

City of Chicago
COMMISSION ON HUMAN RELATIONS
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<u>IN THE MATTER OF:</u>)	
TIFFANY MANNING,)	
	Complainant)	CCHR Case No. 06-E-17
v.)	
)	Date of Ruling: September 19, 2007
AQ PIZZA LLC, d/b/a PIZZA TIME and)	Date Mailed: October 4, 2007
AYMAN ALHAKIM)	
	Respondents)	

FINAL ORDER ON LIABILITY AND RELIEF

TO: Robert Hodge	David Richardson	Ayman Alhakim
Law Office of Robert Hodge	Nery & Ricardson	c/o AQ Pizza Time LLC
36 S. Wabash, Room 1310	4124 W. 63 rd Street	1903 W. 87 th Street
Chicago, IL 60603	Chicago, IL 60629	Chicago, IL 60620

YOU ARE HEREBY NOTIFIED that, on September 19, 2007, the Chicago Commission on Human Relations issued a ruling in favor of Complainant Tiffany Manning. The Commission ordered Respondents to pay damages in the amount of \$15,500 plus interest from February 4, 2006 jointly and severally, Respondent Alhakim to pay punitive damages in the amount of \$30,000 plus interest from February 4, 2006, and each Respondent to pay the City of Chicago \$1,000 in fines.¹ The Commission also awarded Complainant attorney fees and associated costs. The findings of fact and specific terms of the ruling are enclosed.

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

Pursuant to Reg. 240.630, Complainant is ordered to file with the Commission and serve on the other parties and the Hearing Officer a statement of attorney fees and/or costs, supported by argument and affidavits, no later than 24 days after the date of mailing of this Order and Ruling to the parties, that is, on or before **October 29, 2007**. Any response to such statement shall be filed with the Commission and served on the other parties and the Hearing Officer within 14 days of the filing of any amended or supplemental statement, or **November 12, 2007**, whichever date occurs earlier. Any reply brief by Complainant shall be filed and served no more than 10 days after the filing of any response. A party may request additional time to file and serve any of the above items pursuant to the provisions of Reg. 270.130.

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

¹ **Compliance Information.** Reg. 250.210 requires parties to comply with a Final Order after Administrative Hearing no later than 31 days after the later of the Board of Commissioners' Final Order on Liability or any Final Order on Attorney Fees and Costs. Payments of fines are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number. Payments of damages and interest are to be made directly to the Complainant. See Reg. 250.220 for information on seeking enforcement of a relief award.

what he was saying about sex and to stop making further advances. (Tr.17,21) When she told him to stop harassing her, Alhakim would say, "You make me so hard, I'm crazy over you." (Tr. 19) Alhakim offered on more than one occasion to pay her \$1,000 to have sex with him (Tr.18)

4. Alhakim took Manning's cell phone and took pictures of his penis. (Tr.15) Exhibits 1 B-H are pictures of Alhakim with his penis exposed. Alhakim took some of the pictures showing Alhakim's genitalia and Manning took two of the pictures. (Tr.22-23) She took some of the pictures because she needed something so others would believe what was happening to her. (Tr.24)
5. Alhakim asked Manning to erase the pictures from her cell phone but she sent them to her "auto block" folder. (Tr.26) Alhakim tried to get Manning to take pictures of her private parts but she refused to do so. (Tr. 26) Manning stated Alhakim was masturbating in his office one day while she was eating on her break. (Tr.23) She threw out her food and walked back to the cash register at the front of the store. (Tr.24) She saw him masturbating in the store at least three times. (Tr.25) The reason she did not quit the job was that she was renting an apartment and did not have any other place to stay. (Tr.28)
6. On February 3, 2006, Alhakim called Manning back to his office, asked why she did not want to sleep with him, and said that he was crazy about her. She told him that she had a boyfriend and was engaged. Alhakim grabbed her hand so she could touch his penis and tried to kiss her on the mouth. He also was trying to pin her on his couch. She resisted his efforts to get her on his couch and then left his office. (Tr.30-32)
7. It was difficult for Manning to come to work during the time that she was employed for AQ Pizza because she knew "there was never going to be a day of silence. He would always talk about sex." She could not have a normal day where she could just do her work. She was the only woman working at AQ Pizza. Alhakim called Manning a "nigger" six or seven times during her employment. (Tr. 41)
8. On February 4, 2006, Alhakim called Manning into his office and said that business was slow and he would call her back in the future for further employment. She told him that he was firing her but he denied that he was firing her. (Tr.29)
9. The only other employees of AQ Pizza LLC who were known to Manning were a cook and delivery person. Alhakim hired Complainant, acted as her only supervisor, and directed her not to return to work. During her employment, Manning did not know of any other person associated with AQ Pizza except Alhakim and the two other employees.
10. Felicia Lymon, whose affidavit was presented at the hearing, was employed at AQ Pizza from early July 2005 through mid to late September 2006. About two weeks after she started working at AQ Pizza, Alhakim sexually harassed her almost every day. He offered her money to have sex with him at least three different times. On three different occasions, Alhakim called her to his office, pulled out his erect penis, and caressed his penis. He also asked her to suck his penis. He made efforts to kiss her at least three different times. Alhakim grabbed Lymon's butt ten to twelve times. (Complainant's Exhibit 3)

