



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

IN THE MATTER OF:

Ramelle Wallace
Complainant,
v.
Tong Tong Bae Bar and Restaurant
Respondent.

Case No.: 12-E-04

Date of Ruling: March 19, 2014

Date Mailed: April 8, 2014

TO:

Ramelle Wallace
5049 W. Washington Blvd., #1B
Chicago, IL 60644

Timothy J. Fitzgerald
The Fitzgerald Law Firm
901 W. Jackson, Suite 300
Chicago, IL 60607

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on March 19, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent 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 Respondent:

1. To pay Complainant \$1,000 in emotional distress damages plus interest on that amount from January 10, 2012, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$1,000.¹

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.

CHICAGO COMMISSION ON HUMAN RELATIONS

¹**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.



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FINAL RULING ON LIABILITY AND RELIEF

I. BACKGROUND

On January 11, 2012, Complainant Ramelle Wallace filed this complaint with the City of Chicago Commission on Human Relations ("Commission") alleging that Respondent Tong Tong Bae Bar and Restaurant engaged in racial, color, and age discrimination by refusing to hire her. Respondent's Verified Response was due on or before June 22, 2012. Respondent failed to file a Response. The Commission issued three separate Orders to Respond and Notices of Potential Default on April 11, 2013, May 16, 2013, and July 1, 2013. Respondent did not respond to the Notices of Potential Default. On August 15, 2013, an Order of Default against Respondent was issued.

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

On November 20, 2013, an administrative hearing was held. Complainant appeared *pro se* and Respondent was represented by counsel. On January 22, 2014, the hearing officer issued his Recommended Ruling. No objections were filed.

II. FINDINGS OF FACT

1. Complainant Ramelle Wallace is African-American. At the time she attempted to apply for the job at Respondent, she was 53 years old. (Complaint. Pg. 1)

2. Respondent Tong Tong Bae Bar and Restaurant is a bar and restaurant in the Albany Park neighborhood in Chicago. It is owned and operated by Choon Ja Lee ("Lee"), who is Korean speaking. Respondent's premises has one room that acts as a restaurant and a separate room that has a full bar. (Tr. 25-26)

3. Respondent's clientele is mostly made up of Koreans, although there are some other ethnic groups. (Tr. 26)

4. On or about January 10, 2012, after seeing a Help Wanted sign in Respondent's window, Complainant called the number on the sign to inquire about employment. (Tr. 8)

5. The number on the Help Wanted sign was the personal cell phone of Lee. Lee handles all calls inquiring about employment. In taking these calls, because of the nature of her clientele, Lee asks the applicant what their nationality is and whether they speak Korean. She also asks the applicant's age because anyone who serves alcohol needs to be over 21 years old. (Tr. 26-28)

6. Complainant claims that when asked what her age was and she responded 53, that Respondent replied "no, no, no," and that when asked her nationality, she responded that she was African-American, Respondent again responded "no, no, no." Complainant also claims in her Complaint that after answering Respondent's questions, the Respondent replied that she was "not the right type for the job," and "that [she] was too old." Lee denies such responses, but admits that she asked the alleged questions. (Complaint. Pg. 2) (Tr. 9, 30)

7. Respondent has hired as a temporary part-time employee, a Caucasian friend of Lee's who does not speak Korean. (Tr. 31)

8. At the time Complainant inquired about the position, she was not employed and was receiving disability. She was looking for a job to supplement her income. She was already depressed and the alleged incident made her depression worsen. (Tr. 10-11)

III. APPLICABLE LEGAL STANDARD

Section 2-160-030 of the Chicago Human Rights Ordinance makes it unlawful to "directly or indirectly discriminate against any individual in hiring ...because of the individual's race, color ...[or]age ...The prohibitions contained in this paragraph shall not apply to ...(b) hiring or selecting between individuals for bona fide occupational qualifications."

IV. ANALYSIS

The Order of Default means that Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations in the Complaint including defenses concerning the Complaint's sufficiency. Commission Regulation 235.320. Therefore, the allegations of the Complaint- that Complainant attempted to apply for employment with Respondent and after Complainant revealed her age and race, she was told that she was not the right person for the job- are all admitted by the Respondent in light of the default.

