City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60610
(312) 744-4111 (Voice), (312) 744-1081 (Fax) (312) 744-1088 (TTY/TDD)

IN THE MATTER OF:

TERESA BELLAMY,		
	Complainant,	**CCHR Case No. 03-E-190**
v.		
		Date of Ruling: April 18, 2007
NEOPOLITAN LIGHTHOUSE,		**Date Mailed: April 23, 2007**
	Respondent.	

FINAL ORDER ON LIABILITY AND RELIEF

TO: Miriam Solo
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YOU ARE HEREBY NOTIFIED that, on April 18, 2007, the Chicago Commission on Human Relations issued a ruling in favor of Complainant Theresa Bellamy. The Commission ordered Respondent to pay damages in the amount of $25,000 plus interest from September 16, 2003, and to pay the City of Chicago a fine of $100.[1] The Commission also awarded Complainant attorney fees and costs on her claim of discriminatory employment terms and conditions, excluding work performed solely on the hostile environment or constructive discharge claims on which Complainant did not prevail. The findings of fact and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100(14) and 250.150, to seek review of this order, parties may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law; however, because attorney fees proceedings in this matter are now pending at the Commission, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Pursuant to Reg. 240.630, Complainant is ordered to file with the Commission and serve on the other parties and the Hearing Officer a statement of attorney fees and/or costs, supported by argument and affidavits, no later than 24 days after the date of mailing of this Order and Ruling to the parties, that is, on or before **May 17, 2007.** Any response to such statement shall be filed with the Commission and served on the other parties and the Hearing Officer within 14 days of the filing of any amended or supplemental statement, or **May 31, 2007**, whichever date occurs earlier. Any reply brief by Complainant shall be filed and served no more than 10 days after the filing of any response. A party may request additional time to file and serve any of the above items pursuant to the provisions of Reg. 270.130.

CHICAGO COMMISSION ON HUMAN RELATIONS
Clarence N. Wood, Chair/Commissioner

[1] **Compliance Information.** Reg. 250.210 requires parties to comply with a Final Order after Administrative Hearing no later than 31 days after the later of the Board of Commissioners' Final Order on Liability or any Final Order on Attorney Fees and Costs. 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 Deputy Commissioner for Adjudication and including a reference to this case name and number. Payments of damages and interest are to be made directly to the Complainant. See Reg. 250.220 for information on seeking enforcement of a relief award.

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FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant, Teresa Lea Bellamy, filed this complaint alleging violations of the Chicago Human Rights Ordinance, Chapter 2-160 of the Chicago Municipal Code. Her Complaint contains three claims: (1) discrimination in the terms and conditions of employment based on her sexual orientation (lesbian); (2) harassment based on her sexual orientation; and (3) constructive discharge. *See* Complaint, ¶¶ 3, 6, 7. Respondent, Neopolitan Lighthouse, denies all the allegations. In addition, at the Administrative Hearing, Respondent offered evidence of an affirmative defense: that Respondent had taken reasonable steps to prevent discrimination and harassment, and that Complainant had failed to take reasonable advantage of the available procedures for addressing such complaints by reporting them to superiors in the organization.[1]

A public Administrative Hearing was conducted on July 26 and 27, 2006, and post-hearing briefs were filed by the parties on September 18, 2006; replies were filed October 30, 2006. After

[1] Respondent need not file a formal affirmative defense in order to preserve the issue for the Administrative Hearing. CCHR Rules and Regulations, § 210.180; *Pearson v. NJW Office Personnel Services, Inc.*, CCHR No. 91-E-126, 1992 WL 792875, *13, ¶ 56 (Sept. 21, 1992).

seeking and obtaining an extension of time to file objections, on February 2, 2007, Respondent filed Objections to the First Recommended Decision on Liability, and on February 21, 2007, Complainant filed her Response to Respondent's Objections.

II. FINDINGS OF FACT

Adopting the Hearing Officer's recommendations, the Commission makes the following factual findings:

A. Background

1. The Executive Director of the Respondent, Neopolitan Lighthouse ("Neopolitan"), is Crystal R. Bass-White. [07/26/06 Tr. at 15.]

2. Bass-White's sister, Brigette Petty, has held a variety of positions with Neopolitan since May 2003, including Deputy Director. [07/26/06 Tr. at 197.] Petty has also functioned as Neopolitan's head of human resources. [07/26/06 Tr. at 201.]

3. The mother of Bass-White and Petty, Josephine Bass, is the founder of Neopolitan; she consults on issues that Neopolitan's Board assigns to her. [07/26/06 Tr. at 19.]

4. Bass-White and Petty's cousin, Walter, also work at Neopolitan. [07/26/06 Tr. at 84.]

5. Complainant, Teresa Bellamy, is a lesbian women who became employed as the Shelter Director and Program Director at Neopolitan, beginning on July 2, 2002. [07/26/06 Tr. at 197.] Her annual salary was approximately $35,500. [07/26/06 Tr. at 109.]

6. Bass-White assumed Bellamy was lesbian from about the time she interviewed and hired her. [07/26/06 Tr. at 233.]

7. Bellamy reported to Bass-White and, to a certain extent, to Petty. [07/26/06 Tr. at 197.]

8. Bellamy was regarded by her supervisors as competent, capable, articulate, and smart. [07/26/06 Tr. at 95; 07/27/06 Tr. at 34.] Bass-White admitted that Bellamy had one of the most difficult jobs in the organization. [07/27/06 Tr. at 34.]

