Respondent Sharma told Complainant that he and other employees practiced their religion privately. The hearing officer also found that Respondents provided private spaces for religious practices to facilitate employees' private practice of their religion. The hearing officer found that Respondent Sharma did not know whether Surya told Complainant that she should not wear her hijab in the office. Additionally, the hearing officer found that Respondent Sharma said wearing a hijab was a personal choice, but it was not a choice made by others in his office and that it would make some patients uncomfortable. Respondent Sharma told Complainant that she should not wear her hijab in the office. Further, the hearing officer found that after the conversation with Respondent Sharma, Complainant did not wear her hijab in the office because she was afraid of losing her job.

### **Conversations with other members of Respondents' staff about the hijab**

45. Complainant talked with other dental assistants and doctors about her conversation with Respondent Sharma regarding her wearing a hijab. Tr. p. 36. Specifically, she spoke with two dental assistants, Martha Avigeli and Kathy (no last name known), and Dr. Yousuf. Tr. p. 35-37. A member of the office staff named Martha told Complainant to talk with Dr. Abughazaleh and Dr. Moussa, both of whom are Muslim. Tr. p. 37. Martha Avigeli and Kathy were not called to testify at the hearing. Complainant initiated the conversations with Dr. Abughazaleh and Dr. Moussa. Tr. p. 69.

46. Respondent Sharma said he could not recall having any conversations with other staff members about wearing a hijab, noting the staff had practiced a long time and wearing a hijab "was never an issue." Tr.p.148.

47. The hearing officer found that Complainant was upset after Surya and Respondent Sharma told Complainant not to wear her hijab in the office. Complainant then sought the guidance of other members of the office staff about whether she should wear her hijab in the office.

### **Complainant's conversation with Dr. Moussa about wearing the hijab**

48. Complainant had a conversation with Dr. Moussa, who is a Muslim and female, a few days after her conversation with Respondent Sharma on January 30, 2013. Tr. p. 38. Martha Avigeli had suggested Complainant talk to her, and introduced Complainant to Dr. Moussa. Tr. p. 70. Kathy, who was Dr. Moussa's dental assistant, was present for the conversation. Tr. p. 38. Kathy and Martha Avigeli did not testify at the hearing.

49. Complainant told Dr. Moussa that Respondent Sharma told her not to wear her hijab in the office. Tr. p. 39. Dr. Moussa told Complainant that she would talk with Respondent Sharma about Complainant wearing a hijab. Tr. p. 39. Complainant said Dr. Moussa told her she would not "make a big deal about it." Tr. p. 39. Complainant did not have another conversation with Dr. Moussa about wearing the hijab. Tr. p. 39. Dr. Moussa never told Complainant that she had spoken to Respondent Sharma or Surya about Complainant wearing a hijab. Tr. 39-40.

50. After Complainant's conversation with Dr. Moussa, she did not have any other conversations with Respondent Sharma or Surya about wearing her hijab. Tr. p. 40.

51. Dr. Moussa testified that she knew Complainant but Complainant never assisted her. Tr. p. 104. Dr. Moussa saw Complainant four or five times between January and March 2013. Tr. p. 104. A few days after Complainant began her employment with Respondents, Complainant approached Dr. Moussa and told Dr. Moussa that she had been told not to wear her hijab. Tr. p. 105. Dr. Moussa said that Complainant told her that her family and fiancé were pressuring her to wear her hijab. Tr. p. 106. Dr. Moussa did not get involved because it was a personal issue. Tr. p. 106.

52. Dr. Moussa testified that Complainant asked her if Complainant should ask Respondent Sharma about wearing a hijab because Complainant had the impression Respondent

Sharma did not want her to wear the hijab. Tr. 107. Dr. Moussa did not believe that of Respondent Sharma; she never had that impression of him. Tr. p. 107.

53. Dr. Moussa testified that Complainant said that someone in Respondent American Dental Associates told her not to wear her hijab, and further that Complainant had a conversation with someone and “they had implied that.” Tr. pp. 108, 110.

54. The hearing officer found that Complainant asked Dr. Moussa for guidance about wearing her hijab to work a few days after she began employment with Respondents, following Complainant’s conversations with Respondent Sharma and Surya during which she was told not to wear her hijab.

#### **Dr. Moussa’s conversations with Surya and Respondent Sharma**

55. Nermeen Moussa is an endodontist who has been employed by Respondent American Dental Associates since October 2010. Tr. p. 102. Respondent Sharma is her employer. Tr. p. 103. Dr. Moussa was called by Complainant as a witness and was a very nervous and evasive witness for Complainant.

56. Dr. Moussa’s religious affiliation is Muslim. Tr. p. 103. Dr. Moussa understood that some Muslim women wear a scarf called a hijab. Tr. p. 103. Dr. Moussa did not wear a hijab, except when praying, or on a pilgrimage or something of that nature. Tr. p. 104. She had never worn a hijab at Respondents’ offices. Tr. p. 104.

57. Dr. Moussa asked Surya whether Surya had told Complainant not to wear her hijab at work and Surya told Dr. Moussa that she had no knowledge of that happening, and told her “that is not how the conversation went.” Tr. pp. 108, 115. Dr. Moussa then asked Respondent Sharma about it and he said wearing a hijab was a personal choice but noted that Complainant had come to the interview without wearing a hijab. Tr. pp. 108, 112. Dr. Moussa told Complainant about her conversation with Surya and told Complainant that she did not want to get involved because it was a personal issue. Tr. pp. 112, 113.

58. Dr. Moussa had never felt uncomfortable around Respondent Sharma because of her Muslim faith. Tr. p. 114. She prays in her office. Tr. p. 114. She and other Muslim doctors prayed and fasted in the office. Tr. p. 114. Dr. Moussa and her mother, who wore a hijab, had eaten dinner with Respondent Sharma in an outdoor restaurant. Tr. p. 115. Dr. Moussa had patients who wore hijabs and none ever expressed discomfort about wearing them in the office. Tr. p. 116.

59. Respondent Sharma said he only had a brief conversation “further down the line” with Dr. Moussa about whether Complainant could wear her hijab in the office. Tr. p. 147. Respondent Sharma said he told Dr. Moussa it was Complainant’s personal choice. Tr. p. 147.

60. The hearing officer found that Dr. Moussa talked with Respondent Sharma about whether Complainant was allowed to wear a hijab and Respondent Sharma told Dr. Moussa it was Complainant’s personal choice, but Respondent Sharma noted that Complainant had interviewed without the hijab.

### Complainant's conversations with Dr. Abughazaleh about wearing the hijab

61. Martha Avigeli introduced Complainant to Dr. Abughazaleh, an oral surgeon at the practice, and Complainant talked with him twice about whether she should wear her hijab. Tr. pp. 40, 70, 96.

62. No one else was present during the first conversation, which took place during the middle of Complainant's employment. Tr. p. 41. Complainant told Dr. Abughazaleh that Surya had told Complainant after she was hired that Complainant could wear her hijab, but after Surya spoke with Respondent Sharma, Surya said Complainant should not wear her hijab. Tr. p. 42. Complainant recalled Dr. Abughazaleh saying that she should wear her hijab and that Allah was her provider. Tr. p. 41.

