

4/2/12

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 05 ESH 200

EEOC NO. 16JA500124

Luisa S. Oliveira
Complainant

v.

DECISION ON COMPLAINANT'S MOTION FOR FURTHER FINDINGS AND IMPOSITION OF PUNITIVE DAMAGES; ON THE MOTION OF MONICA HORAN TO WITHDRAW; ON THE NOTICE OF WITHDRAWAL OF JOSEPH KEOUGH; AND ON COMPLAINANT'S MOTION FOR ASSESSMENT OF ATTORNEY'S FEES

Furniture Mattress Warehouse, Inc., Carlos Montt,
Jorge Montt, Erwin Vasquez and Rene Garcia
Respondents

INTRODUCTION

On April 6, 2005, Luisa S. Oliveira (hereafter referred to as Complainant) filed a charge against Furniture Mattress Warehouse, Inc., Mukesh Tandon, Carlos Montt, Jorge Montt, Erwin Vasquez and Rene Garcia with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission). Probable cause to believe the allegations of the charge was found, a Complaint and Notice of Hearing issued and hearings on the Complaint were held before Commissioner Camille Vella-Wilkinson.

On December 28, 2011, after all the hearings had concluded, the Commission issued a Decision and Order. The Commission found that the complainant did not prove the allegations of the Complaint with respect to Mukesh Tandon and dismissed the complaint against him. The Commission found that Furniture Mattress Warehouse, Inc., Carlos Montt, Jorge Montt, Erwin Vasquez and Rene Garcia (hereafter referred to as the Respondents) violated the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA) with respect to the allegations of the complaint. The Commission issued an Order.

On or about January 30, 2012, the Complainant filed a Motion for Further Findings and Imposition of Punitive Damages. On February 7, 2012, the Complainant filed a Motion for Assessment of Attorney Fees.

On January 11, 2012, attorney Joseph Keough, Jr., attorney for Respondent Furniture

Mattress Warehouse, filed a Withdrawal of Appearance. On February 7, 2012, the Complainant filed a Conditional Objection to Attorney Joseph Keough's Motion to Withdraw. On March 8, 2012, Attorney Keough filed a response to the Conditional Objection. On March 27, 2012, the Complainant filed a response to Attorney Keough's response.

On January 26, 2012, Monica Horan, attorney for Respondent Carlos Montt, filed a Motion to Withdraw. On February 7, 2012, Complainant filed a Conditional Objection to the Motion. On March 19, 2012, Attorney Horan filed a response to the Conditional Objection.

DISCUSSION

The Commission's Order entered on December 28, 2011, provided as follows with respect to the Respondents:

II. Violations of R.I.G.L. Section 28-5-7 having been found with respect to the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt, the Commission hereby orders:

1. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt cease and desist from all unlawful employment practices under R.I.G.L. Section 28-5-7;
2. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt are jointly and severally liable to pay the complainant \$7,185.69 together with statutory annual interest of 12% from the date the cause of action accrued, February 2004, until paid, to compensate for her lost salary and commissions in the fall of 2004 while she was on sick leave;
3. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt are jointly and severally liable to pay the complainant the amounts charged for medical treatment and counseling for PTSD and stress reaction, together with statutory annual interest of 12% from the date the cause of action accrued, February 2004, until paid; the amounts to be determined at a later Commission hearing if the parties cannot stipulate on the amounts on or before 45 days from the date of this Order;
4. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt are jointly and severally liable to pay the complainant \$12,000 as compensatory damages for pain and suffering together with statutory annual interest of 12% from the date the cause of action accrued, February 2004, until paid;

5. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt submit proof of payment to the complainant in accordance with Paragraph II (2 and 4) within 75 days of the date of this Decision and Order;
 6. That the respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt submit proof of payment to the complainant in accordance with Paragraph II (3) within 30 days of the date that the amount is determined or agreed upon;
 7. That, within 45 days of the date of this Order, the respondent employer 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;
 8. That the respondent employer prominently post a copy of the Commission poster and its Sexual Harassment Policy/Complaint Procedure prominently in its Rhode Island facilities and provide a certification to the Commission that the Policy/Complaint Procedure and poster have been posted together with a copy of