



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:

Sha'Ron Shores
Complainant,
v.
Charles Nelson d/b/a Blackhawk Plumbing
Respondent.

Case No.: 07-E-87

Date of Ruling: February 17, 2010
Date Mailed: February 25, 2010

TO:

Sha'Ron Shores
P.O. Box 8353
Northfield, IL 60293

Charles Nelson d/b/a Blackhawk Plumbing
6193 S. Troy, Basement
Chicago, IL 60629

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on February 17, 2010, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent 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 Respondent:

1. To pay to Complainant compensatory damages in the amount of \$82,000, plus interest on that amount from September 27, 2007, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$500.¹

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 at this time. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

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

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 Reg. 250.210. Enforcement procedures for failure to comply are stated in 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 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.



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FINAL RULING ON LIABILITY AND RELIEF

I. Claims and Procedural History

Complainant Sha’Ron Shores filed a Complaint with the Commission on Human Relations on November 5, 2007, alleging that Charles Nelson, while doing business as Black Hawk Plumbing, violated the Chicago Human Rights Ordinance, Chapter 2-160 of the Chicago Municipal Code. Shores alleges that Respondent sexually harassed her by means of sexually suggestive and explicit statements and conduct, then ultimately terminated her employment because she refused Nelson’s sexual advances. Shores also alleges that Nelson discriminated against her due to her religion by statements critical of her religion and church activities.

After the Commission notified him of the Complaint and of the requirement to file and serve a Verified Response, Nelson submitted a Verified Response. After an investigation, the Commission entered an Order Finding Substantial Evidence on December 4, 2008, and mailed a copy to each party on December 23, 2008. Subsequently the Commission mailed an Order Appointing Hearing Officer and Commencing Hearing Process to the parties, with its Standing Order on administrative hearing procedures and other material, on January 30, 2009. That order notified the parties that a pre-hearing conference was scheduled for March 10, 2009. Complainant appeared for the Pre-Hearing Conference but neither Nelson nor any representative appeared. On April 10, 2009, the Commission then mailed to Nelson (and to Complainant) a Notice of Possible Default and Other Sanctions for Failure to Attend Pre-Hearing Conference and Order Setting Administrative Hearing. The Notice required Nelson to show good cause for the absence by May 1, 2009, in order to avoid default or other sanctions. The Notice also set a deadline of May 21, 2009, for each party to serve and file a pre-hearing memorandum pursuant to Reg. 240.130, and set an administrative hearing date of June 11, 2009, beginning at 9:30 a.m. The Notice was returned marked “Return to Sender, Attempted Not Known, Unable to Forward.” Consequently, Respondent failed to make any submission in response to the Notice and failed to attend the administrative hearing as scheduled. Accordingly, at the administrative hearing, the hearing officer found Respondent in default pursuant to Regs. 235.10(a) and (d) as well as Regs. 210.270(b), 240.120(b), and 240.398. Tr. 3. The hearing officer then heard Complainant’s testimony as to her *prima facie* case.

On December 23, 2009, the hearing officer issued her Recommended Ruling on Liability and Relief.¹ No objections were filed.

II. Findings of Fact

1. Sha'ron Shores was hired by Black Hawk Plumbing's owner, Charles Nelson, on June 18, 2007. Complaint, par. 1.
2. Charles Nelson is the owner of Blackhawk Plumbing and does business under Blackhawk Plumbing as a trade name. Complaint, par. 1
3. Shores was hired as a Project Manager and her duties and responsibilities included ordering supplies, managing the payroll, and handling the paperwork for day-to-day operations. Tr. 8.
4. Shores asserts that Nelson inquired how she felt about him, asking, "What's up with me and you?" and whether they were, "boyfriend and girlfriend." Shores responded that she was working for him and was not there for sex. Shores asserts Nelson replied that he was "not paying you all this money just for your brain," and wanted to know what she was going to do for him. Tr. 6-7.
5. Shores asserts she asked Nelson whether he was "asking me for sex or something like that" to which he replied, "No," yet added the question, "[W]hy do you think I'm paying you all this money?" Tr. 7.
6. Shores asserts that on September 27, 2007, Nelson got upset when she told him she had no sexual interest in him and, as a result, asked her to not come in to work for a few days. Tr. 10.
7. Shores asserts that on October 3, 2007, Nelson stopped payment on a bonus check she was due in the amount of \$1,500. Tr. 10, 19.
8. Shores asserts that on October 8, 2007, Nelson told her she had to do what he asked, including going to the hotel to have sex with him. Tr. 11.
9. Shores asserts that on Friday, October 19, 2007, Nelson gave her a Sweetest Day Card that she considered inappropriate for a boss to give an employee. Tr. 11.
10. Shores asserts that an incident occurred where she walked into the office and Nelson was naked from the waist down. Tr. 12.
11. Shores asserts that in interviewing and hiring a new office assistant, Nelson inquired about her age, marital status, and attractiveness, and Nelson was angry with Shores when

