

The attached Decision and Order discusses the following issues:

Sexual Harassment in Employment

Constructive Termination

Compensatory Damages

11/5/08

Before the
STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 05 ESH 233

In the matter of

Roseanne DeAngelis
Complainant

v.

DECISION AND ORDER

Midstate Tire and Service, Inc./
Antonelli Holding Company and
Christopher Antonelli
Respondents

INTRODUCTION

On May 9, 2005, Roseanne DeAngelis (hereafter referred to as the complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against Midstate Tire and Service, Inc./Antonelli Holding Company and Christopher Antonelli (hereafter referred to as the respondents). The complainant alleged that the respondents discriminated against her with respect to terms and conditions of employment and constructive termination from employment because of her sex, a violation of R.I.G.L. Section 28-5-7. The charge was investigated. On July 27, 2006, Preliminary Investigating Commissioner John B. Susa assessed the information gathered by a staff investigator and ruled that there was probable cause to believe that the respondents violated the provisions of Section 28-5-7 of the General Laws of Rhode Island as alleged in the charge.

On April 6, 2007, a complaint and notice of hearing issued. The complaint alleged that the respondents discriminated against the complainant with respect to terms and conditions of employment and constructive termination of employment because of her sex. A hearing on the complaint was held on November 9, 2007 before Commissioner Alton W. Wiley, Jr. The complainant was present and represented by counsel. The respondents did not appear. The complainant submitted Claimant's Proposed Findings of Fact and Conclusions of Law on January 3, 2008. The respondents did not submit a Memorandum.

JURISDICTION

At the time of the events in question, respondents Midstate Tire and Service, Inc. and Antonelli Holding Company were corporations that employed four or more employees within the State of

Rhode Island and thus they were employers within the definition of R.I.G.L. Section 28-5-6(7)(i) and subject to the jurisdiction of the Commission. Mr. Antonelli was a person acting in the interest of Midstate Tire and Service, Inc. and Antonelli Holding Company, directly and indirectly, and thus was an employer within the definition of R.I.G.L. Section 28-5-6(7)(i) and subject to the jurisdiction of the Commission. Mr. Antonelli also aided, abetted and compelled unlawful employment practices and thus is subject to the jurisdiction of the Commission.

FINDINGS OF FACT

1. The complainant is a woman.
2. The complainant began her employment with the respondents on September 22, 2003. She was employed as the Office Manager and Controller. The complainant's direct supervisors, Cindy Antonelli and respondent Christopher Antonelli, were the owners of Midstate Tire and Service, Inc. and Antonelli Holding Company.
3. The respondents hired the complainant to work five (5) days per week and her pay was \$900 per week.
4. The respondents informed her that she would receive family Blue Cross Health insurance coverage after ninety (90) days of employment and that she would pay fifty percent (50%) of the cost of the insurance. The complainant was not enrolled in a Blue Cross Health insurance plan after ninety (90) days.
5. Shortly after the complainant started working for the respondents, she observed Mr. Antonelli display questionable and unsettling behavior. In early October 2004, he had an episode of yelling in which he accused her, among other things, of being a D.E.A. agent.
6. The complainant was stunned at this behavior. She decided not to quit because she was reassured by Cindy Antonelli and because she needed the job. Mr. Antonelli was apologetic about the episode the next day.
7. Mr. Antonelli developed a habit of frequently talking to the complainant about his personal life during working hours. He would go into her office, have her go into his office, or have her go for car rides with him in order to talk with her about his personal life.
8. When the complainant could not attend the respondents' Christmas party in 2003 on the date initially planned, Mr. Antonelli rescheduled the party so that she could attend.
9. At a gathering after the Christmas party, Mr. Antonelli attempted to offer the complainant a substance which appeared to be an illegal drug. She refused to take it.

