City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Richard Roe
Complainant,
v.
Chicago Transit Authority and Angela Crumpton
Respondents.

Case No.: 05-E-115

Date of Ruling: October 20, 2010
Date Mailed: November 15, 2010

TO:

Katherine J. Eder
Law Offices of Jacob J. Meister
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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on October 20, 2010, 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] as follows:

1. Each Respondent to pay to the City of Chicago a fine of $500, for a total of $1,000 in fines;

2. To pay to Complainant emotional distress and out-of-pocket damages in the total amount of $85,360, which shall be the obligation of Respondents jointly and severally;

3. Respondent Angela Crumpton to pay to Complainant punitive damages in the amount of $6,000;

4. To pay interest on the foregoing damages, as allocated above, from April 19, 2005, in accordance with CCHR Reg. 240.700;

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[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 CCHR Reg. 250.210. Enforcement procedures for failure to comply are stated in CCHR 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 Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to CCHR 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.

5. To pay Complainant's reasonable attorney fees and associated costs, which shall be the obligation of Respondents jointly and severally, as determined pursuant to the procedure described below; and

6. Respondent Chicago Transit Authority to comply with the order for injunctive relief set forth in the enclosed ruling.

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. However, because attorney fee proceedings are now pending, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Attorney Fee Procedure

Pursuant to CCHR 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 CCHR Reg. 240.630(a). Any petition must be served and filed on or before **December 13, 2010**. Any response to such petition must be filed and served on or before **December 27, 2010**. 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 documents pursuant to the provisions of CCHR Reg. 210.320. The Commission will rule on the petition according to the procedure in CCHR Reg. 240.630(b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:	
Richard Roe **Complainant,** **v.** Chicago Transit Authority and Angela Crumpton **Respondents.**	**Case No.:** 05-E-115 **Date of Ruling:** October 20, 2010

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION AND PROCEDURAL HISTORY

Richard Roe[1] filed his initial Complaint against the Chicago Transit Authority ("CTA") on September 14, 2005, alleging that CTA discriminated against him based on sexual orientation in violation of the Chicago Human Rights Ordinance ("CHRO"). Specifically, Roe alleged that his former supervisor, Angela Crumpton, verbally harassed and berated him because she believed him to be homosexual. He further claims that CTA failed to investigate his complaints of harassment or take corrective action to stop Crumpton's allegedly discriminatory conduct.

When he filed his initial Complaint, Roe was still employed with the agency but was on medical leave. CTA filed its Verified Response to the Complaint on October 19, 2005, denying all allegations of discrimination.

In January 2006 and while still on leave, Roe received notice that CTA had terminated his employment. Roe then filed an Amended Complaint on January 30, 2006, alleging that CTA terminated him in retaliation for filing the original Complaint with the Commission. CTA denied these allegations in a response filed on March 3, 2006. On December 2, 2008, after conducting an investigation, the Commission entered an Order Finding Substantial Evidence of harassment based on sexual orientation. But the Commission determined there was no substantial evidence of retaliation and therefore dismissed that claim.

On July 15, 2009, Complainant filed a Motion to Amend the Complaint to add Crumpton as an individual Respondent. The hearing officer granted the motion on August 11, 2009, finding that the amendment was permitted under CCHR Reg. 210.160(b).

The administrative hearing was held on October 5 and 6 and December 1 and 2, 2009. Shortly before the first day of the hearing, Complainant filed a Motion for Sanctions arguing that CTA failed to search for, preserve, and produce documents. In its reply brief, Complainant argued further that CTA submitted incorrect discovery responses and failed to follow several of the Commission's procedural regulations. (Compl. Mot. for Sanctions and Reply in Support). The hearing officer denied Complainant's motion on the grounds that he did not show he was prejudiced by these purported discovery lapses, nor did Complainant argue such prejudice or show that CTA's alleged wrongdoing was intentional or done in bad faith.

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[1] Richard Roe is a pseudonym used pursuant to a Commission order issued November 10, 2011.

The hearing officer allowed post-hearing briefing. Respondents filed their closing statement on February 5, 2010, and Complainant filed his closing statement on February 8, 2010. Complainant filed his brief on damages on February 19, 2010, and Respondents filed a response to it on March 5, 2010. On April 30, 2010, the hearing officer issued her recommended ruling on liability and relief. She issued an amended recommended ruling on May 3, 2010, correcting technical errors in the initial version.

The parties made several further submissions after issuance of the recommended ruling. On May 26, 2010, Respondents filed additional documentation of their payment of accrued vacation time to Complainant, along with their objections to the recommended ruling and requests for review of two interlocutory orders. On May 28, 2010, they supplemented this material with objections to the amended recommended ruling. On May 28, 2010, Complainants filed their objections to the recommended ruling and a request for review of one interlocutory order. On June 7, 2010, Complainant moved to strike Respondents' request for review of the decision not to disqualify, to which Respondents filed a response on June 8, 2010. Respondents in turn filed a motion to strike Complainant's request for review on June 9, 2010.

II. FINDINGS OF FACT

A. Roe's and Crumpton's Personal and Professional Backgrounds

1. Roe started working for CTA while still a college student in the late 1990s (Tr. 125) In 1999, he earned degrees in corporate communications and sociology from Northern Illinois University. (Tr. 124) He became a full-time Project Specialist II in the Rail Operations department of CTA in 2001. (Tr. 126) Roe's uncle has worked for CTA for over three decades and Roe had hoped to follow in his footsteps by similarly having a long-term career with the agency. (Tr. 127, 186-187)

2. Roe has been actively involved in his church, in civic activities, and in volunteer activities. He was previously engaged to be married and has a ten-year-old son. (Tr. 168-169) However, since childhood, Roe has known that he is gay but has never revealed that fact to his family, friends, or CTA co-workers. (Tr. 167-169) Roe intentionally kept his sexual orientation a secret because he believed that he would not find acceptance in the African American community to which he belongs. *Id.*

3. Roe testified that revealing his sexual orientation "would have been a hinder" to his family, his son, his fraternity brothers, and his community because being gay in the African American community "is not something that's acceptable." (Tr. 168) "It's something taboo... and...if someone is, they are usually humiliated and not accepted from their families, from churches...." (Tr. 169)

4. Crumpton became employed by the CTA in June 1987, while still in college. (Tr. 321-322) She accepted a full time position in September 1990 and worked her way up in various positions within the agency, including several supervisory positions. (*Id.*; Tr. 325-331)

5. In the fall of 2002, CTA promoted Crumpton to Administrative Manager for the Red Line in its Rail Operations division. (Tr. 329-330) In this position, Crumpton became Roe's direct supervisor. (*Id.*; Tr. 128)

6. From childhood through April 2008, Crumpton was an active member of the Church of the Living God in Chicago, Illinois. She was also on the ministerial staff. (Tr. 337-

338, 343-344) Several family members, including her grandfather and two uncles, were or are members of the clergy for that church, and Crumpton's husband was a deacon. (Tr. 338) Over the course of her membership at the church, Crumpton heard members of the clergy proclaim homosexuality to be a sin "countless times." (Tr. 344)

7. When asked about her personal views of homosexuality, Crumpton testified: "To each his own. You can be what you want to be...[I]t has no adverse effect on me in any way because that's not what I practice." (Tr. 340-341) However, she also testified that biblically, homosexuality is "an abomination" and based on her religious beliefs, the act of homosexuality is a sin. (Tr. 341-342)

B. The Work Environment at CTA

8. Based on the testimony of several current and former CTA employees, the work environment within CTA's administrative offices appears to be relaxed and social. (Tr. 138) Employees are encouraged to socialize within reason. *Id.* Most of the employees who testified at the hearing have been employed by CTA for more than 10 years—some for their entire careers. (Tr. 65, 75, 127, 280) Some of the witnesses had relatives and spouses who also work or worked for CTA. (Tr. 127, 511)

9. During the relevant time period, CTA had administrative offices at the 95th Street terminal near State Street. Roe, Crumpton, and several other employees who testified at the hearing worked at that terminal and had interactions with one another. (Tr. 42, 65-66, 75-76, 329-330, 333)

10. Several of the female employees at the 95th Street terminal would often gather for breakfast or lunch at one of the tables in the break room. (Tr. 78, 281, 290) They were referred to as "the breakfast club," were boisterous, "a little exclusive," and would often meet to gossip and talk about various topics. (*Id.*; Tr. 102) Crumpton was a member of the breakfast club. (Tr. 87)

C. Roe and Crumpton's Professional Relationship in 2002-2003

11. According to Roe, his professional relationship with Crumpton "started off good." (Tr. 140) Indeed, Crumpton testified that she "genuinely liked [Roe] ... as a person," and that they initially "hung out socially." (Tr. 350) Crumpton testified that she attended fashion shows and other events organized by Roe. (*Id.*; 404) Crumpton would occasionally give Roe rides home and even toured the inside of his home once. (Tr. 405) Crumpton, Roe, and other CTA employees often ate lunch together and on one occasion even went out for Christmas dinner. (Tr. 405-406)

12. Crumpton initially thought highly enough of Roe to introduce him to one of her good friends—Gwendolyn Drake—whom she has known since childhood and who is also a member of her former church. (Tr. 346-348, 405) Crumpton testified that at the time, she thought Roe and Drake "might be a good match." (Tr. 347)

13. At the hearing, Crumpton, Drake, and Roe disagreed about when he met Drake and the nature of their brief relationship. Roe testified that he met and went on a date with Drake in the summer of 2003. (Tr. 141) Crumpton testified that she introduced the two of them in the fall of 2003. (Tr. 405) Drake testified that she met Roe in November 2002. (Tr. 593) Finally, Drake and Crumpton testified that Drake and Roe never went out on a date. (Tr. 405, 596, 599)

14. Despite this conflicting testimony, there is no dispute that Crumpton introduced the two of them at CTA's offices and they subsequently spoke by phone several times. (Tr. 349, 405, 593-596)[2] Regarding the timing of the relationship, it appears to have occurred sometime between the summer and fall of 2003 over the course of several weeks. (Tr. 142)

15. Crumpton's attempt at matchmaking did not go well, however. During Drake and Roe's third and final phone call, they got disconnected. Drake attempted to call him back to no avail. (Tr. 598-599) Based on the way the conversation ended, Drake decided Roe was "strange" and subsequently told Crumpton not to "fix [her] up with any more strange people." (Tr. 600)

16. Roe testified that he never wanted to go out with Drake because he wasn't interested in dating women, but he felt pressured to do so because of Crumpton and because he didn't want questions to be raised about his sexuality. (Tr. 142-143)

D. Roe and Crumpton's Professional Relationship in 2004-2005

17. After the incident with Drake, the professional relationship between Crumpton and Roe took a dramatic turn for the worse. (Tr. 144) Crumpton began to deride Roe and would regularly make snide comments about his appearance and his work. She referred to Roe as "boy," "grease monkey," and "bag lady." *Id.* More importantly, many of Crumpton's comments established that she began to believe Roe is homosexual.

18. Yvonne Davis, who is now retired, worked with Crumpton and Roe at CTA in 2004 and witnessed their interactions. She testified that Crumpton treated Roe "like a child." (Tr. 68-69) She would throw things on his desk, speak to him in a condescending manner, and make negative comments about his clothing. (Tr. 68, 71) For example, Davis testified that Crumpton said things such as "Why are you wearing this today? This looks like something a gay person might wear...." (Tr. 71) Crumpton did not treat other CTA employees in the office the same way as she treated Roe. (Tr. 69)

19. Davis even overheard Crumpton tell Roe, "You're acting like a fag" or "You're a fag." (Tr. 68, 73) Other CTA employees who worked directly with Crumpton and Roe also testified about Crumpton's homophobic statements toward Roe.

20. Former CTA employee Patricia Gibson-Anderson worked with Roe and Crumpton on and off beginning in August 2002. (Tr. 43) She testified that she believed Crumpton thought Roe was gay and often tried to embarrass him because of it. (Tr. 46-48)

21. Anderson testified to several incidents. In one instance and while referring to Roe, Crumpton made the comment that "God told Adam to walk with Eve and not Steve." (Tr. 48) This comment appeared to have stemmed from conversations among several CTA employees about African American men "on the down-low." (Tr. 63) In April 2004, Oprah

[2] Drake's recollection of the November 2002 time period appears inaccurate because Crumpton did not become Roe's supervisor until October or November of 2002. (Tr. 128) Prior to that time, Roe and Crumpton had not worked together and did not know each other well. (Tr. 140) It is highly unlikely that Crumpton would try to match-make one of her dearest and oldest friends to a gentleman that she had just started to work with.