63. The second conversation Complainant had with Dr. Abughazaleh was about a week before Respondents fired her. Tr. p. 43. Dr. Abughazaleh asked Complainant why she was not wearing her hijab and Complainant told him she was afraid of being fired if she wore it. Tr. p. 43. Dr. Abughazaleh told Complainant Respondents could not fire her because it was against the law. Tr. p. 43. After this conversation, Complainant wore her hijab on March 20, 2013. C. par. 7, Tr. p. 43. Complainant had not worn her hijab at Respondents' office between January 30, 2013, and her second conversation with Dr. Abughazaleh. Tr. p. 44.

64. Dr. Abughazaleh has been an oral surgeon with Respondent American Dental Associates for 15 years. Tr. p. 96. Dr. Abughazaleh is a practicing Muslim. Tr. p. 96.

65. Dr. Abughazaleh recalled that Complainant told him that she wanted to wear her hijab but was afraid to wear it. Tr. p. 97, 101. Dr. Abughazaleh recalled telling Complainant that she should only be afraid of God, and that no one in this country could stop Complainant from wearing her hijab. Tr. p. 97. He remembered seeing Complainant come in the office one day with her hijab and she was happy. Tr. p. 97. He did not remember Complainant telling him that Respondent Sharma or anyone at American Dental Associates told Complainant that she could not wear her hijab. Tr. pp. 97-98.

66. Dr. Abughazaleh said that he never heard Respondent Sharma make a derogatory statement about anyone's religion; Dr. Abughazaleh does not believe Respondent Sharma has any *animus* against members of the Muslim community. Tr. pp. 98, 100.

67. Dr. Abughazaleh prays in his office five times a day and no one has told him not to do that; he prays out of sight of patients. Tr. pp. 98, 100.

68. Many of Dr. Abughazaleh's patients wear hijabs; none of the patients have ever said they feel uncomfortable wearing their hijabs at Respondents' offices. Tr. p. 99.

69. Dr. Abughazaleh testified that no employee has ever said they feel uncomfortable regarding their religious faith at Respondents' offices; he would be the first to defend them if they had. Tr. pp. 99-100.

70. Dr. Abughazaleh does not wear a head covering; most male Muslims do not. Tr. p. 101. Dr. Abughazaleh is very active in the Muslim community. Tr. p. 99.

71. The hearing officer found that Complainant talked with Dr. Abughazaleh, a Muslim, about being afraid of wearing her hijab while working for Respondents. Complainant's fears prompted Dr. Abughazaleh to tell her that wearing her hijab was between her and God and that she should not be afraid to wear it because no one in this country could stop her.

72. The hearing officer found that after the second discussion with Dr. Abughazaleh, Complainant again began wearing her hijab at work on March 20, 2013.

73. The hearing officer found that Dr. Abughazaleh practiced his religion privately and had not heard Respondent Sharma make any derogatory statements about anyone's religion.

#### **Pressure from family members and others on Complainant to wear her hijab**

74. Complainant did not speak to the other dental assistants and doctors about concerns she had with family expectations about her wearing the hijab or her own personal concerns. Tr. p. 73. She and her brother are the only members of her family who are Muslim. Tr. 73. Her mother is Catholic, so it would not make sense for her mother to insist that Complainant wear a hijab. Tr. p. 73. Complainant always said she loved her hijab and it had always been on her head since her conversion. Tr. p. 74.

75. The hearing officer found that Complainant would not have said her fiancé or mother was pressuring her to wear a hijab because she had not been engaged for three years at the time she was employed by Respondents and her mother was not Muslim.

#### **Amarili Espada**

76. Amarili Espada was the office manager at the Central Avenue office location of Respondent American Dental Associates. Tr. pp. 121-122. At the time of the hearing, she had worked for Respondents for 4 years. Tr. p. 121. At times, Complainant worked as an assistant at the Central Avenue office location for Espada. Tr. p. 122.

77. Espada did not recall any conversations with Complainant about whether she should wear her hijab or any comments about the hijab from other staff. Tr. pp. 123-124. Espada saw Complainant wearing her hijab and not wearing it, but could not say on which dates or times she wore it. Tr. p. 127.

78. Espada would train new dental assistants about office procedures but individual dentists would train assistants at the "upper level." Tr. p. 129.

79. Espada saw a patient wearing a hijab come to the office once. Tr. p. 126.

80. Espada made schedules for assistants, which changed periodically, but she did not issue work schedules for Complainant. Tr. 124, 129. Dental assistants should be able to work with anyone they are placed with. Tr. p. 125. When Complainant worked at the Central Avenue office, the office only provided general dentistry. Tr. p. 130.

### **Complainant's work with Dr. Rauf Yousuf**

81. Rauf Yousuf is a periodontist who practices as an independent contractor. Tr. p. 131. He has practiced with Respondent American Dental Associates at Archer Dental Specialists for 15 years. Tr. p. 132.

82. Dental assistants at the office are not assigned but are rotated and work with all doctors. Tr. pp. 133-134. Dr. Yousuf had "nothing significant" to say about Complainant's work; Complainant was not the best or worst dental assistant he had ever had. Tr. p. 134.

83. Dr. Yousuf said that dental assistants working with him had a lot to do. Tr. p. 137. Dental assistants took x-rays, got the patient seated, and discussed the procedure with the patient so that the patient would be ready for the consultation. Tr. p. 136. For surgical procedures, assistants would "consent" the patient and prepare the procedure. Tr. p. 137. Dr. Yousuf did not use nitrous oxide in his practice so that was not an issue. Tr. p. 137.

84. Dr. Yousuf had a conversation with Complainant about wearing her hijab at work, but he did not recall the specifics. Tr. pp. 132, 136. He did not remember Complainant ever telling him someone at work had told her not to wear the hijab. Tr. p. 132.

85. Dr. Yousuf identified himself as a practicing Muslim and never had any difficulty at the dental office regarding his religion. Tr. p. 134. He did not pray in the office. Tr. p. 134.

86. Dr. Yousuf saw patients in the office wearing hijabs; none have expressed any concern about wearing the hijab. Tr. pp. 134-135.

87. Dr. Yousuf had never heard Respondent Sharma expressing any *animus* regarding a particular religion. Tr. p. 135.

### **Complainant's conversation with Respondent Sharma on March 26, 2013**

88. On Tuesday, March 26, 2013, Complainant had a conversation with Respondent Sharma. Tr. p. 44. Complainant was wearing her hijab to work on that day; she began wearing her hijab again the previous week for the first time since the first week of her employment. Tr. p. 45. Only Respondent Sharma and Complainant were present for this meeting. Tr. p. 52. Complainant initiated the conversation with Respondent Sharma. Tr. p. 53.

89. Respondents had assigned Complainant to assist with oral surgeons but Complainant did not have any experience or training in that area of dentistry. Tr. p. 53. Complainant was not given any instruction by the surgeons or other dental assistants. Tr. p. 53.