11. On February 28, 2006 Manning filed a criminal misdemeanor charge for battery against Alhakim, in which she alleged that Alhakim forced her on the couch by grabbing her hair, then started kissing her, and putting her hand on his penis. (Tr.33-Exhibit 2) She went to the wrong courtroom when the case was up and it was dismissed. (Tr.34-35)
12. Manning could not pay her bills after she was terminated. She had no place to stay and she had to stay with a male friend because she could not afford to rent. (Tr.45)
13. Shortly after Manning was fired by Alhakim, she filed this Complaint with the Commission on Human Relations on February 21, 2006. Alhakim then left a message on her cell phone voice mail. (Tr.38-39) The transcript of that telephone call, as stated in the Second Amended Complaint and also in Exhibit 7, is as follows: "Hi, this is me Alex. Yeah I want you to do the hair of my dick, you fucking bitch nigger. I can't reach your mom to fuck her too. I want to fuck her, you fucking bitch nigger. You forgot to say to the Chicago city, that you suck my dick, and you forgot to say to your attorney, you suck my dick, you fucking bitch nigger. I fuck all African-American women, all of them nigger bitches. By 5:00, I can be able to fuck them. Just I let you know, you fucking nigger bitch, suck my dick the same one you sucked last time. Bye bye."[sic] (See also Tr.43-44) Manning denied having sexual relations with Alhakim of any type and testified that what Alhakim said in the voice mail message was not true. (Tr.39-40)
14. Manning was frightened by the voice mail she received from Alhakim after filing her initial Complaint. Manning started having dreams that someone was going to kill her. Alhakim knew her home address so she did not know if he would come to her home. He also knew her Social Security number. (Tr.50) She would have flashbacks of the things he had told her, the expressions on his face as he tried to get her to submit to his sexual advances, and that he called her "nigger." All she would see in her nightmare was a knife and that someone was trying to kill her. She did not see a doctor or a mental health professional, because she had to work just to pay her bills. (Tr.44) She would continue to lose sleep until Alhakim left the country in March 2006. (Tr.45-46) Manning continued to have emotional difficulties even after she heard Alhakim left the country, because she could not be sure whether he was gone or still in the United States.
15. Manning was off work for a month after she was discharged from AQ Pizza, before she found other employment. Manning received \$5.00 per hour from AQ Pizza and was paid in cash. Complainant's Exhibit 4 reflects the hours she worked at AQ Pizza.
16. Manning's testimony at the hearing was found credible by the Hearing Officer.
17. AQ Pizza LLC was involuntarily dissolved by the Secretary of State of Illinois on October 28, 2006. AQ Pizza never formally filed Articles of Dissolution.

C. Conclusions of Law

1. Based on the Order of Default, Ayman Alhakim is deemed to have admitted the factual allegations of the Complaint and Amended Complaints and to have waived challenges to their sufficiency. See Reg. 215.240; *McCutchen v. Robinson*, CCHR No 95-H-84 (May 20,

1998); and *Moulden v. Frontier Communications et.al.*, CCHR No. 97-E-156 (Aug. 19, 1998).