Winfrey did a show featuring a book by J.L. King, and it was widely discussed by employees at CTA. (Tr. 356-359)[3]

22. Crumpton testified that at the time, her church held a workshop that specifically discussed African American men "on the down-low." (Tr. 359-360) Crumpton believed that "down-low" activity "was something prevalent in the African American community plaguing females, African American females." (Tr. 355)

23. In the church workshop, Crumpton was shown various pictures of men and given their biographical information. (Tr. 359-360) Crumpton was shocked to learn that one of the men in the photos, whom she found attractive, and who "looked like a normal everyday guy" was later identified by the workshop facilitator as a homosexual. (Tr. 360-364) So disturbed by this revelation, Crumpton brought the workshop materials to CTA and showed several of her friends. (Tr. 361-362)

24. Roe testified that Crumpton also came into his office, showed him the workshop materials, and asked several times if he knew any of the men in the photos. (Tr. 151) A few minutes later and in front of other CTA employees, Crumpton called Roe out of his office and asked him about it again. (Tr. 152) Roe reiterated that he did not know any of the men and started walking back to his office. *Id.* He then overheard Crumpton say to other CTA employees in a mocking manner, "Girl, he said he don't know who none of these [down-low] men are." *Id.*

25. On another occasion, Crumpton told Roe and other employees that "homosexuals will go to hell," "homosexuality isn't the natural order of things," and homosexuality "isn't God's will." (Tr. 144, 219)

26. In addition to the "walk with Eve not Steve" comment, Anderson testified that on several different occasions, she heard Crumpton call Roe a "bag lady" and denigrate him for purportedly "sashaying through the office," further implying that Crumpton believed Roe is homosexual. (Tr. 45) Crumpton berated Roe for wearing a pink sweater and even made negative comments about it to another employee. (Tr. 82, 155)

27. Sylvia Brown, a current CTA employee who has been with the agency for 21 years, testified that she too heard Crumpton demean and harass Roe. (Tr. 78) In one example, Brown was in Crumpton's office. Crumpton called Roe into her office and intentionally berated him in front of Brown regarding a FMLA-related task he was supposed to do. (Tr. 84-85) When Roe left the room, Crumpton remarked to Brown that "he lets me say anything to him." *Id.* Brown testified that she thought Crumpton was very inappropriate with Roe in that instance because "no one wants to be screamed and hollered at in front of someone else." (Tr. 85)

28. Sylvia Brown testified that in another example, Roe had pulled a file for Romayne Brown, then General Manager for the Red, Purple, and Yellow Lines, who was at the 95th Street terminal that day. (Tr. 85-86, 156-157, 334) Romayne Brown was Crumpton's and Roe's superior. Crumpton came up to Roe, asked him what he was doing, and then snatched the file from his hand. *Id.* They had words. Crumpton angrily pointed her finger in Roe's face. *Id.* Sylvia Brown had to step between the two of them to stop the escalating exchange. *Id.*

29. By that time, the relationship between Crumpton and Roe had become so intense that on one occasion, Sylvia Brown walked into Roe's office unexpectedly to ask him a question

[3] "On the down-low" refers to men who secretly engage in homosexual activity while maintaining heterosexual relationships. (Tr. 152, 337) J.L. King is the author of a book titled "On the Down-Low."

and he jumped because he thought it was Crumpton. (Tr. 92). Brown reported Crumpton's abusive behavior to her supervisor. *Id.*

30. In another example, Sylvia Brown and Crumpton were discussing Roe and a female employee who was openly gay. (Tr. 90-91) Roe and the female employee were friends. During the conversation, Crumpton commented that "well, that's typical." Brown testified she believed Crumpton meant it was "typical" for two gay people to be friends. *Id.*

31. Crumpton's disdain of homosexuality was further demonstrated when she mistakenly received a fax from a third party administrator that included FMLA-related information for a CTA employee. (Tr. 147-148) The form identified the employee as HIV positive. *Id.*

32. Crumpton called Roe into her office to show him the file and asked if Roe knew whether the employee was "of the other persuasion"—meaning whether the employee is gay. (Tr. 147) Roe testified that, based on his training, he believed Crumpton's review of the fax and showing it to him violated certain health-related privacy laws. (Tr. 148)

33. In April 2005, Roe had planned a trip to Washington, D.C. Roe testified that on his last Roe in the office before leaving for the trip, he went to remind Crumpton that he would be out of the office for a few days in Washington, D.C. (Tr. 158) In response, Crumpton remarked, "There's a lot of gay people in Washington, D.C." and "they're going to like you." (Tr. 158)

34. Roe had a black eye at the time and replied that "hopefully they won't like me, because I have this black eye," prompting Crumpton to respond, "[T]he boys like that. That's going to make them like you even more." (Tr. 158) Anderson testified at the hearing that she was in the office at the time and overheard Crumpton's statement. (Tr. 50)

35. In addition, Crumpton "made constant digs" and insulting comments toward Roe regarding his clothing, his hair, and his shoes. (Tr. 175-176) Roe testified that Crumpton's demeaning statements became personal and occurred "almost on a daily basis." *Id.*

36. Crumpton denies making most of the statements set forth above. She claims only to have called Complainant a 'bag lady' on occasion. (Tr. 343, 353, 361, 363, 368-370) Crumpton also testified that she had "no knowledge" of the altercation described by Sylvia Brown and denied ever treating Roe in a demeaning way, laughing at him or pointing her fingers in his face. (Tr. 353, 428)

37. Finally, Crumpton stated that she never suspected that Roe was homosexual and that her only issue with him was the quality of his work product and tardiness in getting work done. (Tr. 350-353, 368)

E. The Incident of April 19, 2005

38. At the 95th Street terminal, there is a common area where CTA employees would often gather. (Tr. 160) A bathroom sits right outside of that area. *Id.* On April 19, 2005, Roe had gone into the restroom. Shortly thereafter, CTA employees Delores Hampton, Crumpton, and Estayvaine Bragg came into the common area and were talking. (*Id.*, Tr. 389, Compl. Ex. 20, Resp. Ex. 1)

39. Mr. Bragg asked several times if Roe was in the office. Crumpton remarked, "You've said that boy's name three times. What are you looking for him for? What's that all about?" (Tr. 99, 161; Compl. Ex. 1) Bragg responded, "That's my boy, I wanted to show him some love." (Tr. 161) In response, Crumpton said, "Show him some love? Show him some love? What do you mean you want to show him some love? You sure you're not funny too?" *Id.*[4] Bragg and Crumpton made "snapping gestures" with their fingers and "other body language." (Compl. Ex. 20, Resp. Ex. 1) Bragg smiled and made a "limp wrist" gesture, and everyone began to laugh. (*Id.* Tr. 99-100) In using the term "funny," Crumpton meant "gay." (Tr. 80, 100)

40. Sylvia Brown was also in the common area at the time. She testified that she overheard the exchange and that Crumpton's comments were stated in a way to suggest that Bragg "was coming to see someone gay." *Id.*[5]

41. Roe was still in the bathroom and overheard the conversation between Hampton, Crumpton, and Bragg. Roe was extremely embarrassed and upset by the exchange. He was so embarrassed that he stayed in the bathroom for so long that several other managers had to get keys to unlock the door. (Tr. 162-163) Anderson testified that, while still in the restroom, Roe called and told her what had happened. (Tr. 164)

42. Later that evening, Roe asked Sylvia Brown to give him a ride to 87th Street from work. (Compl. Ex. 1) Roe was still extremely upset during the drive. *Id.* They discussed what had happened in the break room. *Id.* On the following day, Roe spoke to Bragg about the incident. Roe was still very upset. (Tr. 479)

43. This incident and the other encounters with Crumpton were "devastating" to Roe. Roe experienced "deep depression." (Tr. 160) He was unable to sleep and had anxiety when coming into the office. According to Roe, Crumpton's overall conduct toward him "changed [his] life majorly." *Id.*

44. At the hearing, Roe testified that the April 19th incident confirmed for him that Crumpton thought he was gay and that he could never reveal his sexuality because other CTA employees would constantly taunt him. Roe believed that if a manager was allowed to openly criticize and taunt homosexuals, other employees would feel free to do so as well. (Tr. 162-163)

45. Indeed, other CTA employees had begun to openly question Roe's sexual orientation. On several occasions, Michelle Bates, who was initially attracted to Roe, later asked him outright if he was gay. (Tr. 52-53, 282) Some of these inquiries were made in front of other people. *Id.* Further, upon seeing a picture of a male silhouette on Roe's desk, Bates remarked in front of other employees, "Is that your boyfriend?" (Tr. 81)

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[4] Similar to her other denials, Crumpton testified that she did not make these statements. (Tr. 451) She stated that in response to Bragg's statement she said "something to the effect of, okay, go see your boy." (Tr. 389)

[5] Bragg testified about the April 19th incident at the hearing. However, his recollection of events excluded any mention of his making stereotypical snapping gestures or the limp wrist gesture. Indeed, Bragg contends he said only that he "was coming to show Roe some love," and that Crumpton made an open-arm gesture and said three times, "Show him some love?" (Tr. 475-477) However, Bragg's testimony is contradicted by testimony and written statements from Roe, Sylvia Brown, Hampton, and even Crumpton. (Tr. 161, Compl. Exs. 1,20, Resp. Ex. 1) Further, Bragg admitted that Roe was very upset about the incident when he spoke to him the next day. (Tr. 479) If Bragg's and Crumpton's conduct was as benign as Bragg states, there would have been no reason for Roe to be so upset the following day.

46. In another example, several members of the breakfast club, including Crumpton, were seated at their table in the lunchroom. They were talking loudly at first, but when Roe entered the area, they stopped and "you could hear a pin drop." (Tr. 102-103) Then they all laughed at Roe. *Id.*[6]

47. On the day after the April 19 incident, Roe confronted Crumpton. (Tr. 164) He told her that he had overheard the conversation with Bragg and Hampton and that he planned to complain to Gilberto Hernandez, who was Crumpton's immediate supervisor. Roe also said he planned to complain to Romayne Brown, who was the direct supervisor of Hernandez. (Tr. 165, 293, 307)

48. Crumpton got upset and yelled at Roe. She said "[he] could do what [he] want[ed] to do. She's a cat with nine lives and she's always going to land on her feet." (Tr. 165) She also told him, "Gil and Romayne [don't] scare me," and stormed out of the office, slamming the door shut. *Id.*

49. As discussed below, Crumpton accurately predicted that nothing would come of Roe's complaint.

F. CTA's Anti-Discrimination Policies

50. Between 2004 and 2006, CTA had an Equal Employment Opportunity Program ("EEOP") in place and a separate Administrative Procedure policy regarding internal discrimination complaints. (Compl. Exs. 30, 31) According to the EEOP policy, when an employee or applicant files an internal discrimination complaint, "an Affirmative Action Investigator shall conduct a preliminary interview with the complainant to determine the merit of the allegation(s)." (Compl. Ex. 30) The complainant "will provide a detailed account of the time, place and facts related to the alleged violation(s)." If, after reviewing those facts, a determination is made that there is sufficient merit for the investigation, the process moves to the next stage. *Id.*

51. In that next stage, the allegation is recorded on a complaint form and signed by the complainant in the presence of the Affirmative Action Unit person and an investigation is initiated. Subsequently, several events take place: the corresponding department head is notified; interviews are held with relevant parties and witnesses; related documents and other reports are reviewed; a written report of the findings is presented to the Manager of Affirmative Action; the Law Department is consulted in all cases found to have a discriminatory basis; the complainant and the department head are notified of a final disposition of the charges, and the Affirmative Action Investigator follows up to ensure that the resolution is reached. There is even an appeals process for all determinations. *Id.*

52. CTA's policies state further that investigations "will be conducted in a timely manner, and should not exceed 90 days after filing the Complaint." (Compl. Ex. 31) However, that 90 day time period is flexible and may be extended "due to unforeseen and sometimes complicating circumstances." *Id.*

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[6] Apparently, knowledge of the April 19 event became widespread at CTA. Roe testified that after he had gone on sick leave, several CTA employees, even those that he did not know well, asked him about what happened. (Tr. 170-172) Roe feared that many of those employees knew or believed that he is homosexual given the nature of their questions. (*Id.* Tr. 251) Some of the employees also asked Roe's uncle if rumors of Roe's homosexuality were true. (Tr. 169)

53. If an individual files a discrimination complaint outside of CTA's internal process, it is CTA's practice that the EEO department turns its files over to the Law Department. (Tr. 693)

54. Nothing in the EEOP or the Administrative Procedure policies provides that an investigation of a harassment complaint automatically ends or is put on hiatus when the complainant employee goes on sick leave. (Compl. Exs. 30, 31)

G. Roe's Complaints to CTA about Crumpton's Behavior

55. Even before the April 19 incident, Roe and other CTA employees had complained to Hernandez about Crumpton's behavior toward Roe. Sylvia Brown, who was a union representative at the time, approached Hernandez about Crumpton's behavior and mistreatment of Roe. (Tr. 86, 92). She suggested that Hernandez talk to the two of them before things escalated further. *Id.*

56. Between late January and early February 2005, Roe contacted Hernandez and complained about Crumpton's unprofessional behavior. (Compl. Ex. 17) He told Hernandez that Crumpton talked to him in a demeaning way was abrasive and treated him like a child. (*Id.*; Tr. 304)[7] Roe did not say that Crumpton's harassment was based on sexual orientation because he had hoped CTA would address her misconduct without his having to reveal that he is gay. (Tr. 235-236)

57. Roe was so concerned about his negative interactions with Crumpton that he asked Hernandez if there were any upcoming manager rotations within CTA such that Crumpton could be reassigned to another terminal. (Compl. Ex. 17) Hernandez told him he had no knowledge of any anticipated rotations. *Id.*

58. Roe also asked about a transfer for himself. (Tr. 175-176) Hernandez suggested that he "tough it out" and try to work things out with Crumpton because a request for a transfer could be viewed unfavorably. (*Id.*; Tr. 313)

59. Hernandez spoke to Crumpton about Roe's complaints and suggested that she tone down the way she interacted with Roe. (Tr. 299) Hernandez also scheduled a meeting with Crumpton and Roe but they did not discuss the harassment. (Tr. 177-178) Instead, they discussed work assignments and the importance of getting things done in a timely manner. Hernandez never brought up Roe's allegations. *Id.*

60. Hernandez also scheduled a meeting with the administrative staff at the 95th Street terminal on February 17, 2005, to discuss, among other topics, proper communication, respect for authority, and professionalism. (Comp. Ex. 17) According to Hernandez' notes, he subsequently had weekly staff meetings at the 95th Street terminal for the next four weeks. *Id.*

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[7] On January 27, 2005, at around the same time of Roe's internal complaint, Crumpton wrote Hernandez a two-and-a-half page, single-spaced letter outlining "countless...problems...with the quality and quantity of Mr. Roe's work product." (Compl. Ex. 6) Given the timing of this letter, positive reviews by Roe's former supervisor, and scant additional evidence of Roe's allegedly poor work performance, Crumpton's criticisms appear to have been retaliation for Roe's internal complaint. (Compl. Exs. 2 and 3)

61. Hernandez believed that communication and work flow at the terminal improved as a result, but that clearly was not the case because the April 19 incident happened shortly thereafter. *Id.*

62. Roe called Hernandez after the April 19 incident and explained that he overheard Crumpton insinuating to other CTA employees that he is gay. (Tr. 309) Hernandez did not report Roe's complaint to CTA's internal Equal Employment Opportunity ("EEO") department. *Id.*

63. On April 21, 2005, Roe Called CTA's EEO office and spoke to Ellis Kendricks, then Manager of CTA's Affirmative Action Unit. (Tr. 179-180, 649) According to Kendricks' notes, Roe complained of "constant humiliation by Crumpton for 2 yrs," which was "affecting his work" and that "he [was] afraid of her." (Compl. Ex. 27 a)

64. Roe detailed incidents in which Crumpton screamed and yelled at him in front of other employees, snatched items out of his hands, called him a bag lady, and made other remarks related to his sexual orientation. *Id.* Roe said that he endured Crumpton's behavior because he feared losing his job. *Id.* Roe also told Kendricks about the April 19 incident and Crumpton's insinuations that Roe is homosexual. *Id.*

65. After talking with Roe, Kendricks then transferred the call to EEO investigator Salvador Ramirez and asked Ramirez to take over the matter. (Tr. 179) Ramirez then spoke to Roe about his complaint against Crumpton and got the same detailed information regarding her behavior. (Tr. 179-180, 656-658, Compl. Ex. 24)

66. Ramirez asked whether Roe had informed his general manager about Crumpton's conduct. (Tr. 656-658, Compl. Ex. 24) Roe had talked to Hernandez but had not previously complained to General Manager Romayne Brown because it was common knowledge that Crumpton was her protégé. *Id.*[8] Accordingly, Roe did not believe Romayne Brown would take any action against Crumpton regarding his complaint. (Tr. 658)

67. Finally, Roe informed Ramirez that he had "reached the pont [sic] where his nerves can no longer tolerate the hostility, verbal tirades, being called out of the context of his name, and comments being made alluding to him being gay." (Compl. Ex. 24) At that point, Roe was "under so much stress that he could no longer work effectively." (*Id*; Compl. Ex. 27 a) Roe had been scheduled to take an approved medical leave sometime around April 21 for eye surgery, but went on leave a day earlier because of the harassment. (Tr. 184)

68. During his conversation with Ramirez, Roe asked to be moved to another area within CTA so that he would no longer have to work with Crumpton. (Compl. Ex. 24). Ramirez responded that a transfer was beyond the jurisdiction of CTA's EEO department and that Roe would have to work through his union representative. *Id.*

69. At the end of his telephone conversation with Roe, Ramirez told him to put his allegations against Crumpton in writing. (Tr. 180)

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[8] Indeed, at the hearing, Romayne Brown confirmed that she is Crumpton's mentor and friend. (Tr. 527, 591) They have attended social and family functions together. (Tr. 528) Over the years, Brown has also recommended Crumpton for promotions within CTA. (Tr. 523-527).