90. The first day of this assignment came after Complainant decided to wear her hijab in the office again. Tr. p. 53, 83. Respondent American Dental Associates would set out a schedule for dental assistants on Thursday or Friday for the following week. Tr. p. 77.

91. An oral surgeon uses different equipment and procedures than general dentists. Tr. p. 54. Sometimes oral surgeons give "laughing gas" (nitrous oxide), which Complainant is not certified to administer. Tr. p. 55. Complainant's understanding was that as a second assistant to

an oral surgeon she would be required to prepare everything before the doctor entered the room, including giving anesthesia to a patient. Tr. p. 79. Although Complainant worked with oral surgeons before her discharge, she was never asked to administer anesthesia and would not have done so if she had been asked. Tr. p. 80.

92. During Complainant's employment, she was reprimanded by the oral surgeon and the main dental assistant because she incorrectly completed the surgical set-up and slowly performed the task. Tr. p. 80. She was reassigned to a dental hygienist. Tr. p. 81.

93. Complainant's work hours were not reduced and she did not suffer adverse employment actions because of the complaints and reassignment. Tr. p. 81.

94. Shortly after Complainant began wearing her hijab again, Respondents assigned her to an oral surgeon. Tr. p. 82.

95. On March 26, 2013, Complainant told Respondent Sharma that if she was going to assist oral surgeons, she should be paid more and trained. Tr. p. 55. Respondent Sharma told Complainant he was not going to teach her, the office was not a school, and he was not going to give Complainant a raise. Tr. p. 55.

96. Complainant did not tell Respondent Sharma that she thought she was being assigned to the oral surgeons because she was wearing a hijab. Tr. p. 86.

97. Complainant said Respondent Sharma did not tell her that he had to improve or that she needed to work longer than three months before he could assess whether she deserved a raise. Tr. p. 86. Respondent Sharma had complimented her work. Tr. p. 86. Following the conversation, Complainant was upset but went back to work. Tr. p. 55.

98. Respondent Sharma said Complainant came into his office on March 26, 2013, and said because she worked with oral surgeons she deserved a raise. Tr. p. 150. Respondent Sharma said Complainant told him she was not comfortable working with the oral surgeons; he told Complainant that she was never left alone with a patient. Tr. p. 159. Respondent Sharma told her she was the second assistant who was "barely learning" and was just 6-8 weeks into the job. Tr. p. 150. He told Complainant that he could not justify a second raise within 6-8 weeks. Tr. p. 150. He could not justify a raise every time he trained someone. Tr. p. 150. Respondent Sharma did not recall saying the company was not a school, but did recall saying that suctioning patients was the same with a general dentist or oral surgeon. Tr. p. 154. Respondent Sharma said Complainant was not too happy with his response and then went back to work. Tr. p. 151.

99. Respondent Sharma said all assistants are trained to work with all doctors because dental assistants rotate among doctors and must be able to step up and fill in. Tr. pp. 154, 159. Dental assistants always train with a senior person. Tr. p. 154. Respondent Sharma thought Complainant had worked with Dr. Yousuf, who performed the same kind of surgery as the oral surgeon. Tr. p. 154. The next step would have been to work with Dr. Moussa. Tr. p. 154.

100. Respondent Sharma said there were no written procedures on training, nor did Respondents have a written employee manual. Tr. p. 157.

101. The hearing officer found that Complainant did ask for a raise and training from Respondent Sharma and her requests were rejected. The hearing officer found that Complainant had resumed wearing her hijab the Thursday before the conversation with Respondent Sharma. The hearing officer found that Complainant returned to work after this conversation. The hearing officer did not find that Complainant was assigned to oral surgeons because she had resumed wearing her hijab to work.

### **Respondents' decision to discharge Complainant on March 26, 2013**

102. On March 26, 2013, sometime shortly after her conversation with Respondent Sharma about a raise and training, Complainant had to leave the office for a family emergency. C. par. 8, Tr. p. 45. Complainant's mother called her around noon or 1:00 p.m., and told her to pick up her younger brother from Burbank and take him to the family home in Cicero. Tr. p. 45-46.

103. Complainant talked with Surya, told Surya that she had to pick up her brother, and asked to leave. Tr. p. 47. Complainant did not say she would pick up her brother during her 30-minute lunch period. Tr. p. 87. Surya asked her how long she would be gone and Complainant replied that she was unsure because it was rush hour. Tr. p. 47. Surya told Complainant that it was okay for her to leave the office. C. par. 8, Tr. p. 47.

104. Complainant left right away, picked up her brother, took him home and returned to the office about two hours later. Tr. p. 48. There was a lot of traffic. Tr. p. 48. Complainant did not call Surya during her time away from the office. Tr. p. 88.

105. This was the first time Complainant had asked for time to attend to a family emergency; other people had done it and Surya did not have a problem with that. Tr. p. 89.

106. Complainant was assigned to the hygienist that day; the hygienist is always busy. Tr. p. 90. When Complainant returned to the office, she informed Surya of her return and went to work. Tr. p. 48.

107. After his conversation with Complainant about a raise and training, Respondent Sharma noticed that appointments were running late and he asked Surya what was going on. Tr. p. 151. Surya told Respondent Sharma that Complainant had left the office and had not returned. Tr. p. 151.

108. Respondent Sharma told Surya that Complainant had asked for a raise that morning and then she was gone; he could not comprehend how Complainant could ask for a raise and then have a family emergency the same day. Tr. p. 151. Respondent Sharma testified Surya never told him about the conversation she had with Complainant earlier that day about the family emergency. Tr. p. 151.

109. Respondent Sharma instructed Surya to discharge Complainant to keep it simple in the office at all times. Tr. p. 151. He was worried that the next time he denied Complainant a raise she was going to "destroy" the office schedule. Tr. p. 152. He was not present when Complainant was discharged, but he reviewed the discharge document before Complainant was



fired. Tr. p. 152, Cp.Exh. 1. Respondent thought Complainant was being “vindictive” and destroyed “his” schedule. Tr. p. 153.

110. The Employee Warning Notice for Complainant was prepared on March 26, 2013, and was signed by Surya on that date. Cp. Exh. 1. The violations marked were attendance and unauthorized absence. Cp. Exh. 1. The Notice stated that only one warning had been issued, listed the date of the warning as March 26, 2013, and said the warning was written and oral. Cp. Exh. 1. The Notice included the following “Company Statement”:

Employee had a conversation in the morning with Dr. Sharma asking for a raise within just a month of her employment. Dr. Sharma said her work needs improvement and is not on par to justify an increase just yet. He suggested that she update her study and review her performance in 3 months. She returned for work visibly upset.

At 1:45 p.m., she requested an hour to take care of a family emergency, even though we had a very busy schedule & [sic] without any additional help.

Employee came back to work at 3:53 p.m., almost two hours later. Because of her unexplained absence, the schedule, patients and other employees were affected.

At this point we are unable to continue her employment.

Cp. Exh. 1.