10. Shortly before Christmas of 2003, Mr. Antonelli asked the complainant to come into his office because he needed to get something "off his chest". He then told the complainant that he really liked her. The complainant told him that it was just infatuation. He stated that he found her attractive and that he could not stop thinking about her. He also said that he knew what he liked and that it was not infatuation.
11. Between Christmas of 2003 and New Year's Day of 2004, Mr. Antonelli approached the complainant in the workplace and told her that: "it's not infatuation" several times. On the last occasion when he made that comment, he slapped her backside. This conduct was unwanted by the complainant. She sternly told Mr. Antonelli: "Don't you ever lay a hand on me again in any way, shape or form". Mr. Antonelli was then very apologetic.
12. Mr. Antonelli continued to seek out the complainant in order to discuss his personal life through the end of 2003 and the beginning of 2004.
13. On one occasion in the beginning of 2004, Mr. Antonelli had the complainant take a ride with him to the Stop & Shop grocery store in North Kingstown during working hours. He then tried to kiss the complainant when they were in the car. This conduct was unwanted and the complainant told him to stop. Mr. Antonelli told her to stop acting "like a school girl". Later he was apologetic.
14. Mr. Antonelli tried calling the complainant repeatedly at her home on the night of the incident at the Stop & Shop. While at work the next day, Mr. Antonelli insisted that she should have picked up the phone.
15. Mr. Antonelli's conduct was starting to affect the complainant physically. She was vomiting and having migraines. She did not quit the job because she was a single mother and needed the pay and flexible hours.
16. In February 2004, Mr. Antonelli began to brush his body up against the complainant. He made sexual comments and innuendoes. On another occasion, he slapped the complainant's backside. This conduct was unwanted and the complainant confronted him very forcefully. She threatened to quit unless his conduct changed. Mr. Antonelli said that he was sorry and that he did not want her to quit.
17. In February 2004, Mr. Antonelli's attitude towards the complainant became hostile and aggressive because she had rejected his advances. He cut her work hours and pay commencing in the week ending February 21, 2004. He cut her hours from five (5) days per week to three (3) days. He reduced her pay from \$900 per week to \$550 per week. He took these actions because the complainant refused his advances.
18. In February 2004, the complainant continued to experience periods of vomiting and crying. She had trouble sleeping. She felt that her family was suffering.

19. In early March 2004, Mr. Antonelli had the complainant take a ride with him during work hours to a location in Charlestown, Rhode Island. He attempted to kiss the complainant again. This conduct was not wanted and the complainant strongly rejected his advance. After being confronted, Mr. Antonelli had tears in his eyes and apologized.
20. Later in March 2004, Mr. Antonelli had the complainant take a ride to the Stop & Shop grocery store during work hours. He again asked the complainant to kiss him. She refused and told him to stop. He apologized.
21. Still later in March 2004, Mr. Antonelli had the complainant take another ride with him during work hours. He said that he was upset and wanted to talk with someone. They went for a long ride and then for a walk. Mr. Antonelli told the complainant that he couldn't stop thinking about her and that he had to have her. The complainant began crying uncontrollably. She screamed at Mr. Antonelli to stop his conduct and told him that nothing was ever going to happen. Mr. Antonelli began crying, apologizing and pleading with the complainant not to quit. He swore that he would stop. He said that he didn't want to lose her as a friend.
22. After this incident and throughout the month, the complainant went home crying and vomiting. She continued to believe that the pay from her job was important to her family.
23. Shortly after the latest incident in March, Mr. Antonelli called the complainant into his office and told her that she could return to working five (5) days per week. The complainant was unsure that she could deal with the stress and started working three and one-half (3.5) days per week at a salary of \$665 per week. Mr. Antonelli also told the complainant to enroll for health care coverage and that he would pay 80% of the cost. The next enrollment period started July 1, 2004.
24. Mr. Antonelli's conduct appeared to change after the late March incident. He stopped making comments, innuendoes and advances. He continued to talk about his personal life, but his behavior was non-threatening. The next two months were basically without incident.
25. Mr. Antonelli continued to talk to the complainant about his personal life in the office or on rides with him during work hours. She would often comment that she would lose work hours if she talked with him. He would respond that if he wasn't worried, she shouldn't worry.
26. In or around May or June of 2004, Mr. Antonelli indicated to the complainant that he was interested in buying a house. The complainant introduced him to her friend, Mary Ann Papas, who was a realtor. Ms. Papas helped him find a house to buy.
27. The complainant also introduced Mr. Antonelli to her father, Anthony Caparelli, in

order for him to provide secured partial financing to help facilitate the purchase of the house.