70. On or about April 22, 2005, Ramirez e-mailed Romayne Brown about Roe's Complaint. (Compl. Ex. 23) Brown responded by e-mail on April 26, 2005, that she was out of the office but would investigate the allegations when she returned. *Id.* When she spoke to Ramirez by phone, she expressed surprise regarding Roe's complaint because he had never brought the allegations to her attention. (Compl Ex. 24) [9]

71. Ramirez also sent an e-mail to Hernandez about Roe's complaints and asked for details about any prior complaints. (Compl. Ex. 18) Ramirez told Hernandez that Hampton, Crumpton, and Bragg should put their account of the April 19 incident in writing. *Id.* Apparently Hernandez followed up with Ramirez' request because Bragg, Sylvia Brown, Crumpton, and Hampton all prepared written statements. (Compl. Ex. 1, 20, Resp. Ex. 1, Tr. p. 477)

72. On May 6, 2005, at Ramirez' request, Roe sent him a letter detailing the April 19 incident again, other comments made by Crumpton related to his sexual orientation, and additional incidents of unprofessionalism. (Compl. Ex. 7) To avoid revealing his sexual orientation, in the letter Roe asserted that Crumpton's insinuations that he is gay were false. *Id.* Roe again asked to be removed from CTA's transportation department to another area within the agency. *Id.*

73. After sending the letter, Roe called Ramirez several times but was unable to speak with him. (Tr. 181) Approximately one week later, Roe went down to the EEO office to speak with Ramirez directly about his complaint and what action Ramirez planned to take. (Tr. 181-182) During that conversation, Ramirez told Roe, "CTA did not get this way overnight and it's not going to change overnight." Ramirez advised Roe "to develop thicker skin." *Id.*

74. Subsequently, very little if anything was done regarding Roe's complaint. According to notes taken by Ramirez, sometime after his initial meeting with Roe, Romayne Brown claimed to have done her own investigation by speaking to each of the witnesses to the April 19 incident. (Compl. Ex. 24) She purportedly told Ramirez that her investigation did not corroborate Roe's allegations and that in fact, "many of the so called conversations where there was any mention of sex, innuendos etc. were initiated by Roe." *Id.*[10]

75. However, at the hearing, Romayne Brown testified definitively that she did not investigate Roe's complaint and did not personally speak to any of the witnesses about the April 19 incident. (Tr. 533-534, 541-542, 549) Moreover, contrary to Ramirez' notes, she did not recall having a conversation with Ramirez about: her purported investigation, that the

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[9] Sometime in late April 2005, Roe called Romayne Brown about the April 19, 2005, incident. (Tr. 529-531) He told her that Crumpton had made a comment about his gender or sexuality that made him uncomfortable. (Tr. 535, 576) Brown informed Roe she was out of the office due to illness but would handle it when she came back. (Tr. 531) Brown testified that when she returned to work, she attempted to call Roe but was unsuccessful in reaching him. (Tr. 532) She did nothing else to follow up with Roe after learning that he was on sick leave. (Tr. 533-534)

[10] In addition to his notes, Ramirez also filled out a "2005" Inquiry Data sheet regarding Roe's complaint. (Compl. Ex. 25, Tr. 700) Some of the information included in the sheet contradicts his notes. For example, the Data Sheet states that Romayne Brown told Ramirez she would speak to Crumpton about her conduct to ensure she avoided any misunderstandings, but that Brown did not think disciplinary action was warranted. Brown also purportedly told Ramirez that it "would not have been a problem" to move Roe to another location if Brown had been apprised of Roe's issues with Crumpton. *Id.* Neither Ramirez' notes nor Brown's testimony at the hearing corroborate these alleged conversations. Therefore, the hearing officer concluded that they did not occur.

investigation did not corroborate Roe's complaint, or that Roe had purportedly made improper sexual statements. (Tr. 548-550)[11]

76. Like Romayne Brown, Ramirez never personally interviewed or followed up with Crumpton, Sylvia Brown, Hampton, or Bragg regarding Roe's complaint after they submitted their written statements.[12] In fact, the EEO department, specifically Ramirez, never received a copy of those statements. (Tr. 709) Indeed, at the hearing, Ramirez confirmed that he never collected any "data" or information regarding Roe's Complaint. *Id.*

77. Romayne Brown, Ramirez, and Hernandez all testified that they did no further follow-up on Roe's complaint and the EEO office did not complete its investigation because Roe went on sick leave. (Tr. 299-300, 533-534, 669-670, 680-685)

78. No one at CTA called Roe to follow up on the investigation while Roe was on leave. There is no credible evidence that anyone at CTA ever interviewed Bragg, Hampton, or Crumpton. Further, there is no evidence that CTA did anything to investigate the relationship between Crumpton and Romayne Brown given Roe's assertion that Brown would do nothing to stop Crumpton's harassment because Crumpton was Brown's protégé. (Tr. 669)

79. On July 19, 2005, CTA officially closed its file on Roe's complaint. (Compl. Ex. 25) As of that date, the EEO department had not reviewed documents related to Roe's complaint, interviewed witnesses, or prepared a written report of the findings. (Tr. 710) Nor was there a final disposition of the charges.

H. Events Following Roe's Medical Leave

80. Roe was on approved medical and then short-term disability leave from April 2005 through October 2005 when CTA discontinued his disability benefits. (Tr. 606-607) He received full pay benefits from April 28, 2005, through October 25, 2005. While on leave, Roe was diagnosed with severe depression and anxiety. (Compl. Ex. 8-12) His doctor prescribed Cymbalta, Ambien, and Sinethapan for these ailments. The dosage for these medications increased over time and Roe began to see a therapist regularly. (*Id.*; Tr. 183, 611-612) As of the dates of the hearing, Roe was still in therapy and on medication. (Tr. 204, 611)

81. On October 1, 2005, after Roe filed his discrimination Complaint with the Commission and retained counsel, CTA offered to transfer Roe to a project specialist position at the Howard Street Terminal for the Red Line. (Resp. Ex. 5) Roe rejected this offer because "he would still report to the same personnel who failed to address his harassment complaints... Romayne Brown and Gilbert Hernandez." (Resp. Ex. 6)

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[11] Given Romayne Brown's testimony, the statements in Ramirez' notes about her purported investigation and findings of no wrongdoing are contradictions at best or falsifications at worst.

[12] Ramirez testified that Romayne Brown had Crumpton attend a sexual harassment training session in light of Roe's complaint. (Tr. 675-676) However, CTA has produced no documentation confirming Crumpton's attendance at such training, nor did Crumpton, Romayne Brown, or any other CTA employee testify about this issue. Further, none of Ramirez' written statements concerning his conversations with Roymayne Brown mention any sexual harassment training. Given this lack of corroboration and inconsistencies between Brown's testimony and Ramirez' notes regarding their alleged conversations, there is no credible evidence that Crumpton ever attended sexual harassment training following Roe's complaint.

82. At the hearing, Roe also testified that he believed he would still come into contact with Crumpton, who was an Administrative Manager over the Red Line at the time. (Tr. 188). Roe testified that his doctors advised against taking the position for the same reason. *Id.*

83. On November 23, 2005, CTA offered to transfer Roe to a project specialist position on the Brown/Green/Orange Lines under General Manager Fred Schein. (Resp. Ex. 7) Roe rejected this offer because it was still within the Rail Operations Department and, given CTA's manager rotation program, he feared that Crumpton could become his boss again. (Resp. Ex. 8, Tr. 189) CTA never offered Roe a position outside of Rail operations. (Tr. 190)

84. CTA terminated Complainant's employment on January 19, 2006, citing his absence from duty for nine months and unwillingness to return to work. Roe collected unemployment benefits upon his termination from CTA. (Tr. 625, Resp. Ex. 4)

85. After his termination, Roe looked for work in Chicago but was unsuccessful. (Tr. 205) He eventually found a position in June 2006 with the New York City Transit Authority. (Tr. 206) In that position, Roe's salary was approximately $9,000 more than his salary at CTA. (Tr. 606, 622) In June 2007, Roe took a position with L'Oreal USA in New York, NY. His salary for that job increased significantly to $60,000 and to $68,000 in 2008. (Tr. 623-624)

III. CONCLUSIONS OF LAW AND DISCUSSION

Section 2-160-030 of the CHRO provides, "No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's ...sexual orientation...." Section 2-160-020(l) defines "sexual orientation" as the actual or perceived state of heterosexuality, homosexuality or bisexuality.

CCHR Reg. 100(26) defines "person" as "one or more individuals, corporations, partnerships, political subdivisions, municipal corporations or other governmental units or agencies, associations, labor organizations, joint apprenticeship programs, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees in cases under Title 11 of the United States Code, receivers, trustees or other fiduciaries, and any successors or assigns thereof."

In this proceeding, Complainant has repeatedly attempted to cast his claim as a discriminatory discharge based on sexual orientation. However, this case is not about wrongful discharge—constructive or otherwise. The sole claim at issue here is harassment based on sexual orientation. Indeed, the hearing officer rejected this "constructive discharge" theory of liability in her order of September 8, 2009, and the Commission had previously dismissed Roe's wrongful termination claim based on retaliation in its order of December 2, 2008, finding no substantial evidence to support such a claim. In her order of September 8, 2009, the hearing officer determined that neither the initial Complaint nor the first Amended Complaint substantially apprised Respondents of a constructive discharge claim, plus there was no finding of substantial evidence of constructive discharge. The hearing officer did not bar evidence regarding back pay as an element of damages in that pre-hearing order, on the ground that Complainant might be able to show that he lost wages as a result of the alleged harassment.

The applicable regulations regarding harassment provide as follows:

CCHR Reg. 345.100 Prohibition of Harassment

Harassment on the basis of actual or perceived membership in a Protected Class is a violation of the HRO. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of membership in any class protected under the HRO.

CCHR Reg. 345.110 Definition of Harassment

Slurs and other verbal or physical conduct relating to an individual's membership in a Protected Class...constitutes harassment when this conduct:

(a) has the purpose or effect of creating an intimidating, hostile or offensive environment;

(b) has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) otherwise adversely affects an individual's employment opportunities.

CCHR Reg. 345.120 Liability for Supervisor's Actions

An employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of membership in a Protected Class...regardless of whether the employer knows or should have known of their occurrence.

Based on all of these provisions, to establish Crumpton's liability in this matter Roe must show that: (1) Crumpton either knew or perceived him to be gay; (2) Crumpton made slurs and/or engaged in other verbal or physical conduct related to his sexual orientation; and (3) those slurs and/or conduct (a) created a hostile environment, or (b) unreasonably interfered with his work performance, or (c) adversely affected his employment opportunities. As discussed more fully below, the evidence overwhelmingly shows that the Complainant has satisfied his burden.

A. Angela Crumpton is Liable for Harassment in Violation of the CHRO

1. Crumpton Perceived Complainant as Gay

It is clear from the testimony of several witnesses that Angela Crumpton believed Complainant is gay. According to Yvonne Davis, she called him a "fag" outright. Crumpton denigrated Roe for wearing a pink sweater and "sashaying" around the office. She told him that his clothing "looks like something a gay person would wear." She called him a "bag lady." According to Sylvia Brown, Crumpton told her it was "typical" for a female employee who was openly gay to be friends with Roe. Crumpton also told Roe that the "gay people" in D.C. were going to "like" him.

More importantly, Crumpton's conduct during the April 19 incident confirms this finding. After learning that Estayvaine Bragg had come to visit Roe, Crumpton said, "You have

said that boy's name three times" and "I just wanna make sure you ain't funny too."[13] She made snapping gestures with her fingers and laughed at Bragg's limp wrist gesture in reference to Complainant—both of which are stereotypical gestures for homosexuality. All of these examples establish Crumpton's belief that Roe is homosexual.

2. Crumpton Repeatedly Made Verbal Slurs and Engaged in Other Conduct Regarding Roe's Sexual Orientation

The evidence also shows that Crumpton repeatedly made verbal slurs regarding Roe's sexual orientation and engaged in other harassing conduct. In addition to the many examples set forth above, in Roe's presence she also said, "God told Adam to walk with Eve and not Steve." She said that "all homosexuals will go to hell." She showed Roe pictures of men "on the down-low" and then heckled him in front of other CTA employees when he said he didn't know any of the men. She showed him personal health records of an HIV positive employee and inquired whether Roe knew if the employee was "of the other persuasion," i.e. gay, as if Roe would be privy to such information. Crumpton's conduct during the April 19 incident was particularly disturbing because she involved other employees in her harassment.

The evidence also shows that Crumpton grew increasingly hostile toward Roe due to her belief that he is gay. She didn't just lob occasional verbal assaults; she constantly bullied and belittled Roe to the point where he was afraid of her. Crumpton berated Roe in front of Sylvia Brown on several occasions. She threw things on his desk, snatched files from his hands, and was verbally confrontational. Testimony regarding these events came not only from Roe but also but from several current and former CTA employees with nothing to gain or lose from the outcome of this case. Some of them were even friends with Crumpton. That Sylvia Brown witnessed Crumpton's harassment of Roe and felt compelled to inform another manager about it is telling.

Accordingly, Roe has overwhelmingly satisfied the second prong of his harassment claim.