2. Tiffany Manning established a *prima facie* case of sex discrimination by Alhakim. Manning was sexually harassed and then terminated from her employment because of her refusal to submit to Alhakim's sexual advances, not because business was slow. She has established a *prima facie* case of both hostile environment and *quid pro quo* sexual harassment.
3. Based on the derogatory references to her race in the course of Alhakim's sexual harassment, Manning's race was also a factor motivating the harassment and termination by Alhakim. This evidence establishes a *prima facie* case of race discrimination.
4. In addition, Manning has established a *prima facie* case of retaliation by Alhakim, based on her testimony as to the telephone message that she received from him on March 14, 2006, after having filed her initial Complaint with the Commission.
5. Accordingly, Ayman Alhakim is liable for sex discrimination, race discrimination, and retaliation against Tiffany Manning, all in violation of the Chicago Human Rights Ordinance.
6. In addition, Manning has established by a preponderance of the evidence that AQ Pizza LLC is also liable for the sex discrimination, race discrimination, and retaliation committed by Alhakim, regardless of whether any other member or manager of this limited liability corporation knew or should have known of Alhakim's conduct.
7. No other member or manager of AQ Pizza LLC can be held individually liable.

D. Discussion

The Chicago Human Rights Ordinance, in Section 2-160-020(l), Chicago Municipal Code, provides as follows:

"Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In addition, Section 2-160-040, Chicago Municipal Code, provides in relevant part, "No employer, employee, [or] agent of an employer...shall engage in sexual harassment..." and Section 2-160-030 provides in relevant part, "No person shall directly or indirectly discriminate against any individual in ...discharge...or any other term or condition of employment because of the individual's race, color, [or] sex...."

Section 2-160-100, Chicago Municipal Code, further provides, "No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this chapter."

Liability of Ayman Alhakim. Manning's testimony unequivocally established that Alhakim required her to submit to his sexual advances, requests for sexual favors, and other conduct of a sexual nature so that she could keep her job for the limited time that she had it. Manning's testimony further proved that she was terminated for her refusal to submit to Alhakim's sexual advances. Manning worked as a cashier at AQ Pizza and Alhakim was her supervisor. Manning has clearly and credibly established *quid pro quo* sexual harassment by Alhakim.

Manning's testimony also clearly and credibly established that she was subjected to sexual harassment in the form of a hostile environment. Alhakim's conduct was both severe and pervasive, and it created an intimidating, hostile, and offensive working environment. His conduct was frequent as well as physically threatening and intimidating. It also interfered with her work performance; see, e.g., Finding of Fact 7.

The Commission has consistently found sex discrimination in the form of sexual harassment based on the types of evidence Manning has presented. See, e.g., *Ordon v. Al-Rahman Animal Hospital*, CCHR No 92-E-139 (July 22, 1993)(hostile environment including inappropriate and unwelcome sexual advances and physical touching); *McCall v. Cook County Sheriff's Office et al.*, CCHR No. 92-E-122 (Dec. 21, 1994)(hostile environment including comments, gestures, and touching); *Duignan v. Little Jim's Tavern et al.*, CCHR No. 01-E-38 (Sept. 10, 2001)(hostile environment and *quid pro quo* sexual harassment based on several harassing events by supervisor in just over two months dating from inception of employment, one of which involved touching, then discharge by supervisor after rejecting the sexual advances); *Salwierak v. MRI of Chicago, Inc., & Baranski*, CCHR No. 99-E-107 (July 16, 2003)(hostile environment based on offensive sexual remarks, taunting about complainant's sex life, and inappropriate touching, all by supervisor); and *Sellers v. Outland*, CCHR No. 02-H-37 (Oct. 15, 2003)(hostile environment and *quid pro quo* sexual harassment based on repeated demands for sexual favors by landlord, offer to reduce security deposit in return for sex, physical sexual assault, then attempt to evict via unfounded termination notices after resisting landlord's advances).¹

Manning also established that she was subjected to race discrimination in the form of a hostile environment during her employment at AQ Pizza. Alhakim directed to Complainant the highly pejorative slur "nigger" on several occasions in the course of her employment and in conjunction with his sexual harassment. Harassment on the basis of race violates the Chicago Human Rights Ordinance; harassment is defined as slurs and other verbal or physical conduct relating to an individual's membership in a protected class when such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment, unreasonably interfering with an individual's work performance, or otherwise adversely affecting an individual's employment opportunities. See, e.g., *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Sept. 18, 2002), where a restaurant co-owner's repeated use of derogatory language toward employee as a gay man was held to have created a hostile work environment. See also the public accommodation discrimination cases *Miller v. Drain Experts & Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998), where a defaulted