28. The complainant made plans to go to Block Island with her boyfriend, Carlos, and other friends on the Fourth of July weekend of 2004. She planned to meet Ms. Papas during that weekend.
29. Shortly before the Fourth of July vacation, with his purchase of a house pending, Mr. Antonelli called Ms. Papas and said that if she wanted to continue to be his realtor, she needed to convince the complainant to marry him.
30. On Saturday, July 3, 2004, the complainant spoke with Mr. Antonelli on the telephone. Mr. Antonelli then began to say how much he loved her. The complainant told him that she was done with this nonsense and hung up the phone. He then proceeded to leave numerous phone messages on both the complainant's and Ms. Papas' cell phones. He left messages on July 3 that continued until 3:00 a.m. on July 4. He called numerous times on July 4, leaving messages and apologizing. He left approximately sixty (60) phone messages between July 3 and July 4, 2004. The complainant had to erase a number of the messages because her phone storage memory was getting filled and she needed phone memory to allow her children to leave messages.
31. The messages from Mr. Antonelli were expletive-laden and rambling. Most of them asked that the complainant call him. The calls ranged from calling the complainant "the love of my life" to saying "I'm gonna to kill [the complainant]" to being apologetic. Complainant's Exhibit 3, pp. 11, 15 and *passim*. Among the statements made by Mr. Antonelli on the messages were: "She [the complainant] can't face reality; she's gonna face reality tonight"; "I'm gonna kick her ass ... if she [the complainant] doesn't [call back] by the way. Tell her that too"; "you [the complainant] need to come here and spend the night with me" and "the things I would like to do to you [the complainant]". Complainant's Exhibit 3, pp. 14, 15, 18, 20. He called the marina where the complainant was staying when her cell phone message storage was full. He also left messages at the complainant's house saying: "Carlos, Carlos, she's going to be mine". Carlos was the first name of the complainant's boyfriend.
32. The complainant was frightened by Mr. Antonelli's conduct. She went to the East Greenwich Police Department immediately upon returning from Block Island and asked how to seek a restraining order. She sought and was granted an order in Kent County Superior Court that restrained Mr. Antonelli from harassing, threatening or contacting her.
33. The complainant was too frightened to return to work because of Mr. Antonelli's conduct and was forced to terminate her employment on July 6, 2004. She could not sleep for a number of days thereafter and considered herself "a complete basket case". Trans. p. 52. The respondents constructively discharged the complainant.

34. The complainant attempted to mitigate her damages. The complainant made reasonable efforts to find other employment. She searched newspaper ads and went on-line looking for new employment. She did have one employment offer, but the employer did not offer flexible hours which the complainant needed because of her son's medical condition. She did not find suitable alternative employment until she was hired by BTS Tire as a bookkeeper starting on January 5, 2005. As of the date of the hearing, she was still employed by BTS Tire.
35. The complainant's starting pay at BTS Tire was \$383.00 per week. She was paid this rate until July 1, 2006. From July 2, 2006 to the date of the hearing, the complainant was paid at the rate of \$630.00 per week.
36. While employed by the respondents, the complainant's wages were cut from \$900 per week to \$550 per week in retaliation for the complainant's opposition to Mr. Antonelli's sexual harassment. Her pay was reduced from the week ending February 21, 2004 to March 27, 2004, for a total of five (5) weeks. Her total lost wages for that time period were \$350 [$\$900 - 550$] x 5 weeks or \$1,750.00.
37. When asked to come back to work five (5) days per week by the respondents, the complainant could only work three and one half (3.5) days due to the stress she endured on the job. She worked three and one-half (3.5) days at \$665.00 per week from March 27, 2004 to May 22, 2004 for a total of eight (8) weeks. Her total lost wages for that period were \$235 [$\$900 - \665] x 8 weeks or \$1,880.00.
38. The complainant worked four (4) days per week from May 22, 2004 to July 3, 2004 at a salary of \$773.00 per week. Her total lost wages for that period were \$762.00 [$\127 [$\$900 - \773] x 6 weeks).
39. After her constructive termination, the complainant was unemployed from July 6, 2004 to January 5, 2005, a period of twenty-six (26) weeks. Her lost wages for that time period were \$23,400 (26 weeks x \$900 per week).
40. At her new place of employment, the complainant was paid \$383 per week from January 5, 2005 through July 1, 2006. Her total lost wages for that time period were \$39,809.00 [$\517 [$\$900 - \383] x 77 weeks).
41. The complainant's salary at her new place of employment was increased to \$630 per week starting July 2, 2006. Her total lost wages for the time period from July 2, 2006 to the date of the Commission hearing (November 9, 2007) were \$19,170.00 [$\270 [$\$900 - \630] x 71 weeks).
42. The respondents had informed the complainant that she could enroll for health insurance starting in July 2004. The complainant would have paid twenty percent (20%) of the cost. The complainant's constructive termination prevented her from enrolling for that benefit. From July 6, 2004 to the date of the hearing, the complainant

paid \$29,264.88 for out-of-pocket health care expenses for herself and her children because she did not have health insurance.

