

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

KELLY WALTON,
Complainant

v.

DINO CONCORDIA,
Respondent

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PHRC Case No. 200806050

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act ("PHRA") and 16 Pa Code §42.31(k) requires a Respondent to file a written verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under 16 Pa Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a Public Hearing on the issue of damages.
5. In this matter, Concordia's failure to file a properly verified answer resulted in the entry of a judgment for Walton on the issue of liability.
6. Concordia, as a result of the ruling on the issue of liability, has violated Section 5(h)3 of the PHRA.
7. The PHRC has broad discretion in fashioning a remedy.
8. The PHRC may order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the PHRC, will effectuate the purposes of the PHRA.

Property Division. Although not only notified by certified mail and a phone contact by Concordia regarding the Public Hearing, Concordia failed to attend the Public Hearing.

Since liability was found after Concordia failed to file a properly verified answer to Walton's complaint, the only question at Public Hearing was damages Walton could establish.

Section 9(f)(1) of the PHRA provides in pertinent part:

If upon hearing all the evidence at the hearing the Commission shall find that a Respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in the Act, the Commission shall state its findings of fact, and shall issue and cause to be served on such Respondent an Order requiring such Respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the Complaint, hiring, reinstatement . . . with or without back pay . . . and any other certifiable reasonable out-of-pocket expenses caused by such unlawful discriminatory practice provided that, in those cases alleging a violation of Section 5(h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, as in the judgment of the Commission, will effectuate the purposes of this Act, and including a requirement for report of the manner of compliance.

In the instant case, the actual damages may include damages by humiliation and embarrassment. Additionally, Section 9(f)(2) authorizes the assessment of civil penalty "in an amount not exceeding ten thousand dollars . . ."

In regard to an award of damages caused by humiliation and embarrassment, such damages may be based on inferences drawn from the circumstances of the case as well as the testimonial proof. HUD v Ocean Sands, Inc., 2A FHFL \$25,055 (HUD ALJ Sept. 3, 1993) citing HUD v Blackwell, 2A FHFL \$25,001 (HUD ALJ Dec. 21, 1989) aff'd. 908 F.2d 864 (11th Cir. 1990); and HUD v Murphy, 2A FHFL \$25,002 (HUD ALJ July 13, 1990). Furthermore, emotional injuries are by nature qualitative and difficult to quantify. See, e.g. Block v R. H. Macy & Co., 712 F.2d 1241 (8th Cir. 1983)

In HUD v Banaj, 2 FHFL \$25,857 (HUD ALJ February 1995), the court stated, "The key factor in determining the size of an award for humiliation and embarrassment is a victim's reaction to the discriminatory conduct." In the instant case, Ms. Walton credibly testified as to

In addition to the above damages, the actions of Concordia have caused Walton to make changes to her property to protect herself from his harassing behavior. Walton is requesting to erect a six-foot stockade fence to put around her back yard to prevent Concordia from harassing her. The estimate for the construction of the fence is \$1,875.00. Walton also requests that a higher brick wall be constructed between the two properties on the patio. The estimate for this work is \$1,000.00. Because of the despicable discriminatory behavior of Concordia, Walton should be awarded the additional sum of \$2,875.00 to enable Walton to make modifications to her property that will make it much more difficult for Concordia to humiliate and embarrass her.

Lastly, under the PHRA, a civil penalty may be assessed against a Respondent. The Commission's authority to impose a civil penalty was upheld in Allison v PHRC 716 A.2d 689 (Pa. Cmwith 1988), appeal denied (1999). The factors to be considered are the nature of the violation; the degree of culpability; the Respondent's financial resources; the goal of deterrence; and other matters as justice may require. Considering the above factors in the instant case, a civil penalty in the amount of \$1,000.00 should be assessed against him.

An appropriate Order follows.

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AND NOW, this 26th day of July, 2011 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner in the instant case. Furthermore, the full Commission adopts said Findings of Fact, Conclusions of Law and Opinion as its own findings in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion in the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

1. That Concordia will cease and desist from harassing individuals because of their disability or their race.