Because a default judgment was entered against the Respondent, Complainant need only establish a *prima facie* case of discrimination to prevail on her claims. In any discrimination case which alleges disparate treatment in employment based on a protected class, a complainant may establish his or her case by direct evidence or indirect evidence of the necessary discriminatory intent. *Luckett v. Chicago Dept. of Aviation*, CCHR No. 97-E-115 (Oct. 18, 2000). To prove discrimination using the direct evidence method, Complainant must show that "(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." *Id.*; see also *Griffiths v. DePaul Univ.*, CCHR No. 95-E-224 (Apr. 19, 2000), holding that a complainant may "rely on statements by managers which show that the adverse employment decision was taken because of the complainant's protected group status."

Here, Complainant's testimony, along with the admitted allegations of her Complaint, establish a *prima facie* case of discrimination. Complainant was a member of a protected class since she is both African-American and over forty years old. Complainant was not hired for the advertised position and the evidence shows that Respondent made an "unequivocal statement of discriminatory animus" as the reason for not hiring her. Respondent told Complainant that she was "too old" and, when hearing that she was African-American, said "no, no, no," and informed her that she was "not the right type for the job." Respondent is therefore liable for violation of the Chicago Human Rights Ordinance.

V. RELIEF

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

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

A. Damages

1. Lost Wages

The hearing officer found, and the Commission agrees, that Complainant did not meet her burden of proving the amount of any lost wages. No documentation or testimony was presented regarding lost wages. Therefore, no damages for lost wages may be awarded.

2. Emotional Distress Damages

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v.*

Sallas Realty et al., CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky*, CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell*, CCHR No 01-H-101 (Apr. 6, 2003); *Marable v. Walker*, 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner*, 563 F. 2d 159, 164 (5 Cir. 1977).

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

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

The hearing officer determined that Complainant did not present any evidence to show that she suffered from emotional distress or to prove the proper amount to be awarded. Due to the lack of evidence, the hearing officer recommended that no emotional distress damages be imposed.

The Commission disagrees with the hearing officer's analysis, and finds that the testimony Complainant offered at the hearing, although minimal, was sufficient to establish compensable emotional injury under the Ordinance. Complainant testified that she felt demeaned by the incident. Complainant further testified that at the time, she was in a depressed state, which worsened by her inability to locate employment to assist with paying her bills. Complainant stated that the incident added to her depression and frustration. Emotional distress can be inferred from these facts.

As noted in Section 2-120-510(l) of the Chicago Municipal Code, the Commission has the authority to modify the recommendations of a hearing officer in whole or in part and in ordering relief to take such action as may be necessary to make the individual complainant whole. The Commission may in a proper case increase the amount of emotional distress damages from what was requested or recommended. See, e.g., *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004), where the Commission increased the emotional distress damages from the hearing officer's recommendation of no award to \$2,000 based on Complainant's testimony during the hearing regarding the emotional distress caused by Respondent's discriminatory conduct.

Therefore, the Commission awards Complainant \$1,000 in damages for emotional distress.

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).

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).

Here, the hearing officer concluded that the evidence presented during the hearing did not show that Respondent's actions were willful, wanton, or taken in reckless disregard of Complainant's rights. The hearing officer further determined that the actions taken by Respondent were primarily a result of confusion over a language barrier. Therefore, the hearing officer recommended that no punitive damages be awarded against Respondent. The Commission agrees, finding that the damages and fine awarded herein will be sufficient to punish and deter the discriminatory behavior in which Respondent engaged.

4. Interest

Commission Regulation 240.700 provides for pre- and post-judgment interest at the prime rate, adjusted quarterly, compounded annually starting at the date of the violation. Such interest is routinely awarded and shall be calculated starting from January 10, 2012, the date of the discriminatory incident.

B. Fines

Pursuant to Section 2-160-120 of the Chicago Municipal Code, the Commission must impose a fine between \$100 and \$1,000 if a respondent is found to have violated the Chicago Human Rights Ordinance. The hearing officer recommended a fine of \$100. The Commission finds no basis to order only a minimal fine in light of its finding. Accordingly, the Commission imposes the maximum fine of \$1,000.

C. Attorney Fees

Complainant appeared *pro se*, so attorney fees are not awarded.

VI. SUMMARY AND CONCLUSION

The Commission finds Respondent Tong Tong Bae Bar and Restaurant liable for race and age discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to Complainant of emotional distress damages in the amount of \$1,000;
2. Payment to the City of Chicago of a fine of \$1,000.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega
Mona Noriega, Chair and Commissioner
Entered: March 19, 2014