43. The respondents' discriminatory conduct caused the complainant to suffer pain, suffering and fear.

CONCLUSIONS OF LAW

The respondents discriminated against the complainant with respect to terms and conditions of employment and constructive termination of employment because of her sex.

DISCUSSION

The Commission utilizes the decisions of the R.I. Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws in establishing its standards for evaluating evidence of discrimination. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (FEPA). "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See Newport Shipyard, Inc.*, 484 A.2d at 897-98." Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685 (R.I. 1998).

THE COMPLAINANT PROVED THAT THE RESPONDENTS DISCRIMINATED AGAINST HER BECAUSE OF HER SEX WITH RESPECT TO TERMS AND CONDITIONS OF EMPLOYMENT

The FEPA prohibits employment discrimination on the basis of sex. *See* R.I.G.L. Section 28-5-7 (1) which provides in relevant part that:

It shall be an unlawful employment practice:

(1) For any employer:

(i) To refuse to hire any applicant for employment because of his or her race or color, ... sex, ...or country of ancestral origin;

(ii) Because of those reasons, to discharge an employee or discriminate against him or her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment. ...

The Commission's Guidelines on Sexual Harassment, which track the Guidelines on Sexual Harassment of the Equal Employment Opportunity Commission (EEOC), 29 C.F.R. Chapter XIV, Part 1604, Section 1604.11, provide as follows:

3001. Sexual Harassment

3001(A) Harassment on the basis of sex is a violation of the Fair Employment Practices Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment constitutes a form of sex discrimination prohibited by civil rights laws. *See, e.g., Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275, 141 L.Ed.2d 662 (1998); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 114 S. Ct. 367, 126 L.Ed.2d 295 (1993); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 106 S. Ct. 2399, 91 L.Ed.2d 49 (1986); *O'Rourke v. City of Providence*, 235 F.3d 713 (1st Cir. 2001).

To prove a hostile environment sexual harassment claim, a complainant must show:

(1) that she (or he) is a member of a protected class; (2) that she was subjected to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for employer liability has been established.

O'Rourke, 235 F.3d at 728 (citing *Faragher*, 524 U.S. at 787-89; *Harris*, 510 U.S. at 20-23; *Meritor*, 477 U.S. at 65-73). *See also Billings v. Town of Grafton*, 515 F.3d 39 (1st Cir. 2008).

The complainant is a member of a protected class. It is beyond dispute that civil rights laws prohibiting sexual harassment apply to both male and female victims.

The complainant was subjected to unwelcome sexual harassment. The complainant produced credible evidence that Mr. Antonelli made unwelcome sexual advances and requests for sexual favors, that he slapped the complainant's backside more than once, attempted to kiss her more than once and made sexual remarks to her and about her. The complainant produced evidence of numerous phone messages left by Mr. Antonelli that alternately threatened her, cajoled her and asked her to spend the night with him. The complainant was credible in her testimony that she explicitly resisted this conduct and that it was unwelcome. (See Trans. p.p. 17 – 20, 25, 28, 29, 31, 32, and 41.) The respondents did not appear and thus did not refute the complainant's evidence. The record clearly establishes that the respondents subjected the complainant to unwelcome sexual harassment.

The harassment of the complainant was "based on sex". There can be no dispute that "discrimination 'because of ... sex' includes 'requiring people to work in a discriminatorily hostile or abusive environment.'" Gorski v. New Hampshire Dept. of Corrections, 290 F.3d 466, 471 (1st Cir. 2002) (quoting Harris, 510 U.S. at 21). As evidenced in the Findings of Fact, the conduct in question was sexual in nature. There is no evidence, and respondents have not argued, that men in respondents' workplace were subjected to this conduct. The conclusion that the harassment of the complainant was "based on sex" is well supported by both the evidence and case law.

