

IN THE MATTER OF:

Jazlynn Mendoza,

Complainant,

and

**Hernandez Family, LLC d/b/a Rosati's Pizza
and Dorien Hernandez, individually,**

Respondent.

CHARGE NO(S): **2021CF0382 / 2021CN0383**
EEOC NO(S): **21BA10039**
ALS NO(S): **22-0083C**

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above-named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

Entered this March 20, 2024

Tracey Fleming
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JAZLYNN MENDOZA,	)	
	)	
Complainant,	)	
	)	
and	)	Charge No. 2021CF0382
	)	Charge Nos. 2021CN0383
	)	EEOC No. 21BA10039
	)	ALS No. 22-0083C
	)	
HERNANDEZ FAMILY, LLC d/b/a	)	
ROSATI'S PIZZA and DORIEN HERNANDEZ,	)	
individually,	)	
	)	
Respondents.	)	Judge William J. Borah
	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages, which was conducted on November 30, 2022. Complainant and her attorney participated in the evidentiary hearing, while Respondents chose not to appear. Subsequently, Complainant submitted a post hearing brief, along with a petition for statutory attorney's fees and costs, while Respondent chose not to file a post hearing brief or respond to the petition for Complainant's attorney's fees and costs.

FINDINGS OF FACT¹

Introduction

On March 18, 2022, the Complainant filed two separate complaints of sexual harassment and retaliation with the Illinois Human Rights Commission (Commission) against each of the two Respondents: Hernandez Family, LLC d/b/a Rosati's Pizza (Rosati's Pizza)

¹ The following facts were derived from the record file in this matter, as well as from testimony and exhibits admitted at the public hearing.

(ALS No. 22-0083) and Dorien Hernandez (Hernandez), (ALS No. 22-0084), who was Rosati's Manager.

Throughout the course of the litigation, both Respondents have failed to attend the scheduled hearings or to respond to the issued orders. Because of their inaction, on September 14, 2022, default orders were entered against the Respondents. Thus, the facts pled in the respective complaints are admitted as true. Thereafter, on December 6, 2022, the two cases were consolidated under the ALS No. 22-0083C.

History

Complainant was a minor child at the time of her hire on January 16, 2018, by Rosati's Pizza, where Hernandez was its manager and Complainant's immediate supervisor. During her employment, Complainant was paid at the rate of \$9.50 per hour, and on average, she was worked between 21 and 28 hours per week, for an average pay of \$232.75, per week. Since Complainant's discharge on January 23, 2020, she actively searched for employment. Complainant is requesting the back wages in the amount of \$35,112.00, lost for her unemployed period.

Complainant pled in the complaint, that beginning in January 2018 and continuing through January 23, 2020, when she separated from her employment, Hernandez continuously sexually harassed her by his barrage of unwelcome sexual advances and comments. Complainant rebuffed Hernandez conduct and found it to be intimidating, threatening, and offensive. Hernandez behavior was the source of her "on going" anxiety and embarrassment, especially because she was a minor and he was her supervisor. As a result, Complainant had to attend several sessions of counseling. Complainant is requesting emotional distress damages in the amount of \$35,000.00.

Complainant retained Erin A. Duffy, esq. (Duffy) on or around January 29, 2020. Ms. Duffy provided legal services on behalf of Complainant at the adjustable hourly rate of \$375.00 and spent an estimated 72.50 hours on this matter. The requested hourly rate of attorney's fees

and the number of hours expended for this legal matter are reasonable and customary in Wheaton, Illinois, for a total amount of \$19,928.75. The law firm incurred costs in the amount of \$2,431.25.

DAMAGES

As a result of the September 14, 2022, default order, there has been a finding of liability against both Respondents. The allegations of the charge and complaint are deemed admitted and Complainant's claim of sexual harassment and retaliatory discharge have been established. Therefore, it is not necessary to analyze the facts with the elements of the underlying causes of action. Based on the evidence, Complainant sustained actual damages. Section 5/8A-104(B) of the Act.

Back Wages

It is the statutory charge of the Commission to make the prevailing complainant whole. Complainant is eligible for back wages consisting of the difference between what she should have received in salary, but for the discriminatory conduct of Respondent, and the amount received through other employment during the applicable period. Clark v. Illinois Human Rights Commission, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist. 1986); Brown and American Highway Technology, IHRC, ALS No.10805, January 2, 2003.

In calculating back wages, an employee should advance his/her theory of likely earnings along with supporting evidence. Id.

The Calculation of Back Wages

Complainant testified she earned \$232.75 per week, for a total formulaic amount of \$931.00 per month. From her discharge on January 23, 2020, to the date of the hearing or 34 months or \$31,654.00.

Respondent's failure to participate in these proceedings has left me without the benefit of cross-examination on any contrary figures of gross pay, set off, or on Complainant's efforts to find employment.

For the purposes of this order, a total of \$31,654.00 of back wages is appropriate. All ambiguities, when calculating back pay, are resolved in favor of the prevailing Complainant. Clark v. IHRC, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist. 1986).

In the absence of any evidence to the contrary, it will be assumed that Complainant's wage losses were proximately caused by the civil rights violation.

Therefore, based on the compensable period discussed and the credibility of Complainant, I recommend a back wage amount of \$31,654.00 be assessed against Respondents, joint and severally.

Prejudgment Interest

Respondents, joint and severally, should be ordered to pay Complainant interest on back wages. Section 8A-104(J) of the Act.