¹Pursuant to Reg. 210.270(b), when a respondent fails to update the Commission about contact information and status, the Commission shall send orders, notices, and other documents to the most recent address the Commission has and that shall be deemed sufficient. A respondent that does not update contact information cannot later rely on failure to receive any order, notice, or other document as a defense. Accordingly, the Commission has continued to send all documents to Respondent at the last available address for him, which is the address he acknowledged in his Verified Response to the Complaint.

he suggested the new employee was not pretty. Tr. 13.

12. Shores asserts that on October 26, 2007, Nelson asked for sex, which she refused, and Nelson asked if she was gay. On this same date, Shores asserts she was demoted to Office Manager because “the title Project Manager is for a girlfriend,” and Nelson stated, “I fuck my friends.” Shores further asserts Nelson told her she was only good for her looks and her body. Tr. 15.
13. Shores asserts that on October 30, 2007 she appeared for work but was locked out of the office and was told by Nelson the reason was “because I don’t listen and I want to do things my way.” Tr. 16.
14. Shores asserts that Nelson was critical of her religion (Christian) and her church activities. Complaint, par. 7. However, neither the Complaint nor Shores’ testimony at the hearing elaborated on this assertion.
15. Shores asserts she has remained unemployed since the October 30, 2007, termination and her pay with Black Hawk Plumbing was \$2,000 per week. Tr. 20.
16. Shore asserts that she suffered emotional distress due to an understanding that she would ultimately be a partner in the business. Tr. 21.
17. The hearing officer assessed Complainant’s testimony as credible, noting that Complainant testified with clarity, specificity, and consistently with the allegations in her Complaint. Complainant appeared to be confident in her testimony and was able to provide dates and substance of specific exchanges with Nelson.

III. Analysis

Section 2-160-040 of the Chicago Human Rights Ordinance (“CHRO”) prohibits sexual harassment in the workplace. It states:

No employer, employee, agent of an employer, employment agency or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

Sexual harassment is defined as “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 to 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 work environment.” Section 2-160-020(1), Chicago. Muni. Code.

To prevail, the Commission requires Shores first to present evidence at the hearing to establish a *prima facie* case of discrimination. *Bell v. 7-Eleven Convenience Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999). In light of the Order of Default, Respondents Nelson and Black Hawk Plumbing are

deemed to have “admitted all of the facts alleged in the Complaint and to have waived [their] defense(s) to the allegations, including defenses concerning the Complaint’s sufficiency.” Reg. 215.240; *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004); *Horn v. A-Aero 24 Hour Locksmith et. al.*, CCHR No. 99-PA-00 (July 19, 2000); *Soria v. Kern*, CCHR No. 95-H-113 (July 18, 1996).

In a sexual harassment case, a complainant establishes a *prima facie* case by proving: (1) that she was “subjected to unwelcome conduct of a sexual nature;” and (2) that “the conduct was pervasive enough to render her working environment intimidating, hostile or offensive.” *Barnes v. Page*, CCHR No. 92-E-1 (Sept. 23, 1993).

The complainant’s burden is to establish “by a preponderance of the evidence that sufficient facts exist” to imply harassment in the “absence of a credible, non-discriminatory explanation for the Respondent’s actions.” *Bell v. 7-Eleven Convenience Store, supra*. Complainant has met that burden.

A. Hostile Environment Claim

The Commission reviews the record as a whole and the totality of the circumstances from the perspective of a reasonable woman to determine whether conduct is sufficiently severe or pervasive to constitute sexual harassment. Reg. 340.100. Shores testified that she was regularly harassed by Nelson between September and October 2007. Nelson directed sexually explicit comments towards Shores.