9. Although Bellamy had an aggressive supervisory style, she never received any warnings regarding that style during her employment at Neopolitan. [07/27/06 Tr. at 29.]

10. Bellamy argues that because of discrimination and harassment based on her sexual orientation, she was unable to continue working there. She resigned on September 25, 2003. [07/26/06 at 63.] Thus, she worked for Neopolitan for slightly more than 14 months.

B. The Allegedly Discriminatory and Harassing Incidents

11. While she worked at Neopolitan, certain incidents occurred that affected Bellamy's comfort as a lesbian in the workplace.

(1) "Picture Day"

12. One of the first incidents related to "picture day," which occurred about a month after Bellamy starting working at Neopolitan, in August 2002. Bellamy asked employees to bring in pictures of their family members, including pets and significant others. [*E.g.*, 07/26/06 Tr. at 46.]

13. Bellamy instituted "picture day" because the staff were upset about the previous director's leaving, and Bellamy was trying to build team spirit. [07/26/06 Tr. at 65.] Bellamy testified that she received nothing but positive feedback for that exercise. [07/26/06 Tr. at 68.]

14. Bass-White called Bellamy into a meeting shortly after "picture day" and told Bellamy that staff were uncomfortable about being asked to bring in pictures of their family members, but Bellamy never heard any complaints except from Bass-White herself. [07/26/06 Tr. at 47, 67-68, 234-35.]

15. Bass-White also conveyed to Bellamy that the discussion of family was "inappropriate," meaning Bellamy should not ask staff members questions that would reveal their sexual orientation (which Bass-White called "personal choices") or reveal hers to them. [07/26/06 Tr. at 45-46, 234-35.]

16. One of Bellamy's direct reports, Rebecca Mach, who raised other, unrelated, complaints about Bellamy, did not object to "picture day."[2] [07/27/06 Tr. at 65.]

17. Bass-White's criticism of Bellamy's "picture day" clearly suggested that Bellamy should keep her sexual orientation under wraps.

(2) Sexual Harassment Training

18. Another incident that caused Bellamy discomfort relates to the sexual harassment training that was given to Neopolitan staff in mid-2003. This training was performed by an attorney with extensive experience in this area, Patricia Motto. (Motto also represented the Respondent in this case.) [07/26/06 Tr. at 189-90, 242.] At this training, Motto discussed Neopolitan's anti-harassment policy, disseminated copies of the policy, and encouraged reports of any discriminatory conduct, as specified in a written policy. [RX 1.]

19. Bass-White admitted being unclear about the rules of sexual harassment, including what was appropriate and what was not, and decided to have sexual harassment training for the staff. [07/26/06 Tr. at 241.]

20. The decision to conduct this training was made in January 2002, many months before Bellamy was hired. [07/26/06 Tr. at 243.]

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[2] When Mach resigned from Neopolitan to move to Madison, Wisconsin, she told Bass-White that Teresa Bellamy's management style was "intolerable." [07/27/06 Tr. at 67.] Respondent's Exhibit ("RX") 4 summarizes that situation. [07/27/06 Tr. at 68.]

21. Motto began the training session by stating that it had not been prompted by any specific individual or by any specific charge. [07/26/06 Tr. at 134, 192.]

22. Sometime before the training, there had been an incident at the shelter where a client wrote the word "dyke" on the wall, apparently because she was angry that she was being forced to move. [07/26/06 Tr. at 258.]

23. After that incident, in the summer of 2003, Petty heard Bellamy asking an applicant whether or not she would have a problem working with a lesbian supervisor such as Bellamy. [07/26/06 Tr. at 199.] The applicant replied that she would not. Bellamy told the applicant that someone had written the phrase "dyke" on the wall of the shelter. [*Id.*] After hearing this comment, Petty suggested that Neopolitan conduct anti-harassment training. [*Id.* at 201.] As it turned out, however, harassment training had already been planned for the following month.

24. During the training, the staff was advised that they could notify Bass-White or Petty if their "supervisor" was harassing them. [*Id.* at 85.]

25. There was no mention of Bellamy's name during that training session [*id.* at 192], but she was the only "supervisor" at Neopolitan at that time, and she took this remark personally. [*Id.* at 87.] Neopolitan's anti-harassment policy defines "supervisor" as "anyone above the level of the lead person," however. [RX1 at 3.]

26. Bellamy recognized that she might have been overreacting to this part of the training, and she did not consider the reference to "supervisor" hostile until some staff members expressed their "outrage" about it. [*Id.* at 87.]

27. The training did not involve hostility to Bellamy's sexual orientation and that it was not directed at Bellamy.

(3) The False Rumor of an Affair

28. Another incident at issue here involved a false rumor that Bellamy was having an affair with another employee, Brenda Reed.

29. Bellamy testified that Bass-White assured Bellamy that Bass-White did not believe the rumor, because, Bass-White told Bellamy, Brenda Reed was "a good Christian woman." [07/26/06 Tr. at 75.]

30. Bellamy was offended because she wanted Bass-White to disbelieve the rumor for other reasons, namely, that she knew Bellamy wouldn't have such an affair.

31. There was nothing discriminatorily hostile about this incident.

(4) The Tongue Ring

32. Another incident involved a tongue ring that Bellamy wore at work. Petty was offended by the tongue ring and asked Bellamy some questions about it. [07/26/06 Tr. at 76-77.]