¹ The Commission does not base this decision on the federal court cases cited by Complainant and the Hearing Officer: *Burlington Industries v. Ellerth*, 524 U.S. 742,753-754 (1998); *Faregher v. City of Boca Raton*, 524 U.S. 775, 788 (1998); and *Haugerud v. Amery Schl. Dist.*, 259 F.3d 678 (7 Cir. 2001). No issue of first impression is involved; ample precedential decisions of this Commission support the determination that the Chicago Human Rights Ordinance was violated based on the evidence presented here. Thus, pursuant to Reg. 270.510, there is no need to look for guidance to decisions of other jurisdictions interpreting other laws.

respondent was found liable for calling an African-American client “nigger” along with other vulgar epithets in the course of providing services, and *Horn v. A-Aero 24 Hour Locksmith et al.*, CCHR No. 99-PA-32 (July 19, 2000), where defaulted respondents were found liable for using insulting racial epithets and refusing to serve an African-American complainant.

The Commission also finds that Manning has established liability for retaliation. Alhakim’s racially and sexually insulting voice mail message, by its language, was motivated by his receipt of notice of the filing of this Complaint with “the Chicago city.” Manning received it shortly after she filed her Complaint. Its language is sufficiently offensive and intimidating to constitute an adverse action in retaliation for the Complaint filing. Threats are sufficient to constitute retaliation if a complainant actually felt threatened by the conduct and a reasonable person in her position would have felt threatened. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (July 11, 1991).

Liability of AQ Pizza LLC. Manning was required to prove her case by a preponderance of the evidence against AQ Pizza, against whom there had been no entry of an Order of Default as there had been against Alhakim. Although AQ Pizza failed to appear at either the Pre-Hearing Conference or the Administrative Hearing, no formal Order of Default has been entered for those reasons. Nevertheless, AQ Pizza has introduced no evidence which impeaches Manning’s evidence or otherwise supports a defense to her claims. Manning has proved that she was subjected to hostile environment and *quid pro quo* sexual harassment as well as race discrimination and retaliation by the only agent of AQ Pizza whom she knew—her supervisor, Ayman Alhakim. AQ Pizza is liable for this conduct of Alhakim. Manning had no way to report Alhakim’s discriminatory conduct to any other owner or manager of AQ Pizza because she did not know anyone else associated with the business except the cook and a delivery person.

Given Manning’s testimony in this case, AQ Pizza LLC is liable for Alhakim’s discriminatory discharge of Manning regardless of whether any other member or manager of the limited liability corporation knew or should have known of Alhakim’s discriminatory conduct. Reg. 345.120 specifically provides that 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 specific acts complained of were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. Commission decisions have consistently followed the principle that an employer is liable for the conduct of its supervisory employees even if it was not told of the alleged harassment. See, e.g., *Huezo, supra*; *Leahy v. Tcheupdijaian and Liposuction & Cosmetic Surgery Inst.*, CCHR No. 95-E-21 (Apr. 28, 1997); *Arrington v. Levy Restaurants et al.*, CCHR No. 97-E-189 (Dec. 4, 1998); *Wiles v. The Woodlawn Organization & McNeal*, CCHR No. 96-H-1 (Mar. 17, 1999); and *Carnithan & Lencioni v. Chicago Park Dist. et al.*, CCHR No. 00-E-147/148 (May 24, 2001).

Effect of Dissolution of AQ Pizza LLC. AQ Pizza was involuntarily “administratively” dissolved by the Secretary of State of Illinois on October 28, 2006. AQ Pizza never formally filed Articles of Dissolution. The Illinois Limited Liability Act provides at 805 ILCS 180/35-30(c):

Upon the administrative dissolution of a limited liability company, a dissolved limited liability company shall continue for only the purpose of winding up its business. A dissolved limited liability company may take all action authorized under Section 1-30 or necessary to wind up its business and affairs and terminate.

Because this proceeding was pending against AQ Pizza LLC before it was administratively dissolved, a final order or judgment can be entered against it as a part of the winding up of its business.