111. Respondents did not submit any documentary evidence of reprimands or warnings issued to Complainant during her employment. Respondent Sharma said that he was “pretty sure” Complainant had never received any warnings during her employment with Respondents. Tr. p. 158. Respondent Sharma said he usually gave people one or two warnings, but he had never had someone “disappear” shortly after being denied a raise. Tr. p. 161.

112. Respondent Sharma did not discuss Complainant’s “absence” or her family emergency with Complainant prior to ordering Surya to discharge Complainant. Tr. p. 160. Respondent Sharma said he had never discharged someone for requesting time off for a family emergency, but he never had an employee have a family emergency right after being refused a raise. Tr. p. 161.

### **Respondents’ termination of Complainant’s employment**

113. When Complainant returned to the office and began working, Surya called Complainant out of the room where she was working. Tr. p. 49. Surya told Complainant that she needed to talk with her, and took Complainant to her office. Tr. p. 49. Surya told Complainant that she was being dismissed and asked her to sign the document entitled “Employee Warning Notice.” C. par. 9, Tr. p. 49, Cp. Exh. 1.

114. Surya told Complainant that Complainant was being dismissed because Complainant had left work on the busiest day and had not returned for 2-3 hours. Tr. p. 49. Complainant reminded Surya that Complainant had asked for, and received, permission to leave

the office. Tr. p. 49. Surya did not respond but asked Complainant to sign the document. Tr. p. 49.

115. Complainant refused to sign the Employee Warning Notice because she would not sign a document which said Respondents did not give her permission to leave the office when Surya had given her permission. Tr. p. 51, Complainant's Cp. Exh. 1. Complainant testified she told Surya that she believed she was being discharged because she was wearing her hijab. Tr. p. 90.

116. During Complainant's employment, she had never received any oral instruction or written document regarding policies or procedures to request time off for a family emergency. Tr. p. 52.

117. The hearing officer found that Complainant was not discharged for leaving the office for two hours on March 26, 2013, but rather was discharged because Respondent Sharma believed that Complainant invented a family emergency because she was denied a raise and training. Complainant testified credibly that she asked for, and received, permission to leave the office. Respondent Sharma also said that Surya, who was not called as a witness, said that Complainant had left and that he knew Complainant had said it was a family emergency. The written reason for her dismissal was Complainant's "unexplained absence," which is belied by the facts as testified by Respondent Sharma himself. He knew she was absent for a family emergency. He just did not believe her.

118. Respondents provided no other oral or documentary evidence of any other discipline issued to Complainant; in fact, Respondent Sharma said he was not aware of any discipline or warning Complainant had received. Complainant had been performing adequately according to the only testimony about her work product provided by Respondents' witness, Dr. Rauf Yousuf. Respondent Sharma ordered Complainant discharged without a warning, which had not been his practice.

### **Employment after Complainant was discharged by Respondent American Dental Associates**

119. Complainant's last day of employment at Respondents' dental office was March 26, 2013. Within two days, Complainant found new employment at Image Dental, where she still works. Tr. p. 58. While working at Image Dental she had worn her hijab. Tr. p. 60-61. Complainant never had any problems wearing her hijab at Image Dental; the doctor there was a Muslim. Tr. p. 61.

120. On September 20, 2013, Complainant filed a complaint against Respondents because Complainant felt she was fired because she wanted to wear a hijab. C., Tr. p. 61. When Complainant was discharged by Respondents she felt she would never get a job because she wore a hijab. Tr. p. 61.

121. Complainant lost three days' wages between her job with Respondents and her new employment. Complainant had worked from 9:00 a.m. to 7:00 p.m. at Respondents' offices. Tr. p. 26.

### III. APPLICABLE ORDINANCES AND CONCLUSIONS OF LAW

1. Complainant filed a complaint of discrimination alleging discriminatory conduct in the City of Chicago against Respondents on September 20, 2013. Under Section 2-120-510 of the Chicago Municipal Code, complaints of discrimination must be filed within 180 days of the alleged violation.

Complainant filed a timely complaint within 180 days and the Commission has jurisdiction over the complaint.

2. CCHR Reg. 100(13) defines “employer” as “any ‘person,’ as defined in these regulations, employing one or more employees.” CCHR Reg. Section 100(26) defines “person” to include “one or more individuals, corporations, partnerships ....”

Respondent Sharma and American Dental Associates are “employers” within the meaning of this regulation.

3. Section 2-160-050 of Chicago Human Rights Ordinance prohibits discrimination on the basis of religious beliefs and practices. The Ordinance provides:

No employer shall refuse to make all reasonable efforts to accommodate the religious beliefs, observances and practices of employees or prospective employees unless the employer demonstrates that he is unable to reasonable accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

Complainant wore her hijab as both an observance and a practice of her religious beliefs. Respondents’ orders that Complainant was not to wear her hijab during her employment were a violation of Section 2-160-050 of the Chicago Human Rights Ordinance.

4. Section 2-160-030 of the Chicago Human Rights Ordinance prohibits discrimination in “hiring ... discharge ... or other term or condition of employment because of the individual’s ... religion.”

Respondents did not violate Section 2-160-030 of the Chicago Human Rights Ordinance in that Complainant did not establish a *prima facie* case that she was discharged because she wore her hijab.

### IV. ANALYSIS

This is a case in which the credibility of the witnesses is critical because the stories significantly conflict in part. In weighing the evidence in the process of making findings, a hearing officer determines the credibility of witnesses and may disregard, in whole or in part, testimony of witnesses not found to be credible. *Sleper v. Maduff & Maduff, LLC*, CCHR No. 06-E-90 (May 16, 2012), *Poole v. Perry and Associates*, CCHR No. 02-E-161 (Feb. 15, 2006). In making those determinations, a hearing officer may consider the witnesses’ bias and

demeanor. *Poole*, supra. The trier of fact decides if a statement indicates a discriminatory motive. *McGavock v. Burchet*, CCHR No. 95-H-22 (July 17, 1996).<sup>11</sup>

A complainant has the initial burden of establishing a *prima facie* case of discrimination in violation of the Chicago Human Rights Ordinance. *Williams v. Bally Total Fitness Corp.*, CCHR No. 05-P-94 (May 16, 2007). Each element of the claim must be established by “evidence produced and admitted at the administrative hearing” and proved by a preponderance of the evidence, which means that “the item to be proved is more likely true than not.” *Robinson v. American Security Services*, CCHR No. 08-P-69 (Jan. 19, 2011), *Wehbe v. Contacts & Specs et al.*, CCHR No. 93-E-232 (Nov. 20, 1996).

In this matter, Complainant has submitted evidence for two different *prima facie* cases: a case for failure to accommodate her religious practices and a case for discharge based on her religious practices.