33. Petty believed that Bellamy was "flicking" her tongue ring at her (Petty) "in a suggestive fashion, similar to what men do." [07/26/06 Tr. at 209.]

34. Petty erroneously believed that a tongue ring was somehow a lesbian symbol. [*Id.*]

35. Petty admitted that she did not think Bellamy was coming on to her, and did not know what Bellamy was doing when she flicked her tongue ring. [07/26/06 Tr. at 224-25.]

36. Bass-White did not infer that there was anything sexual about the tongue ring. [07/26/06 Tr. at 261.]

37. There was no persuasive evidence that the tongue ring had anything to do with sex or sexual orientation, and the there was nothing discriminatorily hostile about Petty's questions on the subject.

(5) The "Strapping Young Man" Remark

38. Another incident involved a remark allegedly made by either Bass-White or Petty to Bellamy, "You look like a strapping young man." [07/26/06 Tr. at 80, 176-77.] Bellamy alleged that Bass-White made this statement while Petty was attempting to get Bellamy to help her assemble some desks, which required strength as well as skill. Bellamy was unsure whether Petty or Bass-White made the remark, however. [*Id.* at 81.] Bass-White denied the remark. [07/26/06 Tr. at 239.]

39. Although such a remark could be hostile and offensive, there is inadequate evidence to determine that either Bass-White or Petty made such a remark.

(6) The Dress

40. One day, Bellamy was wearing shorts at work because of an injury that required stitches in her leg. Long pants rubbed the stitches, which hurt. [07/26/06 Tr. at 81-82; 07/27/06 Tr. at 85.]

41. Because Bellamy had to interview an applicant that day, Bass-White criticized Bellamy's casual attire and suggested that if she couldn't wear pants, she could wear a dress. When Bellamy told Bass-White that she didn't own a dress, Bass-White said, "What kind of a woman doesn't own a dress?" [07/26/06 Tr. at 82.]

42. Bellamy replied to Bass-White that "women come in all shapes and variances, and not owning a dress doesn't not make me a woman somehow." [07/26/06 Tr. at 143.]

43. Also, on the subject of attire in the workplace, Cara Thaxton, who is also lesbian, testified that Bass-White had suggested that Thaxton buy a pair of black slacks and a white blouse to wear to court. [07/26/06 Tr. at 182-83.] Thaxton took this as a requirement that she "fem it up" a bit.

44. Bass-White testified that Thaxton was wearing a pair of torn pants, which Bass-White did not want her wearing to court, where she was serving as legal advocate for domestic violence victims. Therefore, Bass-White suggested that Thaxton, who had just gotten out of school and had a limited wardrobe, go to K-Mart and buy a pair of black pants and a white shirt, which could be worn with any of her blazers. [07/27/06 Tr. at 26-27.]

45. Bass-White's suggestion that Bellamy wear a dress to avoid hurting her stitches, and that Thaxton wear black slacks and a white blouse to court, were nothing more than requests to dress more formally, not requirements to conform to a gender stereotype.

(7) The Haircut

46. Bellamy complains that after she got a very short haircut in the summer of 2003, Bass-White commented that it looked "dykey," "boyish," "butchy," or something like that. [07/26/06 Tr. at 72, 88-89.]

47. Although Bass-White denied use of any such phrase, the Commission finds that the phrase "dykey" or "butchy" was used.

(8) Discussions of Bellamy's Partner

48. From time to time, it was clear to Bass-White that Bellamy was troubled. On one such occasion, in December 2002, Bass-White encouraged Bellamy to come and talk with her privately about any personal matters. [07/26/06 Tr. at 91-92, 237.]

49. Bellamy accepted Bass-White's invitation and confided in her regarding a recent break-up with her partner. [*Id.* at 93.]

50. It was only after repeated questioning and encouragement by Bass-White that Bellamy mentioned certain aspects of her relationship, such as why she made a decision to move out from the

home where she and her partner lived. Even that discussion did not involve overtly sexual matters. [*Id.* at 92.]

51. Bellamy never inappropriately discussed sexuality or her sexual relationships while employed. [*Id.* at 91.] Her only mention of such matters was at Bass-White's express invitation. Neither Bellamy's nor Bass-White's remarks in this regard were inappropriate.

(9) Discussions of Bellamy's Sexual Orientation

52. One of the most significant incidents at issue here involved Bellamy's official evaluation, which was given to her by Bass-White shortly after Labor Day in September 2003. [07/26/06 Tr. at 93-94.] Although the evaluation was extremely favorable about her work performance, it again cautioned Bellamy that "personal choices should not be displayed in the workplace." [Complainant's Exhibit ("CX") 4.]

53. During the evaluation review session, Bass-White directed Bellamy that she should not be mentioning her "personal choice" of being a lesbian, and that she should not mention her partner in conversations with co-workers, clients, or applicants. [*E.g.*, 07/26/06 Tr. at 45.]

54. Bass-White's evaluation of Bellamy stated, "It is no ones [sic] business what are [sic] personal choices are and it shouldn't be displayed in the workplace at anytime." [CX4 at 1.] It also stated, "Personal life choice have [sic] no place is [sic] the work environment." [CX4 at 3.] Bass-White explained at the Administrative Hearing that this meant that lesbianism should not be displayed. [07/26/06 Tr. at 57.]