The harassment to which the complainant was subjected was sufficiently pervasive and severe so as to alter the conditions of her employment and create an abusive work environment. There is no "mathematically precise test" to aid in this determination. Harris, 510 U.S. at 22. Rather, in order to conclude that a hostile environment exists, the fact finder must look at "the record as a whole and the totality of the circumstances", Meritor, 477 U.S. at 69 (internal citations omitted), and assess such factors as the frequency and severity of the conduct, whether the conduct is physically threatening or humiliating and whether it unreasonably interferes with an individual's work performance. Faragher, 524 U.S. at 787-88; Harris, 510 U.S. at 23. In the instant case, there is sufficient evidence to satisfy the fourth requirement of a successful hostile environment claim.

The uncontradicted evidence establishes that the complainant was subjected to repeated instances of verbal requests for sexual favors and physical touching and that the physical conduct was blatant and offensive. Mr. Antonelli attempted to kiss the complainant against her will on several occasions and slapped her backside more than once. His verbal threats and sexual invitations over the 4th of July weekend were pervasive and disturbing. Mr. Antonelli's sexually harassing conduct was sufficiently severe and pervasive to create an abusive work environment.

The sexually objectionable conduct to which the complainant was subjected was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the complainant did in fact so perceive the environment. A reasonable person would find sexual comments, repeated sexual advances after the rejection of previous advances, slaps on the backside

and a barrage of threatening telephone messages to be objectionable. It is clear that the complainant found the harassing conduct to be offensive. (See Trans. pp. 24, 28, 29, 31-32, 43.)

A basis for employer liability has been established. Case law is unequivocal in holding that an employer is liable for harassment by a supervisor under circumstances like these. Mr. Antonelli was the complainant's supervisor and the co-owner of Midstate Tire and Service, Inc. and Antonelli Holding Company. The respondents did not show that they had a system in place to address harassment and that the complainant unreasonably failed to utilize it. See Faragher. There is no evidence that the respondents had any mechanism for addressing sexual harassment. The complainant told her supervisor, Mr. Antonelli, decisively that the conduct should stop and the harassment continued. The respondents are jointly and severally liable in this situation.

The complainant also demonstrated that the respondents reduced her hours and pay when she refused to acquiesce to Mr. Antonelli's advances. "When a plaintiff proves that a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands, he or she establishes that the employment decision itself constituted a change in the terms and conditions of employment that is actionable under Title VII." Burlington Industries v. Ellerth, 524 U.S. 742, 753 - 754, 118 S. Ct. 2257, 141 L.Ed.2d 633 (1998). "Under Title VII, quid pro quo sexual harassment can be shown where a supervisor uses employer processes to punish a subordinate for refusing to comply with sexual demands." Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 52 (1st Cir. 2000) (Internal cites omitted).

In summary, the complainant proved all the elements necessary to establish that the respondents committed unlawful sexual harassment.

THE COMPLAINANT PROVED THAT THE RESPONDENTS DISCRIMINATED AGAINST HER BECAUSE OF HER SEX WITH RESPECT TO CONSTRUCTIVE TERMINATION

The complainant terminated her employment on July 6, 2004. She alleges constructive termination. The U.S. Supreme Court set forth standards for constructive discharge in Pennsylvania State Police v. Suders, 542 U.S. 129, 146-147, 124 S. Ct. 2342, 2354 (2004):

The constructive discharge here at issue stems from, and can be regarded as an aggravated case of, sexual harassment or hostile work environment. For an atmosphere of sexual harassment or hostility to be actionable, we reiterate, see *supra*, at 2347, the offending behavior "must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Meritor, 477 U.S., at 67, 106 S. Ct. 2399 (internal quotation marks and brackets omitted). A hostile-environment constructive discharge claim entails something more: A plaintiff who advances such a compound claim must show working conditions so intolerable that a reasonable person would have felt compelled to resign. See, e.g., Breeding v. Arthur J. Gallagher & Co., 164 F.3d 1151, 1160 (C.A.8 1999) ("[A]lthough there may be evidence from which a jury could find sexual harassment, ... the facts alleged [for constructive discharge must

be] ... so intolerable that a reasonable person would be forced to quit.”); Perry v. Harris Chernin, Inc., 126 F.3d 1010, 1015 (C.A.7 1997) (“[U]nless conditions are beyond ‘ordinary’ discrimination, a complaining employee is expected to remain on the job while seeking redress.”). [Footnote omitted.]