Reinstatement

As reinstatement has not been requested, it is not part of my recommendation.

Emotional Distress

Complainant alleged she suffered emotional distress because of illegal harassment and requested an award to compensate her for this injury. The Act permits monetary damages for emotional distress. The totality of the circumstances analysis is used. Village of Bellwood v. Illinois Human Rights Commission, 184 Ill.App.3d 339, 541 N.E.2d 1248 (1st Dist.1989).

The "actual damages" provision of section 8B-104(B) of the Act include "indemnification for inconvenience, mental anguish, humiliation, embarrassment, expenses, and deprivation of Constitutional rights." Ayers and Johnson, IHRC, ALS No. 3375 (K), October 3, 1991, quoting Moorhead v. Lewis, 432 F. Supp. 674 (N.D. Ill. 1977).

The act of violating a person's civil rights, by itself, is insufficient to support an award for emotional distress damages. Garrity and Lockett, IHRC, ALS No. 6389, May 3, 1996. "The probative factors in determining the amount of an emotional distress award are the nature and

duration of the suffering experienced by the complainant.” Gipson and H.P. Mechanical, Inc., and Steve Hathorne, IHRC, ALS No. 06-060C, August 3, 2007.

In Bellwood, supra, as here, no medical evidence was adduced.

Although the allegations of the claims of sexual harassment are deemed admitted as fact, pursuant to Section 8A-102(D)(4), and liability existed against Respondents pursuant to the default order of September 14, 2022, it is still a prerequisite to review the “nature and duration of the suffering” experienced by the Complainant prior to any recommendation of emotional distress damages.

Complainant seeks an emotional distress damages award of \$35,000.00.

The weight of the evidence in the record, facts admitted by the default order and the testimony at the hearing relating the nature and duration of the suffering caused by the alleged acts, the age of Complainant and supervisory capacity of Hernandez, support an award for emotional distress.

Complainant felt “on going” “difficulty sleeping, anxiety, depression, discomfort, and embarrassment.” to the degree and effectiveness that she needed to attend professional counseling.

I find that the amount requested is reasonable. Therefore, I find that an award of \$35,000.00 for emotional distress damages is fair and reasonable under all the circumstances presented by this case.

Cease and Desist

Since a default order has been entered and there has been a finding of liability against Respondent, it is recommended that both Respondents be ordered to cease and desist from violating the Act in the future.

Attorney's Fees and Costs

Since a finding was made that the Respondents violated the Act and Complainant's damages have been determined, the only issue remaining is the amount of attorney's fees and costs that should be awarded to Complainant under Section 8A-104(G) of the Act.

Complainant's petition seeks \$19,928.75 in attorney's fees and \$2,431.00 in costs.

The purpose of the attorney's fee provision of the Act is to ensure that attorneys who practice before the Commission are adequately compensated for their services. Lieber and Southern Illinois University Board of Trustees, IHRC, ALS No. 884, September 25, 1987. In Clark and Champaign National Bank, IHRC, ALS No. 354(J), July 2, 1982, the Commission set out factors to consider when awarding fees and costs. The Commission looks to the experience of the attorney, the customary hourly fees for similar legal services in that locale, and the time spent furthering the case.

The law offices of Mirabella, Kincaid, Frederick & Mirabella, LLC, specifically Ms. Erin A. Duffy, esq., provided adequate uncontested affidavits and invoices that established that the legal services performed, experience, and the amount charged in fees were reasonable and customary for Wheaton, Illinois. Therefore, the total amount of \$19,928.75 for attorney's fees is reasonable for this case.

The Act also authorizes recovery of costs as per Section 8A -104(G). Complainant's attorney claimed out of pocket costs in the amount of \$2,431.25 in this matter, which is also reasonable for this case.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter.
2. At the time of the incidents complained of, Complainant was an "employee," as defined in the Act.
3. At the time of the incidents complained of Respondent was an "employer," as defined in the Act.

4. As a result of the September 14, 2022, default order, all the allegations contained in the charge and complaint are deemed admitted as true.

5. In accordance with the default order, Respondent is liable for violations of the Act that prohibit sexual harassment.

6. An argument based on the evidence cannot be made if the argument is an affirmative defense that should have been properly pled and defended.

7. Complainant has proven by a preponderance of the evidence that she has suffered emotional distress from the actions of Respondent of such magnitude that she is entitled to an award of emotional distress damages. Complainant has also proved back wages are due her based on Respondents retaliatory discharge of her.

8. A prevailing complainant may recover reasonable attorney's fees and costs.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered sustaining the complaint and awarding Complainant the following relief:

1. Order Respondents to be joint and severally assessed to pay Complainant back wages in the amount of \$31,654.00.
2. Order Respondents to be joint and severally assessed to pay Complainant prejudgment interest on the award of back wages, as per Section 8A-104(J) of the Act and Section 5300.1145 of the Commission's Rules and Regulations.
3. Order Respondents to be jointly and severally assessed to pay Complainant \$35,000.00, as compensation for emotional distress.
4. Order Respondents to cease and desist from sexual harassment in their employment practices.
5. Order Respondents to be joint and severally assessed to pay Complainant the amount of \$19,928.75, as attorney's fees in this matter plus \$2,431.25 in costs.

HUMAN RIGHTS COMMISSION

BY:

WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: January 24, 2024