Shores testified that Nelson asked whether they were “boyfriend and girlfriend,” and when Shores responded that she was not there for sex and was being paid for her brain, not her body, Nelson replied that he was not paying her all this money just for her brain. Tr. 7. Shores asserts Nelson told her on October 8, 2007, that she had to do whatever he told her to do, including going to a hotel to have sex with him. Tr. 11. Shores asserts that on October 18, 2007, Nelson told her she had to be “nicer” to him and on Friday, October 19, 2007, Nelson gave her a Sweetest Day card that she found inappropriate for a boss to give an employee. Tr. 11. Shores asserts that one day she came into the office and Nelson had his pants down and was naked from the waist down. Tr. 12. Shores asserts that on October 26, 2007, Nelson asked for sex, which she refused. Tr. 15. In response, Nelson asked if she was gay. Shore testified that she was demoted to Office Manager from Project Manager because Nelson told her, “Project Manager is for a girlfriend,” and that she was only good for her looks and her body. Tr. 15.

A reasonable woman would find Hall’s behavior to be sufficiently pervasive to constitute a sexual harassment in the form of a hostile working environment, in violation of Reg. 2-160-040.

Based on these facts, which under the hearing officer’s Order of Default cannot be controverted, the Commission finds that Shore was subjected by Nelson to sexual harassment in the form of a hostile environment.

B. Termination Claim

Shores asserts that the reason for her termination on October 30, 2007, was her refusal to comply with Nelson’s advances. In order to show that her discharge constituted *quid pro quo* sexual harassment, there has to be at least a *prima facie* case that those asserted reasons were a factor in Shores’ termination. Based on the testimony presented, there is sufficient evidence of such

causation.

Shores asserts that Nelson got upset and told her not to come into work for a few days because she told him she was not interested in being his "companion." She asserts that later that day, she was fired from her position. Shores asserts that Nelson stopped payment on a bonus check because she did not do what he wanted her to do.

The timing and explanation of these actions, as described by Complainant, is sufficient to establish a *prima facie* case that the termination was *quid pro quo* sexual harassment. Based on the evidence presented at the hearing, Nelson instructed Shores not to return to work because she would not respond to his sexual advances.

Penalizing an employee for refusing to accept sexual advances and other sexual harassment is *quid pro quo* sexual harassment. In a *quid pro quo* sexual harassment claim, the issue is whether the submission to a sexual demand is made a condition "for the employee to receive or retain job benefits, or deprives the employee of job benefits on the basis of the employee's refusal to engage in sexual relations." *Duignan v. Little Jim's Tavern, et al.*, CCHR No. 01-E-38 (Sept. 10, 2001) quoting *Keppler v. Hinsdale Township High School Dist. 86*, 715 Supp. 862, 866 (N.D. Ill. 1989). Nelson's behavior was a direct reaction to Shores having rebuffed Nelson's sexual advances. It is reasonable to conclude that this was also the real reason Nelson made the decision to terminate Shores' employment.

C. Religious Discrimination Claim

Shores asserts that Nelson was critical of her religion (Christian) and her church activities. Complaint, par. 7. Shores fails to establish a *prima facie* case in that no further testimony or evidence was presented at hearing to support this assertion and a mere criticism of one's religion or church activities as alleged in the complaint does not give rise to a claim of discrimination. See *Benitez v. Marquez*, CCHR No. 93-H-73 (Nov. 17, 1994).

IV. Relief

Section 2-120-510(l), Chicago Muni. Code, allows the Commission to award a prevailing Complainant the following forms of relief:

[A]n order:...to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant;...to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the Commission ...; to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages....These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Compensatory Damages

1. Out-of-Pocket Losses

Because the Commission finds that Shores' termination was a part of the sexual harassment by the Respondent, she is entitled to compensation for her out-of-pocket losses due to the termination.