3. Crumpton's Slurs and Conduct Created a Hostile Work Environment

The Commission has often relied on federal precedent to determine whether the slurs and conduct at issue are sufficient to create a hostile work environment. See, e.g., *Alexander v. 1212 Restaurant Group, LLC*, CCHR No. 00-E-100 (Oct. 16, 2008), aff'd *1212 Restaurant Group, LLC v. Alexander*, 09 CH 16337 (Ill.Cir.Ct. Feb. 19, 2010); *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Sept. 25, 2002); *Bahena v. Adjustable Clamp Co.*, CCHR No. 99-E-111 (July 16, 2003). According to that precedent, the conduct at issue must be severe or pervasive enough to alter the conditions of employment and create an abusive work environment. See also *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993); *Cerros v. Steel Technologies, Inc.*, 288 F.3d 1040 (7 Cir. 2002) ("*Cerros I*"). Further, the test is both subjective and objective. Not only must the complainant find the harassment offensive, but a reasonable person must find it so as well. *Nuspl*, *supra* at p. 9 citing to *Austin v. Harrington*, CCHR No. 94-E-37 (Oct. 22, 1997).

Whether an environment is "hostile" or "abusive" can only be determined by looking at "all of the circumstances," including the frequency of the discriminatory conduct, its severity,

[13] CTA argues that at most, Crumpton said "ain't funny *now*," instead of "ain't funny *too*," as if the slightly different language somehow negates a finding that Crumpton believed Complainant to be gay. It does not. Both scenarios establish that Crumpton believed Roe is homosexual.

whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance. *Harris, supra* at 23. Given this "totality of the circumstances" analysis, direct as well as "second-hand" knowledge of harassment within the workplace is relevant to an examination of the entire context of the work environment. *Dandy v. United Parcel Service, Inc.*, 388 F.3d 263, 272 (7 Cir. 2004), holding that repeated use of racial epithets may create an objectively hostile environment, even if heard second-hand.

Thus CTA's argument that Roe cannot establish a hostile work environment because some of the comments purportedly were not made directly to him fails. First, the evidence shows that most if not all of Crumpton's harassing comments were made either directly to Roe or in his presence. Second, even if Roe was not within earshot of some of the comments, the mere fact that Crumpton felt comfortable enough to make them in front of other CTA employees helps to paint a picture of the harassing environment overall.

A complainant is not required to show that the alleged conduct was both severe *and* pervasive. See *Henderson v. Irving Materials, Inc.*, 329 F. Supp. 2d 1002,1012 (S.D. Ind. 2004). One or the other will do. *Id.* A single "sufficiently severe episode" may suffice, while a pattern of lesser incidents of harassment that extends over a long period of time may also establish a claim. See *Cerros, supra.* However, even though not required to do so, Complainant here has shown that the work environment at CTA was permeated *with both severe and pervasive* harassment based on sexual orientation. He has also shown that he found the conduct to be offensive, as would any reasonable person under the circumstances.

It is clear from the record here that Angela Crumpton held a significant personal bias against homosexuals and communicated it to Roe and others in the workplace. She acknowledged that she grew up in a church that preached that homosexual acts are a sin and "an abomination." She told Roe and other employees that "God told Adam to walk with Eve and not Steve," that homosexuals will go to hell, and that homosexuality isn't God's will. She learned in a workshop at her church about "down-low" activity by African American men "plaguing" African American women, talked about the workshop with other employees in the office, persistently confronted Roe about whether he knew any of the men depicted in the workshop materials, then reported her conversation with him to other employees.

As the hearing officer made clear, Crumpton is entitled to practice whatever religion she chooses and to believe whatever she chooses about homosexuality. However, it is a violation of the CHRO for a supervisor to repeatedly denigrate and harass a subordinate employee because of his actual or perceived sexual orientation. CCHR Reg. 345.100. It is this harassing *conduct* of Crumpton in the CTA workplace which violates the CHRO, not Crumpton's personal beliefs.

In their objections to the recommended ruling, Respondents argue that the hearing officer was prejudiced against Crumpton's religious views and so penalized Crumpton for them. This argument is wholly unfounded. Nowhere did the hearing officer state her own religious views or opine on the correctness of Crumpton's. She clearly set forth a position the Commission also follows: that Crumpton is entitled to believe whatever she chooses about homosexuality, whether founded in religious doctrine or for any other reason. The hearing officer clearly explained that Crumpton's religious beliefs do not violate the CHRO; rather it was her ongoing, intentional, degrading *conduct* toward Roe—because of his perceived sexual orientation—that violated the CHRO. That Crumpton's *conduct* appeared to flow largely from her personal religious beliefs and background is merely the factual context of this particular case. It was Crumpton who extolled her religious beliefs to Roe to taunt and criticize him about his sexual orientation.

It is well-settled that individuals and even certain institutions have First Amendment rights to hold and express religious beliefs of their choice. See *Kelly v. North Park University*, CCHR No. 03-E-173 (Nov. 30, 2005). But they may not act in a manner which violates the rights of others to be free from harassment and other forms of prohibited discrimination. See the discussion of applicable balancing principles in *Rushing v. Jasniowski*, CCHR No. 92-H-127 (May 18, 1994).

As set forth in detail above, Crumpton repeatedly harassed Roe about his clothing, his mannerisms, his associates, his activities, and his work because she perceived that he is gay. These comments and acts were neither random nor stray. She made them in his presence and in front of other CTA employees. Her degradation of Roe was so thorough that even other employees at CTA joined in the ridicule. Crumpton's "breakfast club" friends laughed at Roe when he entered the room. Some were even bold enough to ask Roe outright if he is gay. They mocked Roe with various embarrassing and insulting stereotypical gestures.

By repeatedly taunting and embarrassing Roe about his homosexuality, and acting as a catalyst for others to join in this behavior, Crumpton in essence "outed" Roe, who had previously been deeply private about his sexual orientation. Thus, Crumpton's harassment of Roe took on a life of its own at CTA and created a hostile work environment for him based on sexual orientation.

CTA's argument that a hostile work environment did not exist because most of the conduct was unrelated to sexual orientation, was intermittent and tepid, or was isolated and ambiguous is disingenuous and completely ignores the evidence in this case. (See CTA/Crumpton Closing Argument). There is nothing ambiguous, tepid, or benign in calling someone a "fag" or saying his clothes "look like something a gay person would wear," let alone taunting him to the effect that he was violating the will of God and would go to hell. Moreover, these comments were hardly isolated. They were ongoing for more than a year. Further, the hearing officer found that the other incidences of belittling and degradation occurred expressly *because* Crumpton thought Complainant to be gay.

Several Commission decisions are insightful on this point. In *Osswald v. Cognac Corp.* CCHR No. 93-E-93 (July 1995), the Commission found that a waiter whose manager referred to him as a "faggot," "fucking faggot," and "queen" during his employment proved that the restaurant and the manager were liable under the CHRO for creating a hostile work environment based on sexual orientation. Similarly, in *Nuspl, supra*, the complainant established a hostile work environment where he was called a "faggot" and "missy" and told "she's having a hissy fit." In *Alexander, supra*, the complainant proved that his boss engaged in a pattern of verbal slurs which included calling him "fag," "sissy," "homo," and "Marybeth"—all of which created an anti-gay atmosphere within the workplace. In *Arellano & Alvarez v. Plastic Recovery Technologies, Inc.*, CCHR No. 03-D-37/44 (July 21, 2004), a company president was found to have harassed two employees by repeatedly accusing them of being gay and taunting them about it. Also instructive is the housing discrimination case of *Fox v. Hinojosa*, CCHR No. 99-H-116 (June 15, 2004), where a landlord harassed a tenant after determining he is gay by (among other things) revealing his sexual orientation to his family, whom he had not told.

As detailed above, and like these cases, Crumpton's repeated comments and conduct toward Roe based on her belief that he is gay were similarly severe *and* pervasive enough to create a hostile work environment. Indeed, although Respondents try to minimize Crumpton's conduct compared with the cases cited above, her conduct was worse because it encouraged other employees to similarly taunt Roe or to boldly inquire about his sexual orientation.

Moreover, her conduct occurred in a governmental workplace where managers should be even more attentive to maintaining an accepting environment for all employees protected by civil rights laws.

B. CTA is Liable for Crumpton's Conduct

As set forth in the CHRO, an employer is responsible for its acts as well as those of its supervisory employees with respect to harassment on the basis of sexual orientation, regardless of whether the employer knows or should have known of their occurrence. CCHR Reg. 345.120. The CHRO also imposes on employers an affirmative duty to maintain a working environment free of harassment on the basis of sexual orientation along with other protected classifications. CCHR Reg. 345.100.

Crumpton was a supervisory employee with respect to Roe. There is no dispute that at the time of the events in question, she was an Administrative Manager II. Roe reported to her, and she was responsible for evaluating his work performance. (Compl. Ex. 2-4) Thus, as Crumpton's employer, CTA is liable for her discriminatory conduct. *Alexander, supra* at 20; see also *Warren et al v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-63/63/92 (July 24, 2000), thoroughly discussing and applying vicarious liability principles in the context of harassing conduct by a security guard based on three customers' sexual orientation or gender identity.

In addition, CTA is directly liable because it failed to maintain a harassment-free work environment. Indeed, the evidence shows that CTA effectively allowed Crumpton's harassment to go unchecked because it failed to adequately investigate Roe's claims of harassment, let alone take reasonable corrective action. Even before the incident of April 19, 2005, Sylvia Brown and other CTA employees had complained to Hernandez about Crumpton's treatment of Roe. (Finding of Fact #55) Roe himself had also complained to Hernandez (Findings of Fact ##56-58) At this point, Hernandez told Roe to "tough it out." Although Hernandez held general staff meetings regarding "communication" and "professionalism," he did little to investigate or address the specific complaints raised by Roe except to suggest to Crumpton that she "tone down" her interactions with him. (Findings of Fact ##59-60) Moreover, these staff meetings were clearly ineffective because Crumpton's harassment of Roe continued and she did not feel at all deterred.

CTA's response to the April 19 incident was even more egregious. Roe called Hernandez after the April 19 incident and explained that he overheard Crumpton insinuating to other CTA employees that he is gay (Tr. 309), but Hernandez did not report Roe's complaint to CTA's internal Equal Employment Opportunity ("EEO") department. *Id.* Ramirez—an EEO manager!—told Roe to "develop a thicker skin" and did little to investigate Roe's complaint. The evidence established that the only "investigation" CTA did was to get written statements from Bragg, Sylvia Brown, Crumpton, and Hampton. There is no credible evidence that anyone in management ever interviewed these individuals about the incident after getting those statements. Nor did anyone bother to follow up with Roe regarding the statements or anything else about his complaint.

CTA's decision to end its investigation of Roe's complaint solely because he went on sick leave was untenable—especially when that decision was contrary to its own written policies on how to handle internal discrimination complaints. (Compl. Ex. 30 and 31) Nothing in those policies provides that investigations cease when an employee goes on leave. There was nothing at the point Roe went on medical leave to suggest that he would not be returning to the

workplace. Moreover, the "sick book" excuse appears to be disingenuous because Roe was already on an approved medical leave when he first contacted Ellis Kendrick about the April 19 incident (See Compl. Ex. 27 a, which includes the notation "will meet with Germaine today, but he, Germaine, is off" [*sic.*] and "he's currently at EAP" (Employee Assistance Program)). Yet, Ramirez began to inquire about Roe's complaint by sending e-mails to Hernandez and Romayne Brown, and the written statements were gathered shortly thereafter. In addition, CTA could have easily contacted Roe by phone to follow up with any questions or issues raised during the course of its investigation, but failed to do so. Thus, it appears that CTA had no reasonable explanation for its failure to fully follow up on Roe's complaint according to its stated procedures.

CTA also failed to comply with other provisions in its written policies. Neither Ramirez nor anyone within the EEO department even saw the witness statements gathered by Hernandez. (Compl. Ex. 30) No written report was prepared or presented to the manager of the Affirmative Action department, as required in the written policies, and no findings were ever made. *Id.* Thus, Angela Crumpton's taunt that nothing would happen to her at CTA as a result of her discriminatory conduct proved true.

For all of these reasons, CTA is both directly and vicariously liable for violating the CHRO.

V. RESPONDENTS' REQUESTS FOR REVIEW

A. Disqualification of Hearing Officer

Respondents have requested review of the hearing officer's interlocutory decision not to disqualify herself from the case. The hearing officer entered this decision orally on the record on the first day of the administrative hearing, October 5, 2009. The transcript reveals that she opened the hearing and immediately informed the parties that, on reviewing their pre-hearing memoranda on October 2, 2009, she discovered in Respondents' submission two letters dated in the fall of 2005 between Kristin Case and CTA. They revealed that before Complainant's current counsel became involved in the case, Complainant had been represented by the law firm of Penny Nathan Kahan & Associates. The hearing officer then disclosed that on August 24, 2009, she became of-counsel on a part time basis with that firm. She noted that the firm's representation of Complainant must have occurred some time ago, that Kristen case is no longer an attorney there, and that the hearing officer has never met her. She also stated that she has had no conversation with Penny Nathan Kahan about this case. (Tr. 4-5)

Complainant then confirmed on the record that the Kahan firm had represented him in 2005, after which Complainant represented himself for a period of time until his current counsel began to represent him in early 2006. (Tr. 7) Respondents' counsel then stated that when the parties had a settlement conference, one thing that came out was that Complainant still owed the Kahan firm some money. The hearing officer stated that this was the first she had heard of that. (Tr. 8)

The hearing officer then stated that she does not have any ownership interest in the Nathan firm or any involvement with the firm's collection of money. Rather, she was working there two days per week strictly on an of-counsel basis. She further stated that, going forward, she would have no discussions at all with Kahan about "any issues involving Mr. Roe, whether they [sic.] be money owed, what happened in the case, the nature of their representation, whatever it may be." *Id.*

Respondents' counsel then asked the hearing officer whether Atty. Kahan had any cases against CTA, stating that she knows Kristin Case has brought claims against CTA. The hearing officer stated that, to her knowledge, the firm had nothing against CTA. (Tr. 9) At that point, a short recess was taken and the hearing proceeded without objection from either party. *Id.*

In their request for review, Respondents argue that the Commission must now disqualify the hearing officer because she was now employed by the law firm that formerly represented Complainant in this case "combined with the bias evidenced by the tone and content of the Amended Recommended Ruling." Respondents cite CCHR Reg. 240.210, which provides that a disqualification motion must explain why the hearing officer's impartiality might reasonably be questioned, including but not limited to the circumstances set forth in Illinois Supreme Court Rule 63(C). Respondents specifically point to Illinois Supreme Court Rule 63(C)(1)(a), which provides that a judge shall disqualify himself or herself where "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." Respondents' also cite the standard generally followed by this Commission—that a hearing officer's impartiality might reasonably be questioned where "an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case." *Matthews v. Hinckley & Schmidt*, CCHR No. 98-E-206 (Mar. 15, 2000), citing *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 461 (7 Cir. 1985). Respondents then cite several disqualification decisions including *Chow v. Lemen Sun Grocery*, CCHR No. 97-E-240 (Dec. 10, 1998), where the hearing officer and the complainant's attorney were opposing counsel in a case pending in federal court; *Pepsico, supra*, where the judge employed a headhunter who had engaged in preliminary negotiations about possible future employment of the judge with the two firms who represented the two parties in the case; *SCA Services, Inc. v. Morgan*, 557 F.2d 1210, 114 (7 Cir. 1977) where the judge's brother was a partner in the law firm that represented the plaintiff; *Matter of Hatcher*, 150 F.3d 631, 638 (7 Cir. 1998), where the judge's son had previously assisted in prosecuting a closely related matter; and *Public Utilities Commission v. Pollak*, 343 U.S. 451, 72 S.Ct. 813 (1952), where a U.S. Supreme Court justice disqualified himself because he considered his emotions "strongly engaged as a victim of the practice in controversy."