Manning's counsel argued that if AQ Pizza failed to file Articles of Dissolution, then its members and managing member become personally liable for any awards made on claims arising during the existence of the limited liability corporation. Counsel cited Section 12.80 of the Illinois Business Corporation Act of 1983, 805 ILCS 5/12.80 for this proposition. That section states:

Survival of remedy after dissolution. The dissolution of a corporation either (1) by filing articles of dissolution in accordance with Section 12.20 of this Act, (2) by the issuance of a certificate of dissolution in accordance with Section 12.40 of this Act, (3) by a judgment of dissolution by a circuit court of this State, or (4) by expiration of its period of duration, shall not take away nor impair any civil remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.

This provision does not itself appear to create any personal liability of members or managers of companies chartered under the Limited Liability Company Act. It applies only to regular business corporations under the Business Corporation Act. It provides only that any existing claim or civil remedy that might be available against a dissolved business corporation or its directors or shareholders survives the dissolution for five years. Similarly, the provisions of the Illinois Limited Liability Company Act cited in Complainant's Post-Hearing Memorandum grant certain authority to members or managers of administratively dissolved limited liability companies but do not create any personal liability.

In any event, Manning never attempted to amend her Complaints after the involuntary dissolution to add any other manager or member of AQ Pizza LLC as a respondent. Nor did Complainant ever identify a manager or member of that entity. The fact that Carlos Blanco was mentioned in information the Commission obtained in the course of its investigation and was listed in the Illinois Secretary of State's web site as the "managing member" of AQ Pizza LLC (based on a document attached to Complainant's Post-Hearing Memorandum but not introduced into evidence at the hearing) does not mean that the Commission can now find him individually liable absent a properly-amended Complaint and an opportunity for Blanco to be heard on the issue of his personal liability. See Reg. 210.160(b)(2) concerning amendment of complaints to add or substitute a respondent after a finding of substantial evidence. None of the statutory authority cited by Complainant in the Post-Hearing Memorandum provides a legal basis to the contrary.²

² The Commission does not reach the issue of whether Manning may have a right to pursue a separate action in a different forum against AQ Pizza's members or managing member, on the grounds that it apparently made no provision for any debt or liability of the entity upon involuntary dissolution. Because it is not a court of general jurisdiction, the Commission does not adjudicate such claims. *Toledo v. Brancato*, CCHR No. 95-H-122 (July 9, 1997); *Meekins v. Kimel*, CCHR No. 02-H-84 (June 10, 2004). See also Reg. 250.220 as to the procedure for enforcement of a final order of the Commission, as well as Chicago Muni. Code §2-120-510(e) and Reg. 210.120(g), which provide that the filing of a Commission Complaint does not bar pursuit of any other remedy provided by law except as may be specified by an intergovernmental agreement.

E. Relief

Lost Wages. Manning established that she was terminated from her employment because she complained about Alhakim's sexual advances and/or refused to submit to them, as well as due to Alhakim's racial harassment; therefore, she entitled to recover the wages she lost until she found new employment. Manning's testimony was that she was off work for a month after being discharged. She received \$5.00 per hour in cash when she worked at AQ Pizza, and Complainant's Exhibit 4 reflects the hours she worked there. In closing argument, Manning's counsel requested \$500 for lost wages. Manning would have earned at least that amount, or more, if she had worked as many hours in February 2006 as she had in January 2006. Therefore, Manning is awarded \$500 for lost wages; this is awarded jointly and severally.

Emotional Distress Damages. Manning has requested emotional distress damages of \$15,000. In support of the request, Manning's counsel cited the cases of *Salwierak, supra*, where \$30,000 was awarded for emotional distress damages arising from sexual harassment by a supervisor in a workplace, and *Sellers v. Outland, supra*, where \$40,000 was awarded for emotional distress damages arising from sexual harassment by a landlord which included a physical sexual assault. Counsel's post-hearing brief did not explain specifically how the awards in these two cases correlate with the damages requested in this case; however, the Commission agrees that they and the following cases support an award of \$15,000 as requested.

In *Wright v. Mims*, CCHR No. 95-H-12 (March 19, 1997), the Commission awarded \$15,000 in emotional distress damages to a complainant subjected to housing discrimination, where she and her family were evicted and faced the prospect of being homeless, and the complainant also experienced a decline in her job performance. In *Wright*, as in this case, there was no evidence of medical treatment, therapy, or medication.

In *Arrelano & Alvarez v. Plastic Recovery Technologies, Inc*, CCHR NO. 03-E-37/44 (July 21, 2004), the Commission awarded \$15,000 for emotional distress damages to Alvarez due to sexual orientation discrimination by her supervisor in her workplace, where Alvarez broke out in hives and had irregular sleep patterns as a result. Alvarez also did not provide any evidence of medical treatment or medication as a result of her emotional distress.