Shores testified that she has been out of work since being terminated on October 30, 2007, and that her salary at the time of termination was \$2,000 per week. Tr. 19. Shores testified with reasonable certainty that the amount of compensation she would have been entitled to had she not been terminated is calculated as being \$80,000. See *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002); *Pearson v. NJW Personnel*, 91-E-126 (Sept. 16, 1992); *Austin v. Harrington*, 94-E-237 (Oct. 22, 1997). Shores also testified that she was also entitled to bonuses that started at \$1,500 and increased from there. However, Shores failed to provide sufficient evidence of frequency and amount of bonuses and whether such bonuses are tied to performance. As such, bonuses are speculative at best, and are not considered in the calculation of Shores out-of-pocket losses. On this basis, the hearing officer recommended damages for out-of-pocket losses in the amount of \$80,000. The Commission adopts this recommendation.

2. Emotional Distress Damages

As the Commission stated in *Nash & Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995), compensatory damages may include damages for emotional distress caused by the discrimination. See also *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (May 21, 1997). Shores testified that she suffered emotional distress due to her understanding that she would ultimately be a partner in the business. Tr. 21. Shores failed to present any concrete evidence of an arrangement or plan for her to become a partner or the impact of that not becoming a reality. However, while Shores failed to provide specific evidence of emotional distress, such damages may be inferred based upon testimony of Nelson's frequent sexual comments to Shores which created a hostile and offensive working environment. See *Antonich v. Midwest Building Mgt.*, CCHR No. 91-E-150 (October 21, 1992); *Diaz v. Prairie Builders*, 91-E-204 (Oct. 21, 1992). Further, Shores' employment was terminated after she refused Nelson's sexual advances, which again would lead to the inference of at least some damages for emotional distress. Shores credibly testified that Nelson exposed himself in her presence, propositioned her, and when she rebuffed his advances, asked her to not come to work for several days and ultimately locked her out of the company. It is reasonable to assume that such behavior caused Shores emotional distress. See *Feinstein v. Premiere Connections, LLC et al.*, CCHR No. 02-E-215 (Jan. 17, 2007), where emotional distress damages awarded in the amount of \$2,500 in a *quid pro quo* sexual harassment case; see also *Hawkins v. Ward and Hall*, CCHR No. 03-E-114 (May 21, 2008), where emotional distress damages were awarded in the amount of \$2,000 after an order of default. Therefore, the hearing officer recommended damages for emotional distress in the amount of \$2,000, and the Commission adopts this recommendation.

3. Punitive Damages

Punitive damages were not requested and under the circumstances where Complainant is receiving a substantial back pay award, punitive damages are not necessary to make Complainant whole, were not recommended by the hearing officer, and are not awarded in this case.

4. Fine

Section 2-160-120 of the Chicago Municipal Code (Chicago Human Rights Ordinance) provides for a fine to be imposed against a party who violates the ordinance in an amount of not less than \$100 and not more than \$500. The hearing officer recommend a fine of \$500 against Respondent and the Commission adopts the recommendation.

5. Interest

Commission Regulation 240.700 provides for pre- and post-judgment interest at the prime rate, adjusted quarterly, compounded annually starting at the date of the violation. Such interest is routinely awarded and shall be calculated from September 27, 2007, the first date of harassment identified.

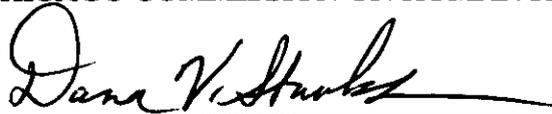
6. Attorney's Fees

As this Complainant appeared *pro se*, there is no basis for an award of attorney's fees.

VI. Conclusions of Law

1. Complainant Sha'Ron Shores has established a *prima facie* case that she was subjected to sexual harassment by Respondent Charles Nelson d/b/a Black Hawk Plumbing. Shores has established a *prima facie* case that she was subjected to both a hostile environment and *quid pro quo* sexual harassment, as she was terminated as the result of her rejection of Nelson's sexual advances. This conduct violates the Chicago Human Rights Ordinance.
2. Complainant did not establish a *prima facie* case that she was subjected to religious discrimination by Respondent Charles Nelson d/b/a Black Hawk Plumbing.
3. The Commission orders the following relief based on the evidence:
 - a. Back pay in the amount of \$80,000.
 - b. Emotional distress damages in the amount of \$2,000.
 - c. Fine in the amount of \$500.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks
Chair and Commissioner