The Commission credited the complainant's evidence of harassment and the evidence was uncontested. Mr. Antonelli propositioned the complainant, attempted to kiss her on more than one occasion, slapped her backside on more than one occasion and retaliated against her when she refused his advances. Over the 4th of July weekend in 2004, he subjected her to a torrent of telephone messages while she was away from work. These messages, some directly to her cell phone and home phone and some to the cell phone of the friend who was with the complainant, ranged from physical threats, to cajoling, to taunts of her boyfriend, to suggestive remarks. The complainant had clearly and firmly rejected Mr. Antonelli's advances throughout her employment. There was no evidence that the respondents had an alternative system for seeking redress for harassment. Faced with verbal propositions, physical touchings, retaliation and a frightening and irrational series of telephone attacks by Mr. Antonelli, a reasonable person would find the working environment intolerable and feel compelled to resign. The complainant proved that she was constructively terminated by the respondents.

DAMAGES

R.I.G.L. Section 28-5-24 sets forth the remedies that the Commission can award after finding that a respondent has committed an unlawful employment practice. The discrimination found results in joint and several liability.

BACK PAY AND BENEFITS

R.I.G.L. Section 28-5-24(a)(1) provides as follows:

§ 28-5-24 Injunctive and other remedies – Compliance. – (a) If upon all the testimony taken the commission determines that the respondent has engaged in or is engaging in unlawful employment practices, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful employment practices, and to take any further affirmative or other action that will effectuate the purposes of this chapter, including, but not limited to, hiring, reinstatement, or upgrading of employees with or without back pay, or admission or restoration to union membership, including a requirement for reports of the manner of compliance. Back pay shall include the economic value of all benefits and raises to which an employee would have been entitled had an unfair employment practice not been committed, plus interest on those amounts.

...

The complainant has asked that the respondents be ordered to pay her \$92,485.00 as back pay. The complainant's memorandum sets forth her calculations of that amount. The Commission agrees that she should receive back pay for the time when her hours were reduced in retaliation for her opposition to the respondents' harassment and for the time period after her termination. The Commission has minor disagreements with the complainant's calculations, as reflected in the Findings of Fact above and will award \$86,771.00 as the appropriate amount of back pay.

The respondents had promised to pay the complainant's health insurance starting July 1, 2004. The complainant would have been responsible for 20% of the cost of this insurance. The complainant's testimony was that she paid medical bills amounting to \$29,264.88. (Trans. p. 59.) The Commission will award this amount, minus the amount of the 20% cost of the health insurance that the complainant would have been obliged to contribute. There is no evidence in the record as to the cost of the health insurance. Therefore, the Commission will give the respondents thirty (30) days to submit to the Commission evidence on the cost of the health insurance policy in question for the years in question. If either party requests a hearing on the amount in question, the Commission will hold a hearing. If the respondents do not submit evidence on the amount in question within thirty (30) days of the date of this Order, the Commission will award the full amount of \$29,264.88.

The Commission awards interest utilizing the method used for tort judgments. *See* R.I.G.L. Section 9-21-10. The Commission will use the date of July 6, 2004 as the date when interest accrues for back pay and back benefits as that was the date when respondents' discrimination caused the complainant's constructive termination.

COMPENSATORY DAMAGES

R.I.G.L. Section 28-5-24(b) provides that:

(b) If the commission finds that the respondent has engaged in intentional discrimination in violation of this chapter, the commission in addition may award compensatory damages. The complainant shall not be required to prove that he or she has suffered physical harm or physical manifestation of injury in order to be awarded compensatory damages. As used in this section, the term 'compensatory damages' does not include back pay or interest on back pay, and the term 'intentional discrimination in violation of this chapter' means any unlawful employment practice except one that is solely based on a demonstration of disparate impact.

In previous cases, the Commission has awarded compensatory damages for nonpecuniary losses such as pain and suffering. The Commission has indicated that it will be guided by federal cases interpreting federal civil rights laws and the state case law on damages for pain and suffering.