#### **a. Failure to accommodate religious beliefs, observances and practices**

The Chicago Human Rights Ordinance states that an employer must make all “reasonable efforts” to accommodate an employee’s “religious beliefs, observances and practices” unless the employer demonstrates it is unable to reasonably accommodate the employee’s religious observance or practice without “undue hardship on the conduct of the employee’s business.” Chicago Muni. Code §2-160-050. Commission Regulations require the employee to ask for the accommodation. CCHR Reg. 355.100(a). Thus, to establish a *prima facie* case of failure to accommodate religious beliefs in an employment setting, a complainant must prove by the preponderance of the evidence that: 1) she follows the religious beliefs, observances and practices in question; 2) she is a qualified person who can perform the essential functions of the job in question; 3) she requested the accommodation in question; and 4) respondent failed to make the requested accommodation. See *Scott and Lyke v. Owner of Club 720*, CCHR No. 09-P-2/9 (Feb. 16, 2011); *Martin v. Kane Security Services*, CCHR No. 99-E-141 (Oct. 17, 2000); *Anthony v. O.A.I., Inc.*, CCHR No. 02-PA-71 (Aug. 25, 2003). See also *Luckett v. Chicago Dept. of Aviation*, CCHR No. 97-E-115 (Oct. 18, 2000); *Bosh v. CNA et al.*, CCHR No. 92-E-83 (Oct. 22, 1997). If a complainant establishes a *prima facie* case, the burden then shifts to the respondent to prove that the requested accommodation could not be provided without imposing an undue burden on respondent or was otherwise unreasonable. See Chicago Muni. Code §2-160-050.

Complainant testified credibly that she had been a practicing Muslim for nine years and had been wearing a hijab since her decision to become a Muslim. Through her testimony and the testimony of all Respondents’ witnesses, Complainant has established that Respondent Sharma and his company, American Dental Associates, knew that Complainant was a practicing Muslim and that she wished to wear her hijab as part of her religious practice.

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<sup>11</sup> Several people who were employees of Respondents and who witnessed one or more of the critical events were not called by either party, nor did either party produce evidence that one or more of those witnesses were or were not available to be called. In view of the fact that neither party established that the witnesses were available and that Complainant did not argue that any presumption should be made under the “missing witness rule,” the impact of the failure to call what might have been critical witnesses will not be considered here. See *Sturgies v. Target Department Store*, CCHR No. 08-P-57 (Dec. 16, 2009). See also FEDERAL CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT §1.19 (2009 rev.) (“Adverse Inference from Missing Witness”).

It is true that Complainant did not wear her hijab at work from the first week to the last week of her employment. Complainant testified credibly that she needed a job; economic necessity was paramount. From the very first days of Complainant's employment, she sought the assistance of other employees, including Dr. Moussa and Dr. Abughazaleh, to change Respondent Sharma's decision or to give her guidance on the decision not to wear her hijab. Complainant testified that not wearing her hijab made her feel "naked." As such, Complainant established that she follows Muslim religious beliefs, observances and practices and in her case means that she wears a hijab.

Complainant was a qualified employee, as confirmed by the testimony of Respondent Sharma, who said there had been no disciplinary complaints against Complainant until her last day, and Dr. Yousuf, who testified that she was an average employee. Respondents had not discharged Complainant during the 30-day period of probationary employment Respondent Sharma told her about in the interview.<sup>12</sup>

Complainant testified credibly that Surya told Complainant that Respondent Sharma said Complainant should not wear her hijab.<sup>13</sup> See *Ziomber v. Globetrotters Engineering Corp.*, CCHR No. 03-E-58 (Aug. 14, 2002) (an employer can be held responsible for the discriminatory actions of an employee). Complainant also testified credibly that after Surya's instruction and after her first conversation with Respondent Sharma about whether she should wear her hijab, she sought the assistance of other employees, which was confirmed by Dr. Moussa's testimony.

In his testimony, which contradicted Respondents' Response to the Complaint in part and was indecisive at times, Respondent Sharma confirmed that he had a conversation with Complainant about wearing her hijab and confirmed he said that others in the office (including Dr. Moussa) practiced their religion privately. The Respondents' Response stated that others practiced their religions privately and that employees are provided "a private room at work to pray in accordance with their faith ...."<sup>14</sup> Respondent Sharma, when questioned by Dr. Moussa, noted that Complainant had not worn her hijab during her interview. Respondent Sharma's own testimony and Response would support a finding that he actively discouraged Complainant from wearing her hijab and further supports Complainant's testimony, and the finding that Respondent Sharma explicitly said Complainant should not wear her hijab in a conversation during her first week of employment. See *Anthony v. O.A.I. Inc.*, CCHR No. 02-PA-71 (Aug. 25, 2003).

The testimony of the three Muslim doctors that they had never seen Respondent Sharma showing animus against Muslims is not surprising. They practiced their religion in private. The issue is not whether Respondent Sharma had animus against Muslims, but rather whether Respondents refused to reasonably accommodate a visible religious practice, wearing a hijab.<sup>15</sup>

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<sup>12</sup> Respondents had no written employee policies.

<sup>13</sup> Neither party called Surya as a witness, or stated why she was not called.

<sup>14</sup> Although Respondents' counsel repeatedly questioned Respondents' witnesses during the hearing about patients wearing hijabs, he never asked whether any other employees had ever worn a hijab.

<sup>15</sup> The testimony that a few patients wore hijabs without complaint and that Respondent Sharma was seen in public with Dr. Moussa's mother, who wore a hijab, is an interesting, and totally irrelevant, response to Complainant's claims.

Thus, Complainant established that she requested a religious accommodation and was refused.

Respondents submitted no evidence that allowing Complainant to wear the hijab was unreasonable or would impose an undue burden on Respondents' business. Complainant testified credibly that she had worn her hijab without incident as an employee in previous and subsequent employment at other dental offices.

As such, Respondents Sharma and American Dental Practices violated Section 2-160-050 of the Chicago Human Rights Ordinance by failing to allow Complainant to wear her hijab at work, a reasonable accommodation of her religious beliefs, observances and practices.

#### **b. Discharge due to religion**

The Chicago Human Rights Ordinance prohibits discrimination in employment, including termination, based on religion. Chicago Muni. Code §2-160-030. The second *prima facie* case for which Complainant submitted evidence is based on her discharge which she alleged was due to her religious practice of wearing a hijab.

A complainant may establish a *prima facie* case of discrimination in employment by two methods: by direct evidence of discriminatory intent or by the indirect method based on inferences drawn from the facts proven in the case. *Sleper v. Maduff & Maduff, LLC*, CCHR No. 06-E-90 (May 16, 2012). The direct method will be addressed first.

Under the direct method, Complainant could prove that she was discharged due to her religious practices and beliefs if Respondent Sharma made explicit statements that she was being discharged because she was wearing a hijab, or which proved he had a discriminatory *animus*. See *Sleper, supra*, and cases cited therein. Complainant did not provide this kind of evidence. However, that does not end our inquiry.

The Commission has adopted the "convincing mosaic" approach developed in federal courts in which circumstantial evidence proffered by a complainant can lead a fact-finder to infer discriminatory intent. *Sleper, supra*, citing *Greenwell v. Zimmer, Inc.*, 2010 U.S. Dist. LEXIS 29457 \*12 (N.D.Ind.2012) and *Phelan v. Cook County*, 463 F.3d 773, 770 (7<sup>th</sup> Cir. 2006).