Complainant filed a response to this request for review arguing that it was untimely. Here, the Commission agrees with Respondents that the hearing officer allowed the parties to seek review of her decision in conjunction with objections to her recommended ruling on liability. (Tr. 6) Nothing in CCHR Regs. 240.210 or 240.220 regarding disqualification suggests that the hearing officer cannot allow this variance in the timing to challenge her decision pursuant to her scheduling authority under CCHR Reg. 240.307(b), especially when the issue was discovered only three days before the administrative hearing.[14]

By the same token, the Commission rejects Respondents' argument that Complainant's response to their request for review should be stricken because leave to file it was not sought. Respondents filed a response to Complainant's request for review as well as a reply to this one, without seeking leave. The Board of Commissioners has accepted all of these submissions.

[14] It is true that Respondents had opportunity to argue for disqualification during the later stages of the administrative hearing or in post-hearing briefing, yet did not challenge the hearing officer's decision until they received an unfavorable recommended ruling. Nevertheless, the hearing officer allowed review at this point.

The Commission does not find that the circumstances of record disqualify the hearing officer. Certainly the Commission finds nothing in the "tone and content" of the hearing officer's recommended ruling that establishes a personal bias against either Respondent.

In its recent decision in *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Oct. 21, 2009), the Board of Commissioners reaffirmed the Commission's standards for disqualification of a hearing officer and the applicable precedents as set forth in *Matthews, supra,* including the summary in that decision of the competing policy concerns surrounding disqualification:

> The Commission "must carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning [the Administrative Hearing Officer's]...impartiality might be seeking to avoid the adverse consequences of [the Administrative Hearing Officer's] presiding over their case." *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988), *cert. denied*, 490 U.S. 1102 (1989). "A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." *Id.*

Also in *Matthews*, the Commission noted as without question, "In a motion for disqualification, the burden is on the moving party."

The Commission has also held: "[I]t is axiomatic that a motion to recuse because of the appearance of partiality may not be based merely upon unfavorable judicial rulings regardless of the correctness of those rulings." *Chimpoulis/Richardson v. J & O Corp. et al.*, CCHR No. 97-E-123/127, n. 29 (Sept. 20, 2000); see also *Matthews, supra.*, discussing the presumption of "honesty and integrity" afforded adjudicators which can be overcome only by "a strong, direct interest in the outcome of a case...."), quoting *DelVecchio v. Illinois Dept. of Corrections*, 31 F.3d 1363, 1375 (7th Cir. 1994).

In *Flores*, as here, the Commission rejected the argument that the hearing officer's decisions against the party seeking disqualification during the course of the proceedings were evidence of personal bias calling for disqualification. Review procedures are available to Respondents to seek reversal of decisions they believe are erroneous.

In addition, nothing of record establishes that the hearing officer had an apparent or actual interest in the outcome of this case. Respondents' arguments that the hearing officer would decide this case for Complainant in an effort to benefit the Kahan law firm or due to a supposed "halo effect" surrounding her decision to enter an of-counsel relationship with the firm are speculative and remote. There is no evidence about how much Complainant still owes the firm or whether he would have been unable to pay it without a favorable decision in this case. There is no information about the firm's evaluation of the merits Complainant's case. Nor is there evidence that this hearing officer is so unsophisticated as to believe that all cases handled by the Kahan firm are or should be winners. There is no evidence that the Kahan firm has shared any information about its previous representation of Complainant with the hearing officer. That the hearing officer promptly and fully disclosed the issue to the parties and made sure they had an avenue of review belies any accusation that she would then try to use her position to obtain information outside the record or that she would necessarily favor Complainant's position because of the Kahan firm's early involvement in the case.

Complainant's current counsel entered appearances on March 6, 2009. The Kahan firm had filed its motion to withdraw as Complainant's attorney three years earlier, on February 27, 2006, citing a breakdown of communication and Complainant's failure to make agreed payments

to the firm. That motion was served on CTA's attorney.[15] The Commission did not provide a copy of the motion to the hearing officer or include it in the public hearing record up to this point,[16] and there is no extrinsic evidence that the hearing officer had any knowledge (prior to this ruling) of why the Nathan firm no longer represents Complainant. These circumstances reinforce that the hearing officer's knowledge of the Kahan firm's early representation of Complainant does not require an inference that she would for that reason be inclined to favor Complainant's position over that of Respondents. That they parted company in the early stages of investigation (while pleadings and responses were still being filed) could also support inferences adverse to Complainant's position.

Accordingly, the Commission denies this request for review and affirms the hearing officer's decision not to disqualify herself. However, now that the Commission has ruled in Complainant's favor and authorized a petition for attorney fees, the circumstances will change if Complainant seeks compensation for fees or costs incurred while he was a client of the Kahan law firm, such that the Commission would expect the hearing officer to reconsider whether she can participate in decision-making on that request.

B. Amended Complaint Adding Crumpton as a Respondent

Respondents also requested review of the hearing officer's decision allowing Complainant to amend his Complaint to add Angela Crumpton as an individual Respondent. Complainant filed his Motion to Amend on July 15, 2009. The hearing officer issued an order granting the motion on August 11 and Complainant filed the Amended Complaint on August 14, 2009. Both Crumpton and CTA filed responses to the Amended Complaint on September 14, 2009. The first day of the administrative hearing was October 5, 2009.

Respondents argue, first, that Complainant should have moved to amend his Complaint sooner, noting that he had been represented by his current counsel since March of 2009. Also, they argue that Complainant failed to attach a copy of the proposed amended complaint or provide a specific statement about it in his motion, citing CCHR Reg. 210.150(d), and failed to serve a copy on Crumpton personally. More substantively, Respondents then argue that the Amended Complaint raised new, material legal issues not considered by the Commission in its investigation and that the hearing officer ignored Crumpton's arguments that she would be prejudiced in her capacity to defend.

Amended complaints to add a respondent after a determination of substantial evidence are governed by CCHR Reg. 210.160(b)(2). A complainant is required to file and serve a motion to amend. There is no requirement (as under CCHR Reg. 210.150(c) regarding amendments to add claims or allegations) that this motion be filed as soon as basis for it is known, if as here the motion is filed prior to the administrative hearing. Thus there is no basis for Respondents' arguments that Complainant's motion was not timely.

As to the motion procedure, CCHR Reg. 210.160(d) incorporates the procedures of Reg. 210.150(d), (e), and (f) for amendment of claims or allegations. Under Reg. 210.150(d), the motion "must state the reason for seeking to amend the complaint, must establish that the applicable criteria for amendment after a substantial evidence finding are met, and must include

[15] Under Commission regulations, it was not necessary for the Commission to rule on this motion. Because it was made during the investigation process and no objections to it had been filed within 14 days after filing, the motion was deemed granted without Commission order. See CCHR Reg. 270.340(b).

[16] It will now be added to complete the record regarding this request for review.

either the proposed amended complaint *or a specific statement of the proposed amendment.*" [emphasis added] Complainant's motion clearly stated that he was seeking to amend his Complaint to add Crumpton as an individual Respondent; he was not required to attach a proposed amended complaint as well.

Reg. 210.150(d) further requires that the motion be "served on all parties and the hearing officer." Neither this nor any other regulation specifies whether the proposed new party must be served with the motion. However, in this case, CTA's counsel responded to the motion *on behalf of Crumpton* on August 5, 2009. Although this response itself was not served on the hearing officer or filed with the Commission until the hearing officer learned of it through Complainant's reply and requested it from counsel, the response was nevertheless considered by the hearing officer and addressed in her order granting the motion. Crumpton then received notice of the Amended Complaint after it was filed, responded to it, and suffered no apparent prejudice due to any failure to receive a copy of the motion at the time of filing.[17]

The criteria under Reg. 210.160(b)(2) for adding a respondent after a substantial evidence finding, all of which must be met, are as follows:

1. The claims of the new complaint arise out of the same transaction/s or occurrence/s set forth in the original complaint.

2. The new respondent was notified or had knowledge of the filing of the original complaint.

3. The original complaint was such that the new respondent knew or should have known, within the 180 day filing period, that the complaint arose from a transaction or occurrence in which the respondent was involved.

4. The addition does not raise new, material factual or legal issues not considered by the Commission in its investigation.

5. Any objecting party has failed to demonstrate that the amendment would prejudice the party in maintaining its claim or defense on the merits.

Respondents in their request for review argue that the fourth and fifth criteria were not met. First, they assert that two new, material legal issues were not considered by the Commission in its investigation, namely "personal liability" and "punitive damages." Regarding personal liability, they argue that the Commission considered only whether CTA was vicariously liable for Crumpton's alleged actions, not whether she could be held personally liable for the allegations themselves, citing *Stanley v. Chicago Police Dept.*, CCHR No. 01-E-31 (Oct. 2, 2001), as a decision that distinguishes personal liability from "official" liability. This argument misinterprets the *Stanley* decision, which is not about vicarious versus direct liability but rather about whether a government official was acting in a personal versus official capacity. *Stanley* specifically reaffirms, "There is no question that persons may be sued individually at the Commission," citing Sec. 2-160-030, Chicago Muni. Code, prohibiting employment discrimination by any "person." The issue of personal versus official capacity arises where a lawsuit seeks to impose personal liability on a government official for action taken under color

[17] Also, had Crumpton wished to oppose allowing the Amended Complaint, she could have raised the issue in her response to it.

of state law, even though that individual may not have personally engaged in any adverse action against the plaintiff. *Id.*

Personal versus official liability is not the issue here. All of the allegations and findings against Crumpton involve adverse actions she herself took against Complainant, not actions taken by others for which she was responsible in her official capacity. Naming Crumpton as a respondent was not intended as a way of naming CTA. CTA was already named as a respondent, and the findings against it are based on both vicarious liability for Crumpton's actions as well as CTA's own failure to take adequate corrective action when Crumpton's discriminatory actions were reported to it.

All of the issues material to Crumpton's liability were before the Commission and considered in its investigation. There is no difference whatsoever between the text of the allegations of the Amended Complaint and the initial Complaint.[18] The claimed new issue of "personal liability" is a mere tautology reflecting that, by amendment of the Complaint, Crumpton would become an individual Respondent. The first legal issue the Commission had to consider in investigating this case is whether there was substantial evidence that Crumpton violated the CHRO. Substantial evidence of CTA's violation through the doctrine of vicarious liability is derived only from finding substantial evidence of Crumpton's individual liability. Had the Commission's investigation revealed no substantial evidence that Crumpton violated the CHRO, the issue of CTA's vicarious liability would not even have arisen. For example, in the recent ruling in *Warren, supra*, the Commission first determined that a security guard was individually liable for discriminatory harassment of a customer, then found the business owner vicariously liable for the guard's conduct because the guard was acting as the owner's agent. In the same case the Commission found a store manager not individually liable for any discrimination then, as a result, found no vicarious liability on the part of the owner.

Nor is the claimed new issue of "punitive damages" material under this criterion for adding a respondent. In fact, no issue regarding damages or other relief is material to the Commission's investigation because an investigation considers only whether there is substantial evidence of an ordinance violation.[19] There is no investigation of what remedies might be ordered if a violation is ultimately found. Complainants are not even required to specify the relief they seek at the investigation stage;[20] this information is required only in the pre-hearing memorandum if the case proceeds to the hearing stage.[21]

Respondents next argue that the hearing officer "ignored" their arguments that Crumpton would be prejudiced in maintaining her defense on the merits because of the impending hearing date—being unable to hire counsel of her choice or conduct discovery. Respondents' assertions of prejudice are unpersuasive.

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[18] The Amended Complaint merely updates the Complainant's address and adds "and Angela Crumpton" after "Chicago Transit Authority" in the "Respondent's Name(s)" block on the Commission's complaint form.

[19] See Sec. 2-120-510(f), Chicago Muni. Code, and CCHR Reg. 220.110(a).

[20] CCHR Reg. 210.120(c) provides that complainants are not required to specify the relief requested at the time of filing, and a request in a complaint for certain types or amounts of relief shall not be deemed a waiver of any other relief.

[21] See CCHR Reg. 240.130(a)(3).

CCHR Reg. 210.160(b)(2) contemplates that motions to add or substitute a respondent may be granted not only during the period between a substantial evidence determination and an administrative hearing, but even at or after an administrative hearing under specified conditions. This motion to amend was filed on July 15, 2009. CTA's counsel filed objections to the motion to on behalf of Crumpton on August 5 (and represented her from that point). Leave to amend was granted on August 11 and the administrative hearing began on October 5, leaving nearly two months for Crumpton to prepare her defense and file any motions seeking extra time to prepare, hire her own counsel, or conduct additional discovery. Even though the hearing officer set a high standard for any further rescheduling of the administrative hearing, her order granting leave to amend did not prohibit Crumpton or any other party from presenting a motion for continuance.

Crumpton herself verified CTA's response to the initial Complaint on October 19, 2005, denying all of the allegations about her treatment of Complainant. This included denials of the allegations that she stated in the workplace, in Complainant's presence, that "homosexuals will go to hell" and their behavior is "against God's will." Crumpton also participated in the investigation of the case; she was interviewed by Commission staff. Crumpton and CTA were well-aware from the outset of this case that Crumpton's expressions in the workplace of her religious beliefs about homosexuality were among the issues involved. Respondents theorize that Crumpton might have sought counsel with special expertise in the First Amendment had she known "that the Hearing Officer would use her religious beliefs as the basis of personal liability." However, there is nothing in the record to suggest that Crumpton wished to consult or hire her own counsel once she knew Complainant wanted to add her as a Respondent. She make no motion or objection to that effect during the hearing process, even though she knew that her statements in the workplace about her religious beliefs were an issue.