The U.S. Equal Employment Opportunity Commission (EEOC) has issued Policy Guidance on "Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991", CCH Employment Practices Guide, Vol. 2, Para. 5360 (1992). The Policy Guidance provides that it is EEOC's interpretation that compensatory damages are available for pecuniary and non-pecuniary losses caused by discriminatory acts. Non-pecuniary losses include damages for pain and suffering, inconvenience and loss of enjoyment in life. "Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self esteem, excessive fatigue, or a nervous breakdown." "Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991", *supra*, p. 6225. While "there are no definitive rules governing the amounts to be awarded," the severity of the harm and the time that the harm has been suffered are factors to be considered. "Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991", *supra*, pp. 6226, 6227.

In Rhode Island, the determination of the appropriate amount of compensatory damages should not be influenced by sympathy for the injured party nor should the damages be punitive. Soares v. Ann & Hope of R.I., Inc., 637 A.2d 339 (1994). The decision makers should determine the damages for pain and suffering by the exercise of judgment, the application of experience in the affairs of life and the knowledge of social and economic matters. Kelaghan v. Roberts, 433 A.2d 226 (1981). There is no particular formula to calculate damages for pain and suffering, although lawyers are free to argue that the damages should be calculated at a certain amount per day. Worsley v. Corcelli, 119 R.I. 260, 377 A.2d 215 (1977).

Damages for the pain and suffering which result from discrimination fall within a wide range. *See, e.g., Quiles-Quiles v. Henderson*, 439 F.3d 1 (1st Cir. 2006) (reinstating a jury award of \$950,000 [reduced to the statutory cap of \$300,000] when there was evidence that the plaintiff was subjected to such constant ridicule about his mental impairment that it required him to be hospitalized and eventually to leave the workforce); O'Rourke v. City of Providence, 235 F.3d 713 (1st Cir. 2001) (reinstating a jury award of \$275,000 where the plaintiff had endured years of sexual harassment causing insomnia, severe weight gain, depression, panic attacks and likely permanent disability); White v. New Hampshire Dept. of Corrections, 221 F.3d 254, 262 (1st Cir. 2000) (affirming district court jury's award of \$45,000 in damages to plaintiff who was sexually harassed on the job, retaliated against after filing a complaint and constructively discharged); Howard v. Burns Bros., 149 F.3d 835, 843 (8th Cir. 1998) (upheld the propriety of an award of \$1,000 compensatory damages to a plaintiff who proved that a co-worker "brushed" her on several occasions and made sexual remarks; the plaintiff and her husband had testified as to her emotional distress).

In the circumstances of the instant case, the complainant has requested \$15,000 in compensatory damages for pain and suffering. The Commission finds that \$15,000 is a reasonable amount in compensation for the complainant's pain and suffering. The complainant testified that Mr. Antonelli's harassment while she was employed often caused her nausea, vomiting, crying, headaches and sleeplessness. Trans. p.p. 20, 21, 23, 31, 32, 43. The numerous phone messages left by Mr. Antonelli over the July 4th weekend in 2004 left the complainant fearful, crying and a "basket case". (Trans. p.p. 43, 51, 52.) The complainant was forced to terminate her employment

and continued to be upset for several months thereafter. (Trans. p.p. 51, 60.) The Commission was persuaded by the complainant's testimony and finds that \$15,000 adequately compensates the complainant for the emotional distress, fear, pain, and suffering caused by respondents' discrimination.

EQUITABLE RELIEF

The Commission orders equitable relief in order to remedy discrimination and to prevent discrimination in the future. See R.I.G.L. Section 28-5-24(a) which provides that, upon finding a violation of the FEPA, the Commission shall issue an Order requiring the respondents "to take any further affirmative or other action that will effectuate the purposes of this chapter". The respondents must post the Commission anti-discrimination poster, develop a system for addressing employee complaints of harassment and receive training on harassment and discrimination.

ORDER

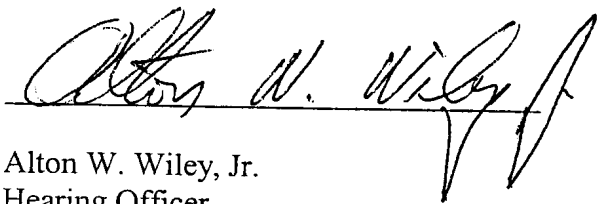
- I. Violations of R.I.G.L. Section 28-5-7 having been found, the Commission hereby orders:
 - A. That, within forty-five days of the date of this Order, the respondents develop a Sexual Harassment Policy/Complaint procedure that provides employees an internal mechanism to have their complaints of discrimination addressed. The policy, at a minimum, must meet the standards set forth in Title 28, Chapter 51 of the General Laws of Rhode Island and must identify at least two (2) individuals who can receive and address complaints;
 - B. That the respondents post a copy of the Commission poster and their Sexual Harassment Policy/Complaint Procedure prominently in their facilities within fifty (50) days of the date of this Decision and Order;
 - C. That the respondents provide training to Mr. Antonelli and all supervisors and managers employed by Midstate Tire and Service, Inc./Antonelli Holding Company on state and federal laws which prohibit harassment, on the respondents' sexual harassment policy and on how to address complaints of harassment and provide a certification to the Commission within sixty (60) days of the date of this Order that the training has been completed, the name of the trainer, the date of the training, the names of the persons trained