The court in *Greenwell* described the "convincing mosaic" approach as being proved by one of three methods.

With the direct method, a plaintiff may prove discrimination by showing an admission of discriminatory animus or by constructing a "convincing mosaic" of circumstantial evidence that allows a jury to infer intentional discrimination. *Phelan v. Cook County*, 463 F.3d 773, 779 (7th Cir. 2006). Three types of circumstantial evidence can create this proof. *Petts v. Rockledge Furniture, LLC*, 534 F.3d 715, 720 (7th Cir. 2008); *Troupe*, 20 F.3d at 736. First, a plaintiff may bring direct evidence by way of suspicious timing, ambiguous oral or written statements, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn. *Petts*, 534 F.3d at 721; *Troupe*, 20 F.3d at 736. Second, a plaintiff may have evidence (whether or not rigorously statistical)

demonstrating that similarly situated employees outside the plaintiff's protected class received systematically better treatment. *Petts*, 534 F.3d at 721; *Troupe*, 20 F.3d at 736. Third, a plaintiff might show that she was qualified for the job but was passed over for or replaced by a similarly situated person not in the protected class, and that the employer's stated reason for the difference in treatment is unworthy of belief, a mere pretext for discrimination. *Petts*, 534 F.3d at 721; *Troupe*, 20 F.3d at 736. Regardless of the category of circumstantial evidence brought forward by a plaintiff, the evidence brought forward must point directly to a discriminatory reason for the employer's action. *Petts*, 534 F.3d at 720.

*Id.*

In *Sleper*, the Commission first adopted the “convincing mosaic” approach and noted that previous Commission opinions had found direct discrimination in public accommodation cases based on “the totality of circumstances of each case.” The Commission in the *Sleper* opinion cited *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 18, 2006), where a black store patron was followed closely by a security guard in contradiction to the store's general policy and practice, and *Jenkins v. Artists' Restaurant*, CCHR No 90-PA-14 (Aug. 14, 1991) where a black patron was asked to leave by security personnel because he was deemed “suspicious,” as examples of the Commission using the same analysis as the federal court's “convincing mosaic” approach. In *Flores v. A Taste of Heaven and Dan McCauley*, CCHR No. 06-E-32 (Aug. 18, 2010), the Commission noted that in a discriminatory discharge case, a complainant must show:

(1) [her] 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.

Complainant did not offer any proof that others were treated better (the second method of proof in *Greenwell*) or that she was passed over or replaced by a similarly situated person not in the protected class (the third method of proof in *Greenwell*). Therefore, she must rely on “suspicious timing, ambiguous oral or written statements, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn.” *Greenwell, supra*. This would logically include if Complainant can prove by a preponderance of the evidence that the express reason given for her discharge was pretextual. See *Sleper, supra*.

Here are the possible parts of the “mosaic” upon which Complainant must rely for her discharge discrimination case. When Respondent Sharma hired Complainant, she was not wearing a hijab, a fact which he reminded Dr. Moussa of when they talked about Complainant. Respondent Sharma did not know what Complainant's religion was when she was hired, nor did he know she normally wore a hijab.

Complainant proved that Respondent Sharma told her not to wear her hijab, a visible symbol of her religion, in her first week of employment. Respondent Sharma told Complainant that “his” office was professional and that other Muslim employees did not wear a hijab. Respondent Sharma also told Complainant if she wore her hijab she might make patients

uncomfortable. Respondent Sharma told Complainant that people in the office practice their religions privately.

Following this discussion with Respondent Sharma, Complainant spoke with two other dentists at the office where she worked about the fact she had been told not to wear her hijab. Both Dr. Moussa and Dr. Abughazaleh confirmed that Complainant said she had been told not to wear her hijab. During the second conversation Complainant had with Dr. Abughazaleh, he told her she should follow her beliefs and wear her hijab.

Following the second discussion with Dr. Abughazaleh, Complainant again began wearing her hijab at work on March 20, 2013. Respondent Sharma generally worked Tuesdays and Thursdays at the office where Complainant worked and he saw Complainant infrequently during her employment. At or about the same time, Respondents began to assign Complainant to oral surgeons. (Complainant provided no evidence, other than assumptions, that the reassignment was related to her resuming wearing her hijab at work.)

On Tuesday, March 26, 2013, Complainant had a conversation with Respondent Sharma about a raise and training. Complainant wore her hijab to this meeting; this was the first time Respondent Sharma saw Complainant wearing her hijab since the first few days of her employment. After the meeting, during which Respondent Sharma denied her request for a raise and training, Complainant returned to work, admittedly quite angry.

Sometime later that same day, Complainant's mother called with a family emergency. Complainant asked for, and received, permission from Surya, the office manager, to leave the office.

While Complainant was attending to her family emergency, Respondent Sharma noted the schedule in "his" office was backed up, affecting all of the medical personnel and patients. Upon discovering that Complainant had left the office, Respondent Sharma ordered Surya to discharge Complainant upon her return; he said Surya did not inform him that Complainant had a family emergency. However, Respondent Sharma did approve the wording of the termination notice, which expressly stated that Complainant had requested time off for a family emergency. Respondent Sharma did not, as Complainant's counsel notes, question Complainant about the family emergency before he decided to terminate her employment. Rather, he determined without further information that Complainant was acting vindictively to disrupt his office because he had denied Complainant a raise.

Upon her return, Complainant resumed working. Complainant was called by Surya to her office, where Surya told Complainant that she was being discharged. Complainant refused to sign the termination notice because it was not truthful. Respondent Sharma testified that the practice of the office is to usually give employees 1-2 warnings; Complainant received none.

This is the evidence that Complainant argues paints a picture, a "convincing mosaic," that Respondent Sharma determined to fire Complainant because she was wearing her hijab on the day of her discharge. While there is strong evidence for Complainant's claim that she was not allowed to wear her hijab, in violation of the Ordinance requirement that an accommodation must be made to allow for religious practices, the evidence to support Complainant's assertion she was fired for wearing it is far more tenuous.



Given Respondent Sharma's references to the office and his general demeanor during the hearing, the hearing officer determined that Respondent Sharma viewed the office as his private fiefdom. He felt that Complainant was very audacious to ask for a raise when she had been at his office only two months; the language of that meeting, confirmed by both Complainant and Respondent Sharma, supports that conclusion. Then shortly after this meeting, Respondent Sharma finds that Complainant has left "his" office and disrupted "his" schedule. While Complainant wishes us to assume that Respondent Sharma was also upset that Complainant was wearing her hijab again, Complainant provided no evidence that he even mentioned the hijab to her or to anyone else in the office on that day.

The only picture that is clear from this scenario is that Respondent Sharma fired Complainant for disrupting "his" office and "his" schedule. While this may have been a poor employment practice, it is not a violation of the Chicago Human Rights Ordinance. The hearing officer found that Complainant did not prove via the direct evidentiary method that Respondents terminated her employment because she wore her hijab, either by direct evidence or a convincing mosaic.