In determining the proper amount of emotional distress damages in this case, the Hearing Officer and Commission have considered Manning's emotional distress testimony in the record, both before and after her termination. See Findings of Fact 3-7 and 13-14 above. She was subjected to sexual harassment almost daily during her month and a half of employment. She was physically assaulted and subjected to continual verbal harassment. Alhakim would masturbate in front of her and put pictures of his penis on Manning's cell phone camera. Manning stayed at her employment because she needed the money to pay her rent. This was dehumanizing physical and emotional abuse by Alhakim, to which Complainant was subjected throughout her employment.

Then Manning received a post-termination voice mail from Alhakim after she filed a Complaint with the Commission which frightened her and which included a great deal of vulgar language such as Alhakim's statement that Manning was a "nigger bitch." Findings of Fact 13-14.

After her employment was terminated, Manning had no place to live because she could not afford to rent, and she had to stay with a male friend. She had frequent nightmares that someone with a knife was going to kill her. Manning would have flashbacks where she would remember the expressions on Alhakim's face as he tried to get her to submit to his sexual advances. Findings of Fact 12 & 14.

Given the severity and pervasiveness of the discriminatory conduct by Alhakim, the constant abuse Manning experienced during her employment which included physical assault, and Manning's credible testimony concerning its effects on her, the Commission accepts the recommendations of her Counsel and the Hearing Officer that Manning be awarded \$15,000 for emotional distress damages against AQ Pizza LLC and Alhakim, jointly and severally.

Punitive Damages Against Alhakim. Manning seeks an award of \$50,000 as punitive damages against both Alhakim and AQ Pizza. Manning's counsel cited *Salwierak, supra*, in support of that amount. In *Salwierak*, the Commission awarded \$30,000 in punitive damages against the individual supervisor who engaged in the sexual harassment and \$30,000 against the employer entity, which was informed of the ongoing sexual harassment but took no action to stop it.

The Commission has awarded punitive damages in cases where a respondent's actions are wilful and wanton, malicious, and in reckless disregard of the rights of the victim of discrimination. The Commission has determined that punitive damages are required both as punishment of an ordinance violator and to deter others from committing similar acts in the future. See, e.g. *Akangbe v. 1428 West Fargo Condominium Association*, CCHR No. 91-H-7 (Mar. 25, 1992); *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (October 21, 1998); *Boyd v. Williams*, CCHR No.92-H-72 (June 16, 1993), *Collins & Ali v. Magdenovski*, CCHR No.91-H-70 (Sept. 16, 1992); *Nash/Demby v. Sallas Realty & Sallas*, CCHR No. 92-H-128 (Apr. 19, 2000); and numerous other decisions awarding punitive damages.

The Commission can also consider that, in this case, neither Alhakim nor any representative of AQ Pizza LLC appeared at the Pre-Hearing Conference or the Administrative Hearing. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 20,1998).

Although the Commission considers the income and assets of a respondent in determining the appropriate amount of the punitive damages, when a respondent does not appear or present such information at the hearing, the Commission may award punitive damages without regard to financial circumstances. *Miller v. Drain Experts & Derkits, supra*.

In the *Salwierak* case, *supra*, the complainant was employed by the respondents for almost four years. The Commission found that she was subject to sexual harassment "on an almost continuous basis." The harassment was found to be egregious. *Salwierak* was awarded \$30,000 in punitive damages against the respondent employee who engaged in the sexual harassment.

This is a case where substantial punitive damages are required against Alhakim, based on the malice he displayed and the wilful, wanton, egregious nature of his discrimination. Although employed under his supervision for a fairly short period, Manning was subjected to constant sexual harassment and even sexual assault. Even when told that his conduct was unwelcome, he did nothing to stop his abusive behavior. He engaged in obnoxious verbal comments on an ongoing basis and exhibited his genitals to Manning on several occasions and masturbated in front of her.

Given the aggravated facts in this case, the Commission accepts the Hearing Officer's recommendation and awards punitive damages against Alhakim in the amount of \$30,000.