and a copy of the syllabus of the training;

- D. That, within forty-five days of the date of this Order, the respondents pay the complainant back pay of \$86,771.00 together with interest at a rate of 12% per year for the time period of July 6, 2004 to the date of payment;
 - E. That the respondents provide to the Commission within thirty (30) days of the date of this Order evidence as to the cost of the health insurance that would have been provided to the complainant from July 1, 2004 to November 9, 2007;
 - F. That the parties notify the Commission within ten (10) days after evidence is submitted pursuant to Paragraph I (D) above whether the party requests a hearing on the issue of the cost of the health insurance for the years in question;
 - G. That the respondents pay the complainant \$29,264.88 as reimbursement for medical expenses incurred minus 20% of the yearly cost of the health insurance plan, together with interest on the balance at the rate of 12% per year from July 6, 2004 to the date of payment,
 - 1. the yearly cost of the health insurance plan to be determined after the opportunity for submission of evidence by the respondents and possible hearing on the issue;
 - 2. the reimbursement to be paid within forty-five days of the Commission's determination of the amount due together with interest at the rate of 12% per year from July 6, 2004 until the date of payment;
 - H. That the respondents pay the complainant \$15,000 as compensatory damages for pain and suffering together with interest at a rate of 12% per year from the date of this Order until paid;
 - I. That the respondents submit cancelled checks indicating remuneration of the complainant in accordance with the Paragraphs I (D and H) within forty-five (45) days of the date of this Decision and Order and submit a cancelled check indicating remuneration of the complainant in accordance with Paragraph I (G) within forty-five (45) days of the determination of the amount due.
- II. The attorney for the complainant may file a Motion and Memorandum For Award Of Attorney's Fees no later than forty-five days from the date of this Order, with a copy

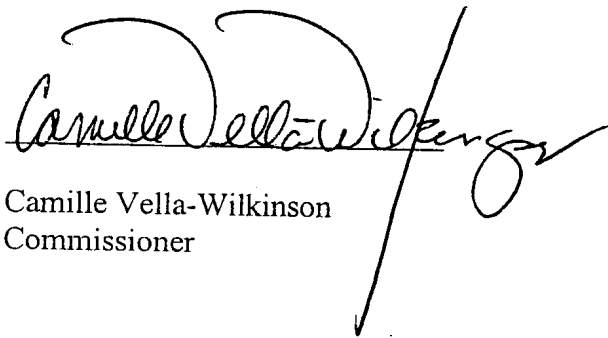
mailed to the respondents. The respondents may file a Memorandum In Opposition no later than forty-five days after the complainant's attorney files his Motion and Memorandum with the Commission. The parties' attention is directed to Morro v. Rhode Island Department of Corrections, Commission File No. 81 EAG 104-22/02 (Decision on Attorney's Fees 1982) for factors to be generally considered in an award of attorney's fees under the FEPA. Either party may elect a hearing on the issues involved in the determination of an appropriate award of attorney's fees by requesting it in the memorandum.

Entered this 5 day of November, 2008.

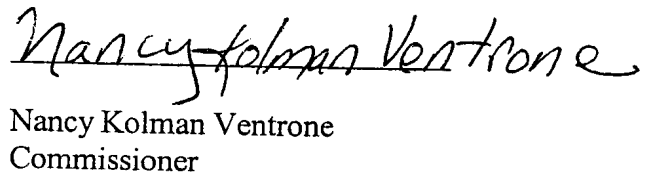


Alton W. Wiley, Jr.
Hearing Officer

I have read the record and concur in the judgment.



Camille Vella-Wilkinson
Commissioner



Nancy Kolman Ventrone
Commissioner