For Complainant to prove a discriminatory discharge based on religion using the indirect evidence method, she must show that she is a member of a protected class, she was meeting the employer's legitimate job expectations, she was subject to an adverse employment action, and similarly situated employees outside of her protected class were treated more favorably. See *Sleper, supra*. Complainant has proved the first three elements of this method, but she provided no evidence of any other employees being treated more favorably. Her comment that other employees had asked for, and been given, time off for family emergencies, without any detail as to which employees, what kind of family emergency, or when these actions happened, is not sufficient proof that Complainant was illegally discharged. Therefore, Complainant did not establish a *prima facie* case of discriminatory discharge based on the indirect method.

Accordingly, the hearing officer determined that Respondents Sharma and American Dental Associates violated Section 2-160-050 of the Chicago Human Rights Ordinance by failing to reasonably accommodate Complainant's religious practices and beliefs. The hearing officer further determined that Respondents Sharma and American Dental Associates did not discharge Complainant due to her religious practices and beliefs. The Commission agrees and adopts the findings of the hearing officer.

## **V. REMEDIES**

Upon determining that a violation of the Chicago Human Rights Ordinance has occurred, the Commission may order remedies as set forth in Section 2-120-510(1) of the Chicago Municipal Code:

[T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of, 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 or at any stage of the judicial review; 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 violation of provisions of Chapter 2-160 and Chapter 5-8.

## **A. Damages**

Complainant seeks "\$285 for in out-of-pocket expenses, \$15,000 in compensatory damages, [and] \$5,000 in punitive damages." Tr. 166-167, Cp. Brief p. 14.<sup>16</sup> It is Complainant's responsibility to prove that she is entitled to damages in those amounts. See *Sleper, supra*.

### **1. Out-of-Pocket expenses**

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).

The out-of-pocket expenses sought by Complainant are to compensate her for being out of work for 3 days. Tr. 166-167. The hearing officer found that Complainant did not prove that her discharge was due to her religious practice of wearing a hijab and did not award out-of-pocket damages. The Commission concurs with the hearing officer's approach and finds that an out-of-pocket expense award is not warranted in this case.

### **2. Emotional distress damages**

Emotional distress damages are to compensate a complainant for embarrassment, humiliation and emotional distress caused by discriminatory acts of a respondent. *Flores v. A Taste of Heaven and Dan McCauley*, CCHR 06-E-32 (Aug. 18, 2010) and cases cited therein. Damages may be inferred from the circumstances of the events, as well as proved by testimony. *Flores, supra*.

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

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<sup>16</sup> "Cp. Brief" is Complainant's Post Hearing Brief filed on February 11, 2015. Respondents did not file any Post Hearing Briefs.

accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Nash and Demby, supra*; and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997).

Complainant seeks \$15,000 in damages for emotional distress. The Commission cases awarding emotional distress damages are generally either large (\$15,000 or more) or relatively modest (\$2,000 - \$3,000). The Commission looks at whether the following factors are present in awarding the larger amounts:

1. Detailed testimony reveals specific effects of the discriminatory conduct.
2. The conduct took place over a prolonged period of time.
3. The effects of the emotional distress were felt over a prolonged period of time.
4. The emotional distress was accompanied by physical manifestations and/or medical or psychiatric treatment.
5. The discriminatory conduct was particularly egregious, accompanied by face-to-face conduct, slurs or epithets referencing the protected class, and/or actual malice.
6. The complainant was particularly vulnerable.

*Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

Recent cases which have awarded larger amounts include:

*Flores v. A Taste of Heaven and Dan McCauley*, CCHR No. 06-E-32 (Aug. 18, 2010): Complainant awarded \$20,000 in emotional distress damages. Complainant endured repeated slurs about her age, sex, and national origin over a year of employment, including one incident that occurred in front of her husband and son. She testified that she became depressed, gained weight, had trouble sleeping, and sought professional help.

*Johnson v. Fair Muffler Shop*, CCHR No. 07-E-23 (Mar. 19, 2008): Complainant awarded \$20,000 in emotional distress damages. The manager directed racially derogatory epithets toward complainant for six months, then discharged him after Complainant complained to the business owner. Johnson testified that the discrimination made him feel "less than a human being," created problems with eating and sleeping for a month, caused anger management problems requiring therapy, and separated him from his wife for two months while he sought employment in another state.

*Manning v. AQ Pizza LLC et al.*, CCHR No. 06-E-17 (Sept. 19, 2007): Complainant awarded \$15,000 in emotional distress damages. A restaurant manager sexually harassed complainant, addressed her in racially derogatory terms, and fired her when she continued to refuse sexual activity with him. These actions continued after she filed her complaint with the Commission. The complainant testified that she lost her housing due to economic problems and had nightmares and flashbacks.

In contrast, at the other end of the damage award spectrum are cases where complainants testified about a single act of discrimination and provided minimal evidence about the impact the discrimination had on them personally. Generally, these complainants are awarded damages in the \$1,500 to \$2,500 range. See *Sleper, supra* (complainant awarded \$2,500 in emotional distress damages where she testified that she was upset, offered no evidence of physical manifestations

and did not testify that her distress was of any significant duration); *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004) (complainant awarded \$2,000 in emotional distress damages where she complained of only a single act of harassment and offered no evidence of medical assistance); and *Feinstein v. Premiere Connections. LLC et al.*, CCHR No. 02-E-215 (Jan. 17, 2007) (complainant awarded \$2,500 in emotional distress damages where complainant's testimony showed discrete discriminatory acts which took place during a relatively short period of time, and were accompanied by threats, but complainant was not vulnerable).

Here, Complainant experienced two acts of direct, face-to-face discriminatory conduct when Surya and Respondent Sharma told her not to wear her hijab. She endured two months of not wearing her hijab to work in response to these directives and felt as if she were "naked" during that time. She was conflicted about not wearing her hijab, as shown by the number of times she sought assistance and guidance from other staff members. She did not testify to any physical manifestations, doctor's visits, sleeping or eating problems, or depression. She did testify that she thought she would never get a job wearing a hijab, although that feeling only lasted until her next employment, which she found three days after she was discharged.

The hearing officer determined that Complainant's testimony regarding the extent of her emotional distress was insufficient to justify an award of \$15,000, and recommended a more modest award of \$7,000. Complainant endured nearly two months of denying her religious practice at work, which justifies an award above the most minimal awards. No evidence was produced that Complainant suffered mental or physical harm requiring medical assistance. According to the hearing officer, Complainant's testimony and demeanor evidence a very resilient woman who coped well during her employment with Respondents and rapidly moved on with her life after that experience. As such, the Commission adopts the hearing officer's recommended emotional distress damages award of \$7,000.

### **3. Punitive Damages**

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).

The Commission has noted that awards of punitive damages in employment discrimination cases "send a message to Respondents and the public that certain conduct will not be tolerated in the workplace." *Tarpein v. Polk Street Company d/b/a Polk Street Pub et al.*, CCHR No. 09-E-23 (Oct. 19, 2011), citing *McCall v. Cook County Sheriff's Office et al.*, CCHR No. 92-E-122 (Dec. 21, 1994). Punitive damages may be particularly necessary in cases where damages are modest to ensure a meaningful deterrent. *Miller v. Drain Experts & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998).