55. Bass-White explained at the Hearing that her statement in Bellamy's evaluation meant that employees should not refer to themselves as "dyke" or delve into subordinates' personal lives, but there was no persuasive evidence that Complainant ever referred to herself as a "dyke" or

questioned co-workers about their sexual orientation. [See, e.g., 07/26/06 Tr. at 189; 07/27/06 Tr. at 85, 96.] (Petty's testimony to the contrary lacked credibility. [See, e.g., 07/26/06 Tr. at 200.])

56. Bellamy persuasively denied ever referring to herself as a "dyke" or as "butch." [07/26/06 Tr. at 71, 235-36.]

57. In fact, none of the staff of the shelter ever complained about Bellamy using the term "dyke." [07/26/06 Tr. at 229.]

58. When Bass-White gave Bellamy her evaluation [CX4], Bellamy was extremely upset. She broke down and cried about the section that told her not to reveal her "personal choices" to anyone in the workplace. [07/26/06 Tr. at 95-99; 07/27/06 Tr. at 14-15.]

59. Petty, like Bass-White, referred to lesbianism as a "life choice." [See, e.g., 07/26/06 Tr. at 213.] At Petty's suggestion, Bass-White added to Bellamy's evaluation form that employment was not contingent upon "personal choice." [CX4 at 2.]

60. Another former lesbian employee of Neopolitan, Cara Thaxton, testified that her experience was similar to Bellamy's in one regard: Bass-White implied to Thaxton that lesbians should not be obvious about their sexuality. Bass-White chided Thaxton, "You're way out there, you don't hide a thing." [07/26/06 Tr. at 180-82.]

61. On more than one occasion, Bass-White directed Bellamy not to discuss the fact that she had a female partner. [*E.g.*, 07/26/06 Tr. at 90.]

62. Bass-White expressly told Bellamy not to talk about her lifestyle or the fact that she was a lesbian. [07/26/06 Tr. at 95, 99.] Bellamy understood this to mean that she "shouldn't be a lesbian at Neopolitan." [*Id.* at 99.]

63. Although she attempted to restrict Bellamy from discussing personal family matters, Bass-White herself discussed with staff a number of topics relating to her family, including her son, her former husband, and the fact that she was divorced. [07/26/06 Tr. at 47, 113-14.]

64. Bellamy was understandably offended by the restrictions imposed by Neopolitan's Executive Director, for they effectively required her to repress any comments about her home life or her sexuality. [07/26/06 Tr. at 99.]

C. Bellamy Quits

65. Neopolitan has had some trouble with its record keeping, and Bellamy was occasionally criticized for her failure to solve the problems. [07/26/06 Tr. at 100-02.]

66. In mid-September 2003, Petty demanded more records than Bellamy provided, and Bellamy complained that she was being asked to do more record keeping than was appropriate. [See, e.g., 07/26/06 Tr. at 100-02, 215-19.]

67. During this discussion, Petty called Bellamy "stupid." [07/26/06 Tr. at 100-02.]

68. The straw that broke the camel's back for Bellamy and led to her resignation was this incident, when Petty called her "stupid." [07/26/06 Tr. at 102.]

69. After Petty's insult, Bellamy began thinking about the humiliation she had endured, including being forced to keep her lesbianism under wraps. She decided it was impossible for her to cope with the situation anymore, and so she quit. [07/26/06 Tr. at 105.] She felt very sick, sought therapy, and was unable to work for a substantial period of time. [07/26/06 Tr. at 105-06.]

70. Although she sought therapy for being forced to stay "in the closet" by her employer, Bellamy's resignation had more to do with the abusive manner and tone relating to her allegedly delinquent record keeping and reporting than it did with Neopolitan's "don't tell" rules about her sexuality. [*See* RX13 and RX20.]

D. Complaints by Bellamy

71. It is uncontested that Bellamy never complained about sexual orientation discrimination or harassment to anyone at the company. [07/26/06 Tr. at 136-37, 142-43.]

72. Specifically, Bellamy did not make any such complaints to the Board of Directors. [07/26/06 Tr. at 139.] She felt they were a "ghost board," however. [*Id.*]

73. Bellamy admitted that, despite knowing that she could complain to a variety of people about discrimination or harassment, she opted not to complain. [07/26/06 Tr. at 139-40.]

74. Bellamy did complain about Bass-White's "abrasive management style," however. [07/26/06 Tr. at 138.] She made this complaint to Petty, despite the fact that Petty was Bass-White's sister.

75. Bellamy also complained about Petty to Petty's mother, Josephine Bass. [07/26/06 Tr. at 220.] This complaint related to the record-keeping duties that Petty tried to impose on Bellamy. [*Id.*]

76. In addition, in a memo that she sent to Bass-White, Bellamy made a formal written complaint about Petty's "rude," "condescending," and "berating" manner. [CX5/RX30.]

III. CONCLUSIONS OF LAW

As noted above, Bellamy has sued for discrimination in the terms and conditions of her employment based on her sexual orientation for being forced to "muzzle" her sexual orientation. She has also alleged a hostile work environment due to verbal harassment by her supervisors, Bass-White and Petty. She charges that these violations culminated in constructive discharge.