Crumpton was initially questioned at the administrative hearing by Complainant's counsel, who asked her about her church membership and activities as well as her beliefs about homosexuality. Crumpton answered the questions and her counsel did not object to the line of questioning. (Tr. 337-346) The only objection was about the relevance of the question why she left the church where she had been a member. After the objection was made, Complainant's counsel abandoned that question, so the hearing officer never ruled on the objection. (Tr. 343)

Thus the Commission finds no basis for reversing the hearing officer's decision based on prejudice to Crumpton's defense. The issues in the case were well known from the outset and congruent with the issues facing CTA in preparing its defense. Crumpton has been represented by the same counsel (the CTA Law Department) that have represented CTA from the outset. In addition, the post-hearing briefing process provided Crumpton ample opportunity to make any First Amendment arguments regarding the evidence about her religious beliefs and practices, and First Amendment arguments have been considered by the Board of Commissioners in making this ruling.

Accordingly, the Commission denies this request for review and affirms the hearing officer's decision to allow amendment of the Complaint to add Angela Crumpton as a Respondent.

VI. REMEDIES

A. Emotional Distress Damages

Roe sought $75,000 in emotional distress damages against CTA and an additional $75,000 against Angela Crumpton. (Compl. Brief on Damages at p. 9) The Commission has

repeatedly held that damages for emotional distress can be awarded as actual damages. *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).

Humiliation, shame, and mental anguish are elements of actual damages which cannot be precisely measured. *Alexander, supra* at 22. Generally, the size of the award is measured by the egregiousness of the discriminatory conduct and the complainant's reaction to it. *Id.;* citing *Steward v. Campbell's Cleaning*, CCHR No. 96-E-170 (June 18, 1997). The Commission considers the following factors to determine the amount of emotional distress damages to award to a prevailing complainant: the length of time the complainant experienced emotional distress; the severity of the emotional distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment; the vulnerability of the complainant; and the duration and egregiousness of the underlying discrimination. *Id.*; see also *Rogers v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002); citing to *Nash and Demby v. Sallas Realty & Sallas*, CCHR No. 92-H-128 (May 17, 1995). Respondents must take complainants as they find them—whether they are particularly resilient or particularly vulnerable. *Winter v. Chicago Park Distric*t, CCHR No. 97-PA-55 (Oct. 18, 2000).

It is clear from the evidence that Roe endured significant humiliation and emotional injury from his interactions with Crumpton. He was unable to sleep and had anxiety when coming into the office. According to Roe, Crumpton's overall conduct toward him "changed [his] life majorly." Sylvia Brown testified that the change in Roe was visible. Because of the harassment, he wasn't the same sociable person he had been before. Roe credibly testified that he felt constantly humiliated and was always on guard for the next personal attack from Crumpton. He endured these harassing interactions for at least a year.

Prior to working with Crumpton, Roe had never sought psychiatric treatment. Nor was he on any medication. After working for Crumpton, he suffered from severe anxiety and depression. He began to see a therapist. His doctor prescribed three different medications for his mental ailments. His doctor specifically noted that Roe's "quality of life is impaired by phobia and anxiety." (Compl. Ex. 9) His medications increased over time. (Compl. Ex. 11). Notably, Roe's medications and therapy treatments are still ongoing—nearly five years after Roe left CTA's employment.

Roe's physical and mental reactions are understandable. The descriptions of his interactions with Crumpton (from both Roe and several other witnesses) establish "that he endured [at least] a year of hell at the hands of [Crumpton] based on his perceived sexual orientation." See *Alexander, supra* at 23. Moreover, CTA's failure to stem Crumpton's conduct—and indeed its failure to even seriously investigate Roe's repeated complaints—further added to his distress. Roe had nowhere to turn. He complained to Crumpton's supervisor, Hernandez. He complained to the General Manager, Romayne Brown. He complained to CTA's EEO office. All of these complaints took the courage to decide to reveal that Crumpton's treatment implicated his sexual orientation, information he had not openly revealed. But nothing meaningful happened. In essence, CTA ignored Roe's complaints. Significantly, in failing to take adequate action, CTA violated its own internal anti-discrimination policies.

Given all of this evidence, a significant award of emotional distress damages is warranted here. In *Salwierak v. MRI of Chicago, Inc.*, CCHR No. 99-E-107 (July 16, 2003), the Commission awarded $30,000 in such damages to a complainant who was sexually harassed at her place of employment. The Commission found that the complainant was subjected to egregious and continued harassment throughout the duration of her employment, despite her pleas that it cease. In *Alexander, supra*, the Commission awarded $35,000 to a complainant who was repeatedly harassed by his managers based on his perceived sexual orientation and suffered physical manifestations of the harassment.

In *Sheppard v. Jacobs*, CCHR No. 94-H-162 (July 1997), a tenant was ordered to move after the landlord discovered that she was African American. The Commission awarded her $50,000 in damages for emotional distress based on evidence that she suffered from depression as a result of the discrimination and that the distress triggered a condition causing her to lose most of her hair with likelihood that the loss would be permanent.

In *Winter, supra*, a patron of a Park District facility was awarded $50,000 for the emotional distress resulting from the lack of a wheelchair-accessible restroom which caused her to expose her body to public view and fall into a toilet stall while attempting to transfer to the toilet. The evidence established that this traumatic experience revived pre-existing emotional conditions which had been under control but which made her vulnerable, triggering a serious and extended depression, panic attacks, and agoraphobia for which she was medically treated for over two years before her condition stabilized.

Although these cases are instructive, the awards previously made by the Commission are not enough to address the emotional distress experienced by Roe at the hands of Angela Crumpton and CTA. He experienced sleeplessness, severe anxiety, and depression. He required significant medication and psychotherapy that continues some five years later. In addition, Crumpton essentially "outed" him at his place of employment to the point where many employees began to openly question Roe's sexual orientation, and boasted to Roe that he would be unable to do anything about her conduct. Finally, CTA management superior to Crumpton made light of his repeated complaints even after being informed that his sexual orientation was the target of Crumpton's conduct, and failed to follow CTA's own internal anti-discrimination policies. These specific circumstances make the conduct in this case more egregious than those discussed above.

Respondents argue among other things that Roe's request for $75,000 in emotional distress damages is "astronomical" and notes that the Commission has never before made an award of this amount. (Resp. to Complainant's Brief on Damages at 1-2). However, there is no ceiling on the amount of emotional distress damages that can be awarded on cases before the Commission, as was specifically pointed out in *Winter, supra*: "[T]he fact that $50,000 is the highest amount of emotional distress damages awarded by the Commission in *Sheppard* and here does not mean that more could not be awarded in the future."

Respondents reiterated these arguments in their objections to the recommended ruling, further speculating that the hearing officer proposed a higher emotional distress damages award because she could not impose punitive damages on CTA. The Commission finds no support for such a theory and finds the hearing officer's explanations of her recommendations supportable by the evidence and the criteria for awarding emotional distress damages as summarized above.

Respondents also argue that Roe should not recover damages arising from the stress of litigation because litigation is inherently stressful and the Commission caused "unwarranted"

delays in the investigation of the case. First, the Commission does not regard the pursuit of a discrimination case as a mere option but as a protected activity to which aggrieved parties have a right as provided by law. When discrimination occurs as described here, it is reasonably foreseeable that a victim will recognize it as such and pursue the remedies available. It is also reasonably foreseeable that this type of litigation may be lengthy and complex for a variety of possible reasons, as well as stressful to a complainant. The time required to complete an investigation varies by the nature of the case, the actions of the parties, and other conditions prevailing at any point in time.[22] There is no Commission error in failing to complete an investigation within 180 days of filing, and the Commission will not now adopt a practice of reducing damages based on allegations of "unwarranted" delays by the Commission. As stated in Section 2-120-510, Chicago Muni. Code: "The investigation shall be completed within 180 days after receipt of the complaint, *unless it is impractical to do so within that time.*" [emphasis added] CCHR Reg. 270.140 further provides: "All deadlines related to actions to be taken by the Board of Commissioners, the Commission, or its agents are intended to be directory, not mandatory. A failure of the Board of Commissioners, the Commission, or its agents to meet any such deadline shall not be cause to dismiss a complaint, default a respondent, or otherwise prejudice a claim or defense." See also *Littleton v. Chicago Municipal Credit Union*, CCHR No. 93-CR-5 (Mar. 5, 1993), and *Berman, Torres, et al. v. Chicago Transit Authority*, CCHR No. 91-PA-45 et al. (Jan. 17, 2002).

Respondents further theorize that Complainant's emotional distress may have been attributable to other causes including his fear of being "out" due to the homophobic attitudes of his family and community, even claiming that "[if]...he never saw a therapist prior to the incidents in this case, he was probably long overdue." This argument is misplaced. It is reasonably foreseeable that a person in Roe's position may have feared revealing his sexual orientation and thus may have chosen not to do so. Whatever may have been Roe's level of fear about that, it does not reduce Respondents' level of responsibility for their conduct. As noted in *Winter, supra*, Respondents must take Complainant as they find him—whether particularly resilient or particularly vulnerable. The facts of this case are that Roe had not experienced significant emotional trauma nor had he felt a need for mental health treatment until Crumpton began harassing him and CTA failed to address her conduct. Respondents by their conduct not only caused his sexual orientation to become a subject of discussion in his workplace but also caused him to be taunted about it. Respondents knew or should have known that conduct was wrong and unlawful, even under their own workplace policies. They are responsible for the emotional distress to Complainant that flowed from their egregious conduct.

Complainant for his part objected to the recommended emotional distress damages on the ground that he is "entitled" to a higher award, citing federal court decisions affirming awards of $100,000 and $200,000 for emotional distress. While the Commission agrees that it is fully authorized to enter higher emotional distress damage awards, it nevertheless finds the $75,000 as recommended by the hearing officer to be sufficient on these facts to make Complainant whole with respect to his emotional distress.

[22] During the period from 2005 when this Complaint was filed through 2008 when the investigation was completed, the Commission had publicly acknowledged a substantial backlog of pending investigations over a year old. That backlog peaked in 2004 then was dramatically reduced during the pendency of this investigation. The conditions causing and relieving the backlog affected all investigations; this case was not singled out for "unwarranted" delay. See the annual reports on activity of the Adjudication Division for 2006 through 2008, available on request and from the Commission's website at www.cityofchicago.org/humanrelations.

Accordingly, the Commission approves the hearing officer's recommended award of $75,000 to Complainant, imposed jointly and severally against Respondents Angela Crumpton and CTA.

B. Punitive Damages

Complainant has sought $75,000 in punitive damages against each Respondent, arguing that punitive damages are warranted as punishment and deterrent because "Crumpton's conduct was despicable, outrageous and continuous" and "CTA has done nothing...to stop its employees from illegally discriminating against others based on their sexual orientation." (Compl. Brief on Damages at pp. 24, 26).

In general, 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*, CCHR No. 97-E-93 (Oct. 21. 1998), quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. The Commission has awarded punitive damages where a respondent's actions are willful and wanton, malicious, or recklessly disregarded the rights of the complainant. See, e.g., *Horn v. A-Aero 24 Hour Locksmith et al.*, CCHR No. 99-PA-32 (July 19, 2000), and *Houck, supra.* Punitive damages are also warranted to deter respondents from discriminating against others in the future. See, e.g., *Alexander, supra.*

Consistent with these standards, the Commission agrees with Complainant and the hearing officer that Crumpton's conduct was willful and wanton, because it was deliberate and incessant. Her response to Roe in the face of his complaints to her about her conduct—that Hernandez and Romayne Brown "didn't scare her" and that she "would land on her feet"—was particularly callous and confirmed her indifference to Complainant's protected rights. Punitive damages are warranted against Crumpton individually.

Regarding CTA, the hearing officer recommended against any punitive damages award and the Commission accepts the recommendation. Respondents argued that because CTA is a municipal corporation, "the Commission lacks authority to order the Chicago Transit Authority to pay punitive damages." (CTA Response to Complainant's Brief on Damages at p. 14). CTA relies on the Commission's decision in *Winter, supra,* and the Illinois Appellate Court decision *George v. Chicago Transit Authority*, 58 Ill. App. 3d 692 (1st Dist. 1978) cited therein.

In *Winter*, the Commission held that based on public policy and common law principles, "in absence of a statute specifically authorizing such recovery, municipal corporations are not liable for punitive damages." *Winter, supra* at 41; citing *George, supra* at 60. Further, because "the Chicago Human Rights Ordinance does not specifically authorize a remedy of punitive damages against municipal corporations," the Commission declined to award punitive damages against the Chicago Park District and the Lincoln Park Conservatory. *Id.* at 42.[23] The Commission continues to follow this precedent in declining to impose punitive damages against CTA.

[23] The logic behind the ruling in *George* was that punitive damages against municipal corporations "would impose an unjust burden on the innocent taxpayer without directly punishing the wrongdoer"—thereby frustrating the purpose of punitive damages. *George,* 374 N.E.2d at 680-681. The hearing officer questioned this analysis because taxpayers ultimately bear the burden of any finding of liability against a municipal corporation, yet compensatory damages for that liability are not automatically precluded. However, she acknowledged that the Commission has followed *George* and has not ordered punitive damages against a municipal corporation.

However, the Commission agrees with the hearing officer in rejecting Respondents' argument that the Illinois Tort Immunity Act in Section 745 ILCS 10/2-102 precludes a punitive damages award against Crumpton individually because she is a "public officer." (CTA Response to Complainant's Brief on Damages, at p.15). The cited language reads:

> [N]o *public official* is liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official *while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity*, brought directly or indirectly against him by the injured party or a third party. 745 ILCS 10/2-102 [emphasis added]

Whether or not Crumpton is a "public official" or "public officer" within the meaning of the statute, because she is a supervisory employee, in harassing a subordinate employee based on sexual orientation she cannot be regarded as serving in an executive, legislative, quasi-legislative or quasi-judicial capacity. Accordingly, this provision does not preclude an award of punitive damages against her. Respondents' argument that Crumpton is also immune to punitive damages based on "pre-existing Illinois common law" which purportedly shields "a public officer from personal liability for the performance of discretionary duties" similarly fails.

The Commission considered and rejected this argument in *McCall v. Cook County Sheriff's Office*, CCHR No. 92-E-122 (Dec. 21, 1994), where it ordered payment of punitive damages of $9,000 and $6,000 respectively against two supervisors for sexual harassment of a non-supervisory employee. The Commission pointed out that the Act does not apply to causes of action alleging deprivations of an individual's civil rights, citing *Tomas v. City of Chicago*, 495 N.E.2d 1186 (1st Dist. 1986). The Commission further noted that courts have held the legislative history of the Act shows it was only intended to protect municipalities from liability for common law torts, citing *Luke v. Nelson*, 341 F.Supp.111 (N.D. Ill. 1972), and *Firestone v. Fritz*, 119 Ill.App.3d 685, 456 N.E. 1d 904 (2nd Dist. 1983). Further, as the Commission has noted in other decisions, the Illinois Tort Immunity Act does not apply to actions which may violate the Chicago Human Rights Ordinance. Actions brought under the CHRO are not torts and the Act is strictly construed so as not to provide immunity for actions which are not torts. See *Winter, supra* at 32-39; *Blakemore v. Chicago Dept. of Consumer Services et al.*, CCHR No. 98-PA-42 (Dec. 22, 1999); and *Love v. City of Chicago Office of Emergency Communications et al.*, CCHR No. 01-E-46 (Oct. 16, 2001).