Punitive Damages Against AQ Pizza. The Hearing Officer recommended that no punitive damages be awarded against AQ Pizza LLC, and the Commission agrees. AQ Pizza has been found liable even though there was no evidence in the record that Manning ever attempted to contact any other member or manager of the limited liability corporation about the sexual harassment by Alhakim. Although case law supports the imposition of liability against AQ Pizza for lost wages and emotional distress damages against AQ Pizza under these circumstances, the Commission declines to award punitive damages against it on these facts.

Although he was acknowledged to be Manning's supervisor, there is no evidence that Alhakim himself was a member or manager of AQ Pizza LLC. Nor is there any evidence that any member or manager knew about the conduct of Alhakim toward Manning. This is similar to the situation in *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995), where no punitive damages were assessed against the owner of the respondent restaurant at the time of the sexual harassment, who did not know of or ratify the employee's discriminatory act and had sold the business, so that no element of willfulness was present and no deterrence would come from awarding punitive damages in such a situation.

In the *Salwierak* case relied on by Manning, punitive damages were awarded against the employer. However, the complainant complained to the office manager who then advised the head of the company, but nothing was ever done to stop the sexual harassment except that the head of the respondent company (and then-spouse of the offending supervisor) called Salwierak into her office and asked if her allegations of sexual harassment were true.

Although the purpose of punitive damages is to serve as deterrence and as punishment for willful acts, that purpose would not be served by awarding punitive damages against AQ Pizza. No evidence was presented to establish that AQ Pizza as an entity had any knowledge of the sex and race discrimination of Alhakim or that Alhakim's acts were endorsed or tolerated by the entity in any way. Accordingly, the Commission declines to award punitive damages against AQ Pizza LLC.³

Interest. Reg. 240.700 provides for pre-and post-judgment interest on all damages awarded in favor of Manning the prime rate, adjusted quarterly, and compounded annually from the date of the violation. Such interest is awarded and shall be calculated from February 4, 2006, the date when Complainant's employment was terminated.

Fines. Section 2-160-120, Chicago Municipal Code, provides for a maximum fine of \$500 for each offense in violation of the Chicago Human Rights Ordinance. Ayman Alhakim and AQ Pizza LLC have each been found in violation of the ordinance. The Commission imposes a \$500 fine against each Respondent for the racial and sexual harassment which included the termination of Manning's employment. The Commission imposes an additional \$500 fine against each

³Again the Commission notes with appreciation the Hearing Officer's discussion of the principles set forth in *Kolstad v. American Dental Assn.* 527 U.S. 526 (1999) and the Restatement of Torts. However, it believes that its decision declining to impose punitive damages against the corporate owner of the restaurant is well-supported by Commission precedents without turning to other guidance.

Respondent for the retaliation which occurred after Manning filed her Complaint at the Commission. Thus the Commission has imposed a total of \$1,000 in fines against each Respondent and \$2,000 in total.

Attorney Fees and Costs. The Commission also awards attorney fees in costs to this Complainant, who has been represented by counsel. Pursuant to Reg. 240.630, Complainant may serve on the Hearing Officer and all other parties and file with the Commission a statement of attorney fees and/or costs, supported by argument and affidavits, no later than 24 days after the mailing of this Board of Commissioners' Ruling. The further requirements for supporting documentation are set forth in Reg. 240.630. If such statement is timely filed and served as provided above, Respondents shall have the opportunity to file and serve written responses thereto within 14 days of the filing of the statement, and Complainant will have the opportunity to submit a reply brief no more than 10 days after the filing of the response.

F. Conclusion

For the reasons set forth herein, the Commission finds Respondents Ayman Alhakim and AQ Pizza LLC each liable for sex and race discrimination as well as retaliation in violation of the Chicago Human Rights Ordinance. As detailed above, the Commission awards the following relief:

1. \$500 as out-of-pocket damages for lost wages, awarded jointly and severally.
2. \$15,000 as emotional distress damages, awarded jointly and severally.
3. \$30,000 as punitive damages against Ayman Alhakim only.
4. Pre- and post-judgment interest on the foregoing damages from February 4, 2006.
5. \$1,000 in fines against Ayman Alhakim, at \$500 for each of two offenses.
6. \$1,000 in fines against AQ Pizza LLC, at \$500 for each of two offenses.
7. Attorney fees and/or costs subject to a an acceptable statement pursuant to Reg. 240.630.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:


Clarence N. Wood, Chair/Commissioner