As the Complainant, Bellamy has the burden of proof as to each of her claims, and she must prove them by a preponderance of the evidence. *Lawrence v. Atkins*, CCHR No. 91-FHO-17-5802, 1992 WL 792879, *7 (July 29, 1992). Respondent has the burden of proof as to any applicable

affirmative defense. *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89, 2001 WL 1042296, *5 (July 18, 2001).

Much of the testimony in this case was disputed, and the Hearing Officer had to make many credibility findings. But evaluating testimony and observing the body language of the witnesses is the province of the finder of fact, and the Hearing Officer found testimony of certain witnesses more credible than others, as noted above. See *Montejano v. Blakemore*, CCHR No. 01-PA-4, 2003 WL 23529507, *2 (Oct. 15, 2003) (assessment of truth of statement should be resolved at hearing where officer can observe witnesses and assess credibility); *Shontz v. Milosaviljevic*, CCHR No. 94-H-1, 1997 WL 638688, *9 (Sept. 17, 1997) (in weighing credibility, fact finder evaluates testimony, including body language).

A. Discrimination In the Terms and Conditions of Employment

Bellamy alleges that her employer imposed restrictions that, in effect, "put a muzzle on her," based on her sexual orientation. (See Complainant's Post-Trial Brief at 11.) She says these restrictions forced her to work "in the proverbial closet." *Id.* She charges that being required to suppress any mention of her home life, including her lesbianism, while non-lesbians were allowed to discuss their home lives freely, was a discriminatory condition of employment, in violation of the Chicago Human Rights Ordinance.

The Hearing Officer found – and it is virtually undisputed – that Neopolitan, through its Executive Director, required Bellamy to keep her sexual orientation under wraps and to repress any talk of her sexual orientation in conversations with staff, clients, and applicants. Neopolitan's restrictions on Bellamy's expression of her sexual orientation were, in essence, a threat of discipline if she violated the restriction, and thus were an express condition of her employment. We must

examine the extent to which an employee has the right to be openly lesbian in her work environment under the Chicago Human Rights Ordinance.

The Chicago Commission on Human Relations has long held that employees have the right to express their homosexuality in style, dress, mannerism, and speech, and to publicly declare that they are gay or lesbian. *Pearson v. NJW Office Personnel Services, Inc.*, CCHR No. 91-E-126, 1992 WL 792875, *10-11, ¶¶ 43, 45 (Sept. 21, 1992).[3]

The right to express one's protected status, whether based on sexual orientation, religion, ethnicity, or some other protected category, is not unlimited. Many courts have analyzed the circumstances under which some legitimate business necessity may limit an employer's legal obligations to tolerate or accommodate a protected status; likewise, the employer's business necessity may, in some circumstances, limit the employee's free expression with respect to a protected status.[4] Generally, the analysis weighs the employee's right against the employer's burden, and if the right is not absolute and the burden to accommodate is undue, the employer may be excused from tolerating or accommodating the employee's expression.

For example, *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607-608 (9th Cir. 2004), held that, under federal law, an employee who wanted to post scripture verses in his cubicle to express his anti-gay religious views was not allowed to do so because it violated the company's policy to promote diversity and tolerance in the workplace, and accommodating the employee's desired

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[3] The Commission has also held that it is a violation of the Ordinance to require an employee to conform to a stereotype relating to sexual orientation. *Duignan v. Little Jim's Tavern*, CCHR No. 01-E-38, 2001 WL 1385837, *6 (Sept. 10, 2001). In short, if Neopolitan was requiring Bellamy to act or appear straight in the workplace, that would violate the Ordinance.

[4] *Pearson, id.* at ¶ 44, explains how legitimate business concerns may limit the expressive conduct of both homosexuals and heterosexuals. For example, employees of any sexual orientation may be prohibited from using sexually explicit language in the workplace and may be required to abide by legitimate dress codes.

expression would have imposed an undue burden on the company. *Id.* at 608.[5] Although the court was quick to note that a company may not refuse to accommodate an employee's religious beliefs simply because co-workers find the religious expression irritating or unwelcome, Title VII does not "require an employer to accommodate an employee's desire to impose his religious beliefs upon his co-workers." *Id.* at 607. *Cf. Powell v. Yellow Book USA*, 445 F.3d 1074 (8th Cir. 2006) (holding that employee does not have right to be free from religious expressions of co-workers). Likewise, mere "customer preferences" are generally insufficient to justify discriminatory regulations, *Santiago v. Bickerdike Apts.*, CCHR No. 91-FHO-54-5639, 1992 WL 792884, *11 (May 28, 1992); *Pearson*, at ¶ 50.

McGlothin v. Jackson Municipal Separate School District, 829 F. Supp. 853 (S.D. Miss. 1992), held that an African-American's teacher desire to wear distinctive headgear to express her cultural heritage need not be accommodated by the employer where such headgear violated the school's dress code. See also *Berry v. Dept. of Social Services*, 447 F.3d 642 (9th Cir. 2006) (government body proved it would suffer undue burden if forced to accommodate employee's religious messages, because allowing such messages could violate the Establishment Clause); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012 (4th Cir. 1996) (company did not violate employee's rights when it fired her for sending inappropriate religious message that could expose employer to harassment claims from others, because to accommodate such letters would impose undue burden on employer); *Anderson v. USF Logistics, Inc.*, 2001 WL 114270, 84 F.E.P.C. 1581 (S.D. Ind. Jan. 30, 2001) (holding that employer reasonably accommodated employee's religious practices by allowing her to use the phrase "have a blessed day" in intra-company correspondence

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[5] The Commission often looks to federal or state laws for guidance on interpretation where statutory language is similar. See Reg. 270.510, Rules and Regulations Governing the Chicago Human Rights Ordinance (2001); *Steele v. AYSO*, CCHR No. 98-PA-54, 1999 WL 701616, *2 (Aug. 25, 1999).

but not on correspondence to outside vendors and clients). *Cf. Maldonado v. City of Altos, Oklahoma*, 433 F.3d 1294 (10th Cir. 2006) (across-the-board English-only policy, imposed in the absence of any legitimate need for the restriction, violates Title VII).

An employer's restrictions on expressions of a protected status require, at a minimum, that the employer have a legitimate business reason for the restriction, not mere prejudice: the employer's business needs cannot turn on mere prejudices of customers or co-workers, as noted above. See *Peterson*, *Santiago*, and *Pearson. supra.*

Respondent's express and repeated requirements that Bellamy repress any mention of her sexual orientation in the workplace infringed her right to express her sexual orientation, as guaranteed by the Chicago Human Rights Ordinance. These requirements were made clear by Bass-White beginning with "picture day," and declared again in the September 2003 evaluation.[6] Bass-White's scolding of Thaxton's expression of her sexual orientation as "way out there" [Finding of Fact, ¶ 60] further supports the Hearing Officer's conclusion that Neopolitan did not allow its lesbian employees freely to express their sexual orientation. Heterosexual employees were allowed to discuss their families (including former spouses) freely, but lesbian employees were not. *See. e.g.*, Finding of Fact ¶ 63. This is discrimination in the terms and conditions of employment.

With regard to the burden of tolerating Bellamy's free expression, Neopolitan has suggested that its staff and job applicants were offended by Bellamy's revelation that she is lesbian, or by her desire to share pictures of her family (namely, her partner) with them. [Findings of Fact ¶¶ 12-

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[6] Neopolitan filed Objections to the First Recommended Decision on Liability, arguing that there was no evidence that Bass-White had warned Bellamy about expressing her sexual orientation at the time of "picture day" in August 2002. In her own testimony, however, Bass-White admitted that she had a discussion with Bellamy almost immediately after "picture day" and told Bellamy at that time that her conduct was "inappropriate." [07/26/06 Tr. at 234-35.] In addition, although Neopolitan argues that Bass-White's and Petty's use of the term "life choice" was not a reference to Bellamy's lesbianism, the Commission agrees with the Hearing Officer that there is no other reasonable interpretation of the term, especially in light of the way Neopolitan's executive director and deputy director used it at the Hearing. *See, e.g.*, 07/26/06 Tr. at 56-58, where Bass-White explains that "it" means personal choice, which should not be displayed in the workplace.

17.] Even if such concerns could establish a business necessity to repress Bellamy's expression or an undue burden to tolerate it, there was no proof whatsoever that anyone but Bellamy's supervisors were in any way offended. In fact, all of the evidence suggested the opposite – that no one was offended and that it did not interfere with Neopolitan's business in any way. See, e.g., Findings of Fact, ¶¶ 13-14. There was no proof of any burden on Neopolitan resulting from Bellamy being who she is.

Furthermore, there was no evidence to suggest Bellamy ever attempted to impose her sexual orientation on anyone in the workplace. This case is similar to *Maldonado*, where a discriminatory policy was found to violate the law because there was no legitimate business need for a broad restriction on expression relating to the protected status. Because Neopolitan made no attempt to prove that there was any genuine burden on its business from allowing Bellamy to discuss her home life and express her lesbianism in the workplace, the restriction violated the Ordinance.

B. The Hostile Environment Claim.

As the Commission has explained in *Duignan v. Little Jim's Tavern*, CCHR No. 01-E-38, 2001 WL 1385837, *3, 5-6 (Sept. 10, 2001), urging an employee to conform to stereotypical views of how lesbians should appear and act violates § 2-160-040 of the Ordinance if it interferes with the employee's work performance or creates a hostile working environment. To determine whether words or acts are sufficiently severe or pervasive to have this effect, we look to their frequency and severity, whether the acts are physical, and how they affect the employee's work. Unlike the federal statutes, the Chicago Human Rights Ordinance holds the employer responsible for sexual harassment by managers and supervisors;[7] it also holds the employer responsible for harassment by non-

[7] Under Illinois law, too, employers are strictly liable for the acts of supervisors, including sexual harassment. See, e.g., *Board of Directors Green Hills Country Club v. Illinois Human Rights Commission*, 162 Ill. App. 3d 216, 220, 514 N.E.2d 1227, 1230 (5th Dist. 1987).

employees, non-managers, and non-supervisors if the employer becomes aware of the harassment and fails to take reasonable corrective measures. See Ordinance, § 2-160-040. Words that directly criticize the employee's sexual orientation violate § 2-160-030 as a form of discrimination in the terms and conditions of employment. See, e.g., *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986) (construing similar language under Title VII, 42 U.S.C. § 2000(e)-2(a)(1)).

The only sexually offensive remark found by the Hearing Officer to have occurred was Bass-White's comment about her "dykey haircut," or words to that effect. See Finding of Facts, ¶¶ 46-47. Even if Bass-White told Complainant not to use the word "dyke," see Finding of Facts, ¶ 55, such a caution is not inherently offensive. (In fact, it supports Neopolitan's position that it tried to prevent discrimination based on sexual orientation.) Likewise, even if the Hearing Officer had found that Bass-White or Petty had made the "strapping young man" remark, see Findings of Fact, ¶¶ 38-39, that would not change the result. None of these incidents was physical, and none was severe. At most, there were three remarks bearing on sexual orientation over a 14-month period, and that sum is not pervasive. It is not reasonable to think that these acts were sufficient to interfere with Bellamy's work, nor was there proof that they did interfere. Accordingly, the Commission finds in favor of Respondent on the hostile environment claim.[8]

C. The Constructive Discharge Claim

A constructive discharge claim requires the complaining party to prove that, due to the discriminatory conduct, the work environment became so intolerable that resignation was a fitting response. See *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004). An employee is required to tolerate discriminatory working conditions up to the point where those conditions would

[8] Although Respondent proved Complainant's failure to take advantage of the anti-harassment policy by making a complaint to someone higher in the chain of command, the offensive acts were taken by supervisors, and so her failure to report would make no difference under the Ordinance, as explained above.

force a reasonable person to resign. *Goss v. Exxon Office Systems Co.*, 747 F.2d 885, 888 (3rd Cir. 1984). Although she may sue for the damages caused by suffering through that period, the employee is expected to continue working while seeking redress. See *Suders*, 542 U.S. at 145-46.

Constructive discharge is often based on an intolerable level of illegal harassment, but it can also be based on other intolerable working conditions, such as discriminatory policies or job requirements, *e.g. Goss, supra.* (plaintiff was constructively discharged when she was transferred to an undesirable sales territory, leading to substantial cut in pay). See also *Green Hills*, 162 Ill. App. 3d at 221 (under Illinois law, constructive discharge occurs when sexual harassment "or any other form of illegal discrimination" is sufficiently intolerable).

Bellamy's constructive discharge claim has two prongs: (1) that the hostile environment was so intolerable that she was forced to quit, and (2) that repressing any expression of her sexual orientation was so intolerable that she was forced to quit. We examine these prongs separately.

(1) Harassment As a Basis of the Constructive Discharge Claim

For constructive discharge based on hostile environment, or harassment, a complainant must prove more than a hostile environment; there must be aggravating factors establishing more than the minimal level of severity or pervasiveness for the hostile environment claim. See, e.g., *Landgraf v. USI Film Products, Bonar Packaging, Inc.*, 968 F.2d 427, 430 (5th Cir. 1992). Bellamy's Post-Trial Brief concedes, at 11, that to prove constructive discharge based on a hostile working environment, she must prove that the employment was so "unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." Here, because we have found that the harassment by Bellamy's supervisors did not rise to the level of hostile environment, those acts cannot support the first type of constructive discharge claim.

(2) Constructive Discharge Based On Restrictions On Expression of Complainant's Sexual Orientation

Turning to the alternative basis for the constructive discharge claim, we have found that the employer expressly required Bellamy to repress her sexual orientation in the workplace. If these restrictions would have forced a reasonable person in Bellamy's shoes to resign, and if they actually caused Bellamy to resign, this would violate the Ordinance. See *Brewington v. Ill. Dept. of Corrections*, 161 Ill. App. 3d 54, 61-62 (1st Dist. 1987) (no actionable constructive discharge because the acts causing the resignation were not related to the discrimination).

Although we have found that Bass-White's continued insistence that Bellamy repress any mention of her sexual orientation was a discriminatory condition of her employment and that it affected her severely, the evidence shows that it was not this restriction that caused her to resign. See Findings of Fact, ¶¶ 65-70. Rather, it was an insult regarding her record-keeping and report-generating abilities and Petty's accusation that she was "stupid" that compelled her to leave. This incident was the last straw leading to Bellamy's resignation. *Id.* Because the sexual orientation did not in fact cause the resignation, we find for Respondent on this constructive discharge claim.

IV. DAMAGES

Section 2-120-510(1) of the Enabling Ordinance allows the Commission to award actual damages, attorneys' fees, costs, and other relief for violations of the Ordinance. "Actual damages" includes emotional injury. *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128, 1995 WL 907559, *9-16 (May 17, 1995). To determine the proper measure of actual emotional injury, we examine several factors, including the egregiousness of the illegal conduct, the complainant's reaction to it (including her vulnerability), whether there were physical manifestations of the injury, and the duration of (i) the discriminating conduct, and (ii) its effects. *Houck v. Inter City Horticultural Foundation*, CCHR No. 97-E-93, 1998 WL 915389, *7 (Oct. 21, 1998).

Bellamy has offered evidence of her emotional distress from her work and resignation as a whole. [*E.g.*, 07/26/06 Tr. at 94-99.] Bellamy's testimony regarding the psychological toll this situation took on her was very convincing, and the Hearing Officer had no doubt, based on the testimony, that she suffered greatly for a long period of time. She was depressed, and for the first time in her life, she sought psychological counseling. [07/26/06 Tr. at 106, 109.] She was put on anti-depressants, also for the first time in her life. [*Id.* at 106-07.] But the Hearing Officer concluded that a significant part of the emotional distress Bellamy experienced was due to conduct unrelated to her sexual orientation; for example, thoughtless conduct by Petty and (perhaps unfair) complaints and demands about record keeping. None of these have any apparent connection to Bellamy's sexual orientation.

It is difficult to separate the injury suffered by Bellamy as a result of the discriminatory restriction imposed by her employer from the injury caused by the other factors that added to her emotional pain, and Bellamy has not suggested an amount that would fairly compensate her solely for having to suppress her sexual orientation in the work place. The discriminatory restrictions that effectively required her to stay in the closet began on "picture day," in August 2002, and continued through September 2003, some 13 months in total. The evidence shows that Bellamy was very upset by the September 2003 evaluation, criticizing her for failing to repress her sexual orientation adequately, and that she broke down and cried. While the discriminatory treatment was not sufficient to cause her to quit – she kept working for several weeks afterwards – it unquestionably caused her substantial pain, especially in September 2003, when the restriction became absolute. Shortly after that, she sought counseling and received psychiatric medication, at least in part because of the discrimination she had suffered. While there is no way to measure her psychological injury precisely, the measure of damages need not be proven with precision. *Nash/Demby*, 1995 WL

907559 at *11. The Hearing Officer recommended that Twenty-Five Thousand Dollars ($25,000) is a reasonable amount to compensate her for this discrimination in the terms and conditions of her employment, and the Commission accepts and adopts that recommendation. *Cf.*, *Houck*, 1998 WL 915389 at 7-8 ($5,000 award for emotional distress where complainant was verbally harassed and then fired because she was gay but only worked at job for one week and did not seek psychological counseling); *Nash/Demby*, 1995 WL 907599 at *11 (explaining that compensatory awards for emotional distress are in tens of thousands where complainant offers detailed and convincing testimony, discrimination occurs over long period of time, or discrimination is severe enough to create need for psychological or psychiatric care and citing CCHR, federal, and state cases).

The Commission has made a range of damage awards for emotional distress, depending on both the egregiousness of the conduct and the resulting effect on the victim. *Salwierak v. MRI of Chicago, Inc.*, CCHR No. 99-E-107, 2003 WL 23529560, *4-5 (July 16, 2003). For example, in *Sellers v. Outland*, CCHR No. 02-H-73, 2003 WL 23529519, *13 (Oct. 15, 2003), the Commission awarded $40,000 for emotional distress where the respondent's conduct was egregious, even though complainant did not seek professional help; see also *Salwierak*, 2003 WL 23529560 at *5 (awarding $30,000 and noting that an award may be under $5,000 if distress was "negligible" and $50,000 if severe); *Sheppard v. Jacobs*, CCHR No. 94-H-162, 1997 WL 638687, *14 (July 16, 1997) (vacating hearing officer's award of $15,000 and awarding $50,000 where African-American woman, ordered to move from apartment because of race, suffered depression and relapse of stress-related skin condition causing hair loss). See generally *Webb v. City of Chester, Ill.*, 813 F.2d 824, 836-37 (7th Cir. 1987) (awarding woman who had worked in hostile environment for two weeks $20,250 in emotional damages and citing emotional distress damage awards ranging from $500 to over $50,000 in civil rights cases). An award of twenty-five thousand dollars ($25,000) to Bellamy is appropriate

in light of the fact that her distress was great, it required professional therapy and mediation, and the effects were long-lasting. Accordingly, the Commission awards emotional distress damages in the amount of $25,000.

In addition, the Hearing Officer recommended a One Hundred Dollar ($100) fine. *See* Section 2-160-120. Although this amount is at the low end of possible fines for violations, the Commission accepts this recommendation as integral to the Hearing Officer's overall careful assessment of the relief appropriate to this case, and so imposes a fine of $100.

Under Reg. 240.700 of the Commission Regulations, pre- and post-judgment interest is awarded at the prime rate, adjusted quarterly, compounded annually. The Regulation specifies that such interest starts to accrue from the date of violation. Although the Hearing Officer did not make a specific finding as to the violation date, the Hearing Officer did find that first instance of objecting to Complainant's discussion of her sexual orientation occurred shortly after "picture day" in August 2002, about a month after Complainant began working for Respondent on July 2, 2002, when Bass-White counseled Complainant that revealing her sexual orientation to other staff was inappropriate. See Findings of Fact ##5, 12, 14, and 15. This incident, while it may mark the beginning of an ongoing communication of disapproval of discussion regarding Complainant's sexual orientation, occurred more than a year prior to the filing of the Complaint on December 26, 2003. In her Complaint, Complainant identified the date of the last incident of claimed discrimination as September 16, 2003, when she received a formal evaluation by Bass-White which included an explicit direction not to display her "personal choices" of being a lesbian in the workplace at any time. Complainant emphasized this incident in her Complaint as "culminating" (See Complaint, ¶¶ 6 and 7), and the Hearing Officer also found it to be "[o]ne of the most significant incidents at issue." Finding of Fact #52. Thus the Commission finds that the incident which most clearly communicated

to Complainant that her rights under the Ordinance were being violated occurred on September 16, 2003, and interest should be calculated from that date.

Attorney fees and associated costs are awarded to Complainant on the terms-and-conditions-of-employment claim only. Pursuant to Reg. 240.620, Complainant may submit a statement of fees and costs in keeping with Reg. 240.630(a), based on her work in this case, excluding work performed *solely* on the hostile environment claim or *solely* on the constructive discharge claim, on which she did not prevail.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: _____

Clarence N. Wood, Chair/Commissioner