Although there is longstanding precedent against imposing punitive damages on a municipal government entity, the Commission does not read this exception as prohibiting an order of punitive damages against a public employee who is found individually liable for discriminatory conduct toward another employee. The reasoning supporting the exception for the municipality (that the municipality is not punished or deterred because the taxpayers bear the actual burden) does not apply to individuals.

Complainant did not introduce specific evidence regarding Crumpton's net worth and financial background at the hearing as a basis to determine the appropriate amount of punitive damages.[24] Nor did Crumpton provide any information on her financial circumstances.

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[24] Complainant provided information from the public record about Crumpton's 2008 salary in his objections to the recommended ruling. The hearing officer did not have this belated submission available on the hearing record and the Commission has not considered it.

Respondents argue in their objections that the Commission can award punitive damages without regard to financial status *only* when the respondent did not participate in the hearing process. This is an incorrect reading of the standard; default is not required. The Commission has held that, in determining the amount of punitive damages to be awarded, the "size and profitability" of a respondent are factors that normally should be considered. *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 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 (Mar. 17, 1993) at 13. Rather, "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. Thus in *McCall, supra*, the Commission awarded punitive damages against two individual public employees even though no financial evidence was submitted in support or mitigation of an award of punitive damages.

Here, the hearing officer took into account that Crumpton is a public employee (albeit a manager) and unlikely to be wealthy. Accordingly, she recommended a relatively modest punitive damages award of $6,000 against Crumpton, citing *McCall*. Complainant advocates in his objections to the recommended ruling that the punitive damages against Crumpton should be higher, citing her level of animus against homosexual males in particular and the hostile environment she intentionally created to send a message that such employees were not accepted at CTA. The Commission does not disagree with these points about the egregiousness of Crumpton's conduct. However, the Commission finds that $6,000 as recommended sufficient to accomplish the purposes of punitive damages, and so approves punitive damages against Angela Crumpton in that amount.

C. Out-of-Pocket Damages

1. Salary, Merit Pay, and Salary Increase (Back Pay)

Complainant seeks 36 weeks of back pay, calculated from October 17, 2005, when he stopped receiving disability benefits from CTA, through June 2006, when he accepted a job in New York City. He also seeks $10,000 in pension losses, $5,000 for 401k and 457 "investments," life insurance, medical benefits, lost merit pay, and losses for the salary increase/s he did not receive.

A respondent is only liable for those damages that are attributable to its violation of the ordinance and reasonably foreseeable. See *Hutchison v. Iftekarrudin*, CCHR No. 09 H 21 (Feb. 17, 2010); *citing to Barnett v. T.E.M.R. Jackson Rental et al.*, CCHR No. 97 H 31 (Dec. 6, 2000). Moreover, while complainants may not need to provide a precise calculation of damages, speculative or remote damages will not be awarded. See *Griffiths v. DePaul Univ.* CCHR No. 95 E 224 (April 19, 2000). See also *Rankin v. 6954 N. Sheridan, Inc., DLG Management, et al.*, CCHR No. 08-H-49 (Aug. 18, 2010).

Complainant is not entitled to this category of damages. First, the salary or back pay he seeks is not attributable to Respondents' violation of the CHRO. As explained above, this is not a wrongful termination or constructive discharge case, which may trigger back pay damages. The remedies here are based on a claim of harassment and, therefore, Complainant is only entitled to back pay if he can show that his lost compensation was attributable to the harassment. He has not done so.

The evidence shows that beginning in early October 2005, before Complainant's short-term disability benefits expired, through the end of November 2005, CTA offered Complainant two opportunities to return to work. He would not have reported directly to Crumpton in either position. Moreover, in the second position, not only would Crumpton have been removed from Roe's reporting chain of command, but Romayne Brown would have been removed as well because the second position fell under the authority of a completely different general manager. Roe refused both job opportunities.

Roe testified that he turned down the offers because he feared coming into contact with Crumpton, Romayne Brown, and Hernandez. However, although Brown and Hernandez did not properly investigate and act on Roe's complaints against Crumpton, there is no credible evidence that they themselves harassed him or displayed any personal animus against his sexual orientation. Moreover, the attorney letter responding to CTA's first job offer never mentioned the possibility of reporting to or interacting with Crumpton as grounds to reject the position. (Resp. Ex. 6) Further, Roe would not have reported directly to Crumpton in either position.

Roe testified that his doctors advised against taking either position, but there is no additional, credible evidence that they specifically knew about the two positions offered by CTA or the new reporting structure. Importantly, neither of the response letters to CTA's offers specifically state that Roe's doctors advised against accepting the positions. (Resp. Exs. 6 and 8) Roe offered into evidence two doctor's note stating, "I recommend he work in a different work environment" and that Roe "is able to work but not in the past stressful environment." (Compl. Exs. 14, 15). However, the notes are dated February 1, 2006, months after Roe had already rejected the job offers and, therefore, they do not specifically relate to them. Even though Roe may have occasionally come into contact with Crumpton, the two offers did constitute significant changes in his prior work environment and the evidence does not demonstrate that he could not have tolerated that level of contact or that CTA could entirely prevent contact. Accordingly, Roe's lost income was based on his personal decision to turn down two viable job offers at CTA. It did not flow from the harassment. Therefore, he is not entitled to back pay damages.

Second, for these same reasons, Complainant is not entitled to $10,000 in pension losses, $5,000 for 401k and 457 "investments," life insurance, medical benefits, lost merit pay, or losses for the salary increase/s he allegedly failed to receive. Complainant has offered no evidence that any of these purported losses arose from the harassment. Moreover, he has offered no credible evidence to show that he would have even received these additional benefits. Nor has he offered evidence to support the dollar amounts for any of these purported losses. In some instances, Complainant completely failed to set forth any specific dollar amounts at all. (See Compl. Brief on Damages, p. 20). Thus, the damages sought here are speculative at best and not recoverable. See *Griffiths, supra;* see also *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Sept. 18, 2002), denying out-of-pocket damages where there was no basis upon which to calculate damages because complainant failed to offer any evidence of lost income. See also *Hampton v. Financial Strategy Network*, LLC, CCHR No. 01-E-2 (Apr. 19, 2006).

Complainant, in his objections to the hearing officer's recommended ruling, continues to argue that the Commission should award back pay because CTA failed to take reasonable corrective action in that it rejected Complainant's earlier requests to transfer outside the Rail Operations department. Complainant also argues that the hearing officer's recommendation against back pay contradicts her earlier findings that Respondents failed to take adequate corrective action to address Crumpton's harassment. As explained above, these arguments do not provide a basis to reject the hearing officer's recommendation that back pay is not warranted. The inadequacy of corrective action by CTA is grounded in its failure to fully investigate the

complaints it received about Crumpton's treatment of Roe and its failure to take adequate steps to address Crumpton's conduct during the period before and shortly after the incident of April 19, 2005, up to the filing of the Complaint on September 14, 2005. Roe went on a pre-arranged medical leave for eye surgery after the April 19 incident. He continued on medical leave and then on short-term disability leave through October 25, 2005, and so remained a CTA employee. He had not resigned and had not been discharged (nor had he been offered or promised consideration for any transfer opportunity, as he had requested). During that time on leave, he was diagnosed with the depression and anxiety which has been found attributable to Respondents' conduct. It was only after Roe filed his discrimination Complaint that CTA made the first and then second offer of a transfer to positions not under Crumpton's supervision. Before he filed his Complaint, CTA had not taken adequate action to correct the harassment. (Findings of Fact ##80-81)

2. Cost of Living, Relocation, and Travel

In June 2006, Complainant ultimately obtained a job in New York City with the transit authority there and moved from Chicago. His salary increased by nearly $10,000 in this first position. (Compare Compl. Ex. 16 and Resp. Ex. 3) In June 2007, he left that job and took a position with L'Oreal USA. His salary increased by $20,000 over his compensation at CTA. *Id.* Despite these increases, Complainant seeks costs incurred for the "dramatic" cost of living increase, relocation expenses, and travel expenses between New York and Chicago to interview, and costs to attend a hearing at the Illinois Department of Employment Security. (Compl. Brief on Damages at pp. 21-22). Complainant even seeks reimbursement for expenses incurred when he "was forced to move into his mother's apartment" after CTA terminated him but prior to moving to New York.

Complainant is not entitled to any of these damages. First, he (once again) cannot show that they arose from the harassment. Again, Respondents' misconduct was not the catalyst for Complainant's move to New York and therefore not the basis for the expenses he incurred to do so. It was Complainant's choice, not Crumpton's harassment, that led to his relocation.

Second, damages must be reasonably foreseeable. *Hutchison* and *Rankin*, *supra*. There is no way that CTA could have foreseen that Crumpton's harassment would cause Complainant to (1) have to move into his mother's apartment, (2) relocate to another city, or (3) incur expenses traveling between Chicago and New York. Therefore, these "damages" did not arise from a violation of the CHRO and are not recoverable.

3. Medical and Related Expenses

Finally, Complainant seeks reimbursement of costs incurred for medication related to his anxiety and depression, as well as costs for psychotherapy sessions. (Compl. Brief on Damages at pp. 22-23). Complainant estimated that since April 2005, he has paid $145 per month for medication and $20 in co-pays for each counseling session. (Tr. 611-613). Complainant has attended these sessions "anywhere from a weekly to a monthly basis." *Id.*

These costs are recoverable because they were incurred as a result of Crumpton's violation of the CHRO. As discussed above, there is no evidence they were due to any other cause. Complainant testified that prior to Crumpton's harassment, he was never on any medication and never had psychotherapy for anxiety and depression. Complainant provided specific detail regarding the cost of these expenses. Moreover, these expenses were reasonably foreseeable results of the harassment established in this cases. Complainant had informed CTA

that he had been "harassed, bullied, manipulated, intimidated and degraded." (Compl. Ex. 7). He stated that Crumpton's behavior had caused him "undue stress/anxiety." He told Ellis Kendricks that Crumpton's harassment was "driving him crazy" and that he was "afraid of her." (Compl. Ex. 27a) Complainant was also out on short-term disability for six months due to the anxiety and depression. This evidence reinforces the foreseeability of costs incurred for anti-anxiety and anti-depression medications as well as for psychological therapy.

CTA argues that Complainant is not entitled to these damages because he was "not able to testify to his medical expenses with any reasonable certainty." (CTA Resp. to Complainant Brief on Damages at p. 13). CTA is mistaken. Evidence in the record establishes that Complainant was prescribed several medications and received therapy. (Compl. Ex. 11-13). Moreover, as set forth above, the Complainant testified with clarity regarding the costs incurred for his medical expenses and the time period over which he incurred those costs. Although some averaging was used, the foundation for these estimates was reasonable. Contrary to CTA's assertions, Complainant is not required to produce receipts for these expenses. His credible testimony is sufficient. See *Williams v. O'Neal*, CCHR No. 96-H-73 (June 18, 1997), where a complainant's specific testimony concerning moving expenses was sufficient to support an award of damages for these costs despite lack of receipts. Although speculative or remote damages are not awarded, a complainant need not provide a precise calculation so long as the calculation provided is reasonable and credible. *Griffiths, supra*, citing *Clark v. Illinois Human Rights Commission*, 141 Ill.App.3d 178, 490 N.E.2d 29, 33 (1st Dist. 1986)

Beginning in April 2005 and continuing through December 2, 2009, the final day of the hearing, Complainant paid for medications for 56 months. At $145 per month, that totals $8,120 in costs. Based on Roe's testimony, estimating an average of two therapy visits per month over that same 56 month time period at $20 per session, Complainant incurred $2,240 ($20 x 112 visits) in costs. Accordingly, Complainant is awarded an additional $10,360 for medical and related expenses.

4. Vacation Pay

Complainant also argues that CTA failed to pay him $2,559.30 for three weeks of vacation time owed at the time of his termination. (Compl. Brief on Damages at p. 21). CTA responds that Complainant received his vacation pay on April 1, 2006, and attached a one-page document labeled "Exhibit A" purporting to show that the payment was made. (CTA Resp. to Brief on Damages at p. 11) However, the hearing officer found the nature of the document, the amount paid, to whom, and for what to be undiscernible from the face of "Exhibit A." Pursuant to Illinois law, upon termination or resignation, employees are entitled to compensation for any vacation time accrued. See 820 ILCS 115/5. Accordingly, the hearing officer recommended that, unless CTA could show through clear documentation that it has already paid Complainant for his accrued vacation, he be found entitled to the $2,559.30.

The Commission finds that CTA submitted adequate documentation that it has paid Complainant his accrued but unused vacation time. It attached to its objections to the recommended ruling "Employee Statement of Earnings" and "Payslip" printouts for Complainant dated March 31, 2006, which documented that Complainant had been paid a gross amount of $5,118.39 for 240 hours of vacation time (presumably 30 eight-hour days) and a net amount of $2,998.54. Thus the Commission does not make an award for unpaid vacation accrual.

In summary, then, Complainant is awarded as out-of-pocket damages only the $10,360 incurred for medical and related expenses.

D. Interest on Damages

Section 2-120-510(l), Chicago Muni. Code, allows an additional award of interest on damages ordered to remedy violations of the Human Rights and Fair Housing Ordinances. Pursuant to CCHR 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 that Respondents pay interest on all of Complainant's damages starting from April 19, 2005, the date of the last incident before Complainant began his medical leave.

Complainant argues in his objections to the recommended ruling that interest should be calculated from January 31, 2005, the date he first complained about Crumpton's conduct, rather than the last day of her harassment. The Commission recognizes that it can be challenging to pinpoint precisely when a series of incidents reaches the level of severity and/or pervasiveness sufficient to constitute harassment. The hearing officer explained her choice of April 19, 2005, by first stating her view that the evidence established the CHRO was violated long before the culminating incident of April 19, 2005. She pointed out, however, that the record is unclear regarding the specific dates of many prior incidents, and that is why she chose the date of April 19, 2005, by which time Respondents' conduct had clearly cumulated into a harassment violation.