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).

Respondents chose not to produce any evidence of its profitability or net worth or any evidence that mitigates against the imposition of punitive damages. There was testimony that Respondents have seven dental offices, that the offices employ sixteen “dental professionals,” and that those offices are very busy. Respondent Sharma is the sole owner of Respondent American Dental Associates.

Punitive damages should be awarded in this case. Respondent Sharma characterized wearing the hijab as a “personal choice” rather than a religious practice even during his testimony and stressed he practiced his religion in private. When asked if he told Complainant that patients would be uncomfortable if she wore her hijab to work, his response was not that he would not do that, but rather, a dismissive that he did not “think” he had. Respondent Sharma’s testimony was indecisive and conflicted with both Respondents’ Response and his own employees at times. Respondent Sharma in his testimony and his Response to the Complaint stressed that Dr. Moussa did not wear a hijab at the office and other employees kept their religious practices private. All of this showed Respondent Sharma (the sole owner and president of Respondent American Dental Associates) continued to have a callous disregard of the right of Complainant and others in her protected group to wear visible symbols of their religion while in his employment. Respondents did participate fully in the Commission’s processes, except that they chose not to file a post-hearing brief.

Complainant seeks an award of \$5,000 in this case, which is within the moderate range of punitive damages awarded by the Commission. The hearing officer recommended that Complainant be awarded \$5,000 in punitive damages to send a message to Respondents and others that refusing to accommodate religious practices shall not be tolerated. The Commission accepts and adopts the hearing officer’s recommendation.

## **B. Fines**

Section 2-160-120 of the Chicago Human Rights Ordinance provides that any person who violates any provision of the ordinance as determined by the Commission shall be fined not less than \$100 and not more than \$1,000 for each offense. The hearing officer recommended a fine of \$1,000 be assessed in this case against Respondents. The Board of Commissioners approves and adopts this recommendation.

### **C. Interest**

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on the damages awarded to remedy Ordinance violations. Pursuant to Reg. 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. The hearing officer recommended an award of interest on all damages awarded in this case, starting from the date of the discriminatory act, January 30, 2013. The Commission agrees and adopts the recommendation.

### **D. Injunctive Relief**

Complainant did not seek injunctive relief; however, the Commission finds it warranted in this case. Section 2-120-510(l) of the Chicago Municipal Code authorizes the Commission to order injunctive relief to remedy a violation of the Human Rights Ordinance or the Fair Housing Ordinance. The Commission has ordered respondents found to have violated one of these ordinances to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, record-keeping, and reporting. See, e.g., *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Walters et al. v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994); *Metropolitan Tenants Organization v. Looney*, CCHR No. 96-H-16 (June 18, 1997); *Leadership Council for Metropolitan Open Communities v. Souchet, supra*; *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al.*, CCHR No. 99-H-39/53 (Apr. 18, 2001); *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); and *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission ordered a restaurant which had discriminated against a customer based on gender identity to promulgate an anti-discrimination policy and deliver staff training designed to prevent further discrimination. Also, in a decision finding workplace harassment based on sexual orientation, the Commission ordered an employer to train its managers and staff about applicable laws and existing internal policies prohibiting such discrimination. *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010).

Respondent American Dental Associates did not have any policy or procedures in place for employees to report discrimination or to request an accommodation for religious practices. The violation of the Chicago Human Rights Ordinance in this matter points to the need for Respondents to adopt the aforementioned policies and make sure all employees are aware of them. Accordingly, the Commission orders Respondents to take the following steps as injunctive relief:

#### **- Order of Injunctive Relief**

1. On or before 90 days from the date of mailing of the Commission's Final Order and Ruling on Attorney Fees and Costs (or 120 days from the date of mailing of the Final Order and Ruling on Liability and Relief if no petition for attorney fees and costs is filed or if the parties settle on the amount of such fees and costs), Respondents are ordered to

distribute to all employees and management personnel engaged in the operation of any American Dental Associates dental office located in the City of Chicago a written policy which prohibits unlawful discrimination as defined in the Chicago Human Rights Ordinance and which establishes an internal procedure to report discrimination or request an accommodation for religious practices. In the distribution, Respondent American Dental Associates shall note that adherence to the policy is mandatory for all above-described employees and for management or administrative personnel. The policy should outline mandatory steps to be taken to resolve any potential issues that may arise.

2. After initial distribution of the policy as described above, American Dental Associates shall give a copy of the policy to each subsequent new employee.
3. Respondents are not required to obtain prior approval of the policy from the Chicago Commission on Human Relations or to work with the Commission on Human Relations in complying with this order of injunctive relief. Respondents may request the Commission's assistance with compliance, and the Commission may assist as feasible consistent with its adjudicatory role. However, the responsibility to comply with this order of injunctive relief is entirely that of Respondents, with or without Commission assistance.
4. On or before 120 days from the date of mailing of the Commission's Final Order and Ruling on Attorney Fees and Costs (or 150 days from the date of mailing of the Final Order and Ruling on Liability and Relief if no petition for attorney fees and costs is filed or if the parties settle on the amount of such fees and costs), Respondents shall file with the Commission and serve on Complainant a report detailing the steps taken to comply with this order of injunctive relief. The report shall include a copy of the required written policy and a signed certification by an owner or manager of American Dental Associates that a copy of the policy has been distributed to all existing and new employees.
5. This order of injunctive relief shall remain in effect for a period of three years following the initial compliance date described in Paragraph 1 above.

#### **E. Attorney Fees and Costs.**

Section 2-120-510(1) of that Chicago Municipal Code allows the Commission to order a respondent to pay all or part of the prevailing complainant's reasonable attorney fees and associated costs; fees are routinely granted to prevailing complainants. *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012). Accordingly, attorney fees and costs are awarded to Complainants with the amount to be determined by further ruling of the Commission pursuant to the procedures stated in CCHR Reg. 240.630.

## VI. CONCLUSION

For the reasons stated above, the Board of Commissioners find the Respondents American Dental Associates, Ltd., and Dhiraj Sharma liable for failing to reasonably accommodate religious beliefs and practices in employment in that they refused to allow Complainant to wear her hijab at the workplace in violation of CHRO 2-160-050. As detailed above, the Commission orders the following relief:

- a. Payment to Complainant of damages for emotional distress damages in the amount of \$7,000;
- b. Payment to Complainant of punitive damages in the amount of \$5,000;
- c. Payment to the City of Chicago a fine of \$1,000;
- d. Payment of interest on the foregoing damages from the date of the violation;
- e. Payment of Complainant's reasonable attorney fees and costs as determined pursuant to CCHR Reg.240.630 and further orders the Commission;
- f. Respondents shall comply with the order of injunctive relief set forth in this ruling.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega  
Mona Noriega, Chair and Commissioner  
Entered: July 9, 2015