Complainant's advocacy for a violation date of January 31, 2005, or earlier is based on when Complainant first complained to Hernandez about Crumpton's harassment, referencing Finding of Fact #56. That finding is indefinite, however. It states that Complainant contacted Hernandez between late January and early February of 2005 about Crumpton's unprofessional behavior. This exact date cannot be pinpointed from the evidence. In addition, a violation occurs not when a *complainant* takes an action but when a *respondent* takes or fails to take an action. In this case the evidence does not clearly pinpoint a date in January when Respondents' actions or inactions cumulated into a violation. Under these circumstances, the hearing officer's recommendation to select the April 19 date is prudent and defensible, and the Commission approves it.

Respondents in their objections again argue that the award of pre-judgment interest should be reduced because they should not be held responsible for what they consider to be Commission delay in completing the investigation of the case. As discussed in connection with emotional distress damages, the Commission will not attempt to assess blame for delays in its complaint adjudication processes as a means of reducing damages or interest.

The hearing officer recommended that interest be awarded "through the date of the final order issued by the Board of Commissioners." The Commission does not adopt this recommended end-date for interest. The Commission routinely awards post-judgment as well as pre-judgment interest, and there is no reason to vary that policy in this case. Accordingly, as for other Commission damage awards, interest is awarded on the unpaid balance of damages from the determined date of violation on April 19, 2005, until the damages are paid.

D. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance requires a fine against a party found in violation of the ordinance of not less than $100 and not more than $500. The hearing officer recommended a fine of $500 against each Respondent. In view of the egregiousness of the violation, the Commission agrees with the recommendation to impose the maximum fine against each Respondent, and so imposes a fine of $500 each against Crumpton and CTA, for total fines of $1,000.

G. Injunctive Relief

The Board of Commissioners finds that, in addition to the monetary remedies recommended by the hearing officer, injunctive relief as to the CTA is 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 Chicago Human Rights Ordinance or the Chicago Fair Housing Ordinance. The Commission has when appropriate 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 & Leadership Council for Metropolitan Open Communities 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*, CCHR No. 98-H-107 (Jan. 17, 2001); *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).

The discriminatory conduct against Complainant occurred several years ago, and it is hoped that CTA has already taken steps to prevent a recurrence. The Commission intends this injunctive order to be remedial, not punitive, and to be achievable by CTA. Therefore, the injunctive relief is limited to training.

Nevertheless, what makes this case especially shocking is not only that a CTA manager harassed a subordinate employee because of his sexual orientation but also that other CTA managers with responsibility to address such issues failed to take reasonable corrective action when the harassment was brought to their attention. Therefore, without explicitly ordering it, the Board of Commissioners urges the CTA to re-assess its policies, structures, and practices, and make adjustments as needed to prevent such discrimination going forward. The CTA should be especially attentive to preventing and addressing workplace harassment based on protected classifications including sexual orientation. The training ordered here should be only one step toward that end.

- Order of Injunctive Relief

The Commission on Human Relations orders the Chicago Transit Authority to provide training to its employees regarding discrimination laws and internal policies prohibiting discrimination, with a focus on workplace harassment based on sexual orientation. Specifically CTA is ordered to take the steps described below:

TOPICS: The training must cover *at least* the following topics:

1. The possible penalties for sexual orientation discrimination in violation of the Chicago Human Rights Ordinance, Cook County Human Rights Ordinance, and Illinois Human Rights Act.

2. The kinds of conduct that may constitute sexual orientation discrimination under these laws, including the legal definitions of harassment and hostile work environment as well as the particular responsibilities of management.

3. Awareness that individuals who personally engage in workplace harassment based on a protected classification may be held personally liable under the Chicago Human Rights Ordinance and possibly other laws.

4. The CTA's policies and procedures for reporting and internally addressing workplace harassment based on sexual orientation.

5. The importance of maintaining a workplace environment that supports a diverse workforce including diversity of sexual orientation.

SESSIONS: The training shall be conducted in live sessions of at least one hour's duration, which all CTA employees shall be required to attend, as further explained below. The sessions may cover other types of discrimination as well as other discrimination and employment laws as long as the topics listed above are adequately covered. Computerized or "online" training may be utilized if the reasonably estimated time to complete the training session is approximately one hour and a mechanism exists to document that an employee has completed the entire session. Distribution of paper or electronic material alone is not sufficient to comply with this order.

TRAINEES AND DEADLINES: Managers and any employee with supervisory authority over at least one other employee or position as of the effective date of this order shall be required to attend the described training within six months of the effective date. All remaining employees shall be required to attend the training within one year of the effective date.

TRAINERS: CTA may utilize any qualified trainers, including members of its Law Department or other appropriate CTA personnel. It may utilize qualified trainers or training programs available from external sources. The City of Chicago Commission on Human Relations is not obligated to plan or deliver any part of this training; however, the Commission may agree to assist CTA if requested.

DOCUMENTATION SUBJECT TO INSPECTION: CTA shall maintain documentation sufficient to establish that the training described in this order has been delivered to every individual employed by CTA on the effective date of this order or hired within nine months after the effective date. CTA shall produce this documentation for inspection by the Commission or by Complainant's counsel of record (at its main office unless otherwise agreed between CTA and Complainant's counsel) on 14 days' written notice to CTA's Law Department. This documentation shall be maintained and subject to inspection for a period of two years following the effective date of this injunctive order, except that if a motion for enforcement is filed by Complainant or if the Commission exercises its right to seek enforcement *sua sponte* within this two year period, pursuant to CCHR Reg. 250.220, the documentation must be maintained until all compliance issues have been adjudicated or otherwise resolved. Complainant shall be limited to two requests for production of the documentation; the first may be made between seven and

ten months from the effective date of this order and the second between eleven and twenty-one months.

REPORTING: CTA shall file with the Commission and serve on Complainant two reports detailing the steps taken to comply with this order. The first report is due seven months from the effective date of this order. The second report is due eleven months from the effective date. The reports shall include copies of the agendas and training materials utilized, the names and addresses of the entities and individuals actually delivering the training, and for each training session the date it was delivered and the number of employees who actually participated.

EFFECTIVE DATE: This injunctive order shall take effect 28 days after the mailing of the Commission's final order and ruling on attorney fees (or any other final order concluding the Commission's adjudication of this case). If no fee petition is filed, it shall take effect 28 days from the mailing of this final order and ruling.

EXTENSION OF TIME: CTA may seek a short extension of time to meet any deadline set with regard to this injunctive order, by filing and serving a motion pursuant to the procedures set forth in CCHR Regs. 210.310 and 210.320. The hearing officer need not be served. The motion must establish good cause for the extension. The Compliance Committee of the Commission shall rule on the motion by mail.

PRIOR TRAINING: To the extent that any employee subject to this injunctive order has received substantially equivalent training at any time between the date of filing of this Complaint on September 14, 2005, and the effective date of this injunctive order, the CTA may exempt that employee from the training ordered herein but must then include in the documentation and reports described in this order information sufficient to establish that (a) the employee actually attended the training and (b) it was substantially equivalent training which covered the minimum topics listed above. The documentation and reports must include for each exempted employee the date/s of training, names and addresses of the entities and individuals delivering the training, copies of the training agendas, and copies of the training materials utilized if available.

H. Attorney Fees

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay a prevailing complainant's reasonable attorney fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order, and the hearing officer recommended it in this case. See, e.g., *White v. Ison*, CCHR No. 91-FHO-126-5700 (July 22, 1993). The Commission adopts the hearing officer's recommendation and awards Complainant reasonable attorney fees and costs.

Pursuant to CCHR Reg. 240.630, Complainant may serve and file a petition for attorney's fees and/or costs, supported by arguments and affidavits, no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work;

2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought;

3. Documentation of costs for which reimbursement is sought.

Respondents may file and serve a written response no later than 14 days after the filing of the petition. Replies are permitted only on leave of the hearing officer and the petition will be adjudicated according to the procedures stated in Reg. 240.630.

VII. COMPLAINANT'S REQUEST FOR REVIEW—SANCTIONS

Complainant requested review of the hearing officer's interlocutory order denying his Motion for Sanctions. The motion argued that CTA failed to search for, preserve, and produce documents as required by Commission regulations and orders. In Complainant's reply brief on the motion, Complainant also argued that CTA submitted incorrect discovery responses and failed to follow several procedural regulations. The hearing officer denied the motion on the grounds that Complainant cannot show he was prejudiced by any of the claimed procedural violations, nor did Complainant show that they were intentional or done in bad faith.

On review, Complainant details evidence that CTA failed to produce or preserve relevant documents, including the hearing officer's order of October 9, 2009, recognizing the issue and directing CTA to conduct a search and produce specified documents, with a warning about possible sanctions for failure to comply. Complainant goes on to argue that CTA did act in bad faith and that a complainant is not required to prove prejudice to sustain a motion for sanctions. Finally, Complainant argues that the hearing officer failed to rule on his motion to sanction CTA under CCHR Reg. 240.463 for "failure to comply with numerous procedural regulations and for the blatant disrespect it displayed while appearing before this Commission."

Complainant cited Respondents' counsel's failure to notify CTA witnesses about the dates of their appearances despite assurances to Complainant's counsel that it had done so. Complainant also cited certain statements of Respondents' counsel to Complainant's counsel in written correspondence, including "I suppose I really should read the entire document, even though it promises to be your usual frothing at the mouth" and "Please do not bother [the hearing officer] again by sending her copies of my letter. You really do need to grow up." Complainant concludes his request for review by requesting attorney fees for the additional work required by Respondents' discovery violations.

The Commission agrees with the hearing officer's decision not to impose procedural sanctions as requested by Complainant. First, whether to impose these sanctions is within the Commission's discretion and not an entitlement of an opposing party. CCHR Reg. 240.473 is specifically directed to failure of a party to comply with discovery requests, requirements, or orders. It states that "the hearing officer *may* determine what *if any* sanction is just and proper among the options set forth in Subpart 235 of the Commission's regulations" [emphasis added] and in addition *may* exclude any non-produced evidence or draw a negative inference that the non-produced evidence does not support the party's position. In addition, Subpart 235, Sanctions for Procedural Violations, specifies throughout that the Commission *may,* not must, impose the various sanctions described. CCHR Reg. 235.110 states that a non-compliant party "is subject to" one or more of the described sanctions, which "shall be limited to what is sufficient to punish the conduct and deter repetition of it by the party and others."

Although the Commission agrees with Complainant that it is not strictly necessary to show prejudice to a party in order to impose procedural sanctions, nevertheless it is a factor the Commission considers. See, e.g., *Belcastro v. 860 N. Lake Shore Drive Trust,* CCHR No. 95-H-

160 (July 17, 2000), declining to bar admission of evidence by a complainant who filed discovery responses late because the respondent had not shown it was prejudiced by the delay (although the complainant was fined for the tardiness). See also *Fischer v. Teachers Academy for Mathematics & Science*, CCHR No. 96-E-164 (Mar. 18, 1999), and *Robinson v. Crazy Horse Too*, CCHR No. 97-PA-89 (May 6, 1999), both rejecting motions seeking procedural sanctions as overly punitive where, among other things, no prejudice to the moving party was shown.

Here, Complainant's request for review still fails to show that he was prejudiced in any of his claims or arguments due to Respondents' failure to conduct the type of internal search for relevant documents which Complainant deems proper, or due to other procedural deficiencies such as the failure to notify Respondents' witnesses of their appearance dates. Moreover, Complainant is requesting only his attorney fees arising from these reported deficiencies. The Commission is already awarding Complainant his reasonable attorney fees and associated costs as a prevailing party. Pursuant to that award, he may document the attorney time and expenses reasonably incurred in connection with these and other aspects of prosecuting his case before the Commission. There is no reason to believe at this point that Complainant will not by this method be awarded reasonable fees incurred due to the asserted procedural violations of Respondents. There is thus no need to impose a duplicative fee award to make Complainant whole monetarily.

The intemperate *ad hominem* comments of Respondents' counsel to Complainant's counsel present a closer issue. Recognizing that this has been a hard-fought case by both sides and even attorneys are subject to the emotions and stresses of litigation, nevertheless the Commission disapproves of these unnecessary and personally insulting remarks. Although the record in this case reveals that both sides have pushed the limits of zealous advocacy at times, the Commission agrees with Complainant that the cited communications cross a line. See CCHR Regs. 235.210(c) and 235.310(f), allowing sanctions if a party engages in conduct "which is contemptuous or threatening to the Commission, its personnel, another party, or a witness." The Commission has imposed sanctions for contemptuous conduct even before adoption of these regulations; see, e.g. *Blakemore v. Starbucks Coffee Co.*, CCHR No. 97-PA-60 (Feb. 24, 1999), *Blakemore v. AMC-GCT, Inc.*, CCHR No. 03-P-146 (Apr. 21, 2005); and *Blakemore et al. v. Bitritto Enterprises, Inc. d/b/a Cold Stone Creamery et al.*, CCHR Nos. 06-P-12/13/14//15/24 (Mar. 21, 2007).

On the other hand, in *Cotten v. La Luce Restaurant, Inc,* CCHR No. 08-P-34 (Apr. 21, 2010), the Commission fined a respondent's attorney for discovery violations but declined to impose an additional fine for service violations which affected only the Commission, even while agreeing with the hearing officer that they reflected counsel's general disregard and disrespect for Commission's procedures. And in *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Aug. 18, 2010), the Commission rejected a complainant's argument that punitive damages should be imposed because of the respondents' failure to follow and general disrespect for Commission procedures, explaining that even though this factor can be considered in deciding punitive damages and the respondents were indeed uncooperative, they were already penalized by the order of default entered against them. These recent decisions illustrate that sanctions for procedural violations are administered on a case-by-case basis in the exercise of Commission discretion, not as a mandatory penalty system.

Here, the Commission believes this warning to Respondents' counsel is sufficient at this time, and in the interest of promoting compliance going forward declines to impose procedural sanctions in addition to the liability finding and remedies ordered.

VIII. CONCLUSION

The Commission finds Respondents Chicago Transit Authority and Angela Crumpton liable for sexual orientation discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago by each Respondent of a fine of $500, for a total of $1,000 in fines;

2. Payment to Complainant of emotional distress damages in the amount of $75,000, which shall be the obligation of Respondents jointly and severally;

3. Payment to Complainant by Respondent Angela Crumpton of punitive damages in the amount of $6,000;

4. Payment to Complainant of out-of-pocket damages of $10,360, which shall be the obligation of Respondents jointly and severally.

5. Payment of interest on the foregoing damages from April 19, 2005;

6. Compliance by Respondent Chicago Transit Authority with the order for injunctive relief as described above;

7. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above, which shall be the obligation of Respondents jointly and severally.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: _____
Dana V. Starks, Chair and Commissioner
Entered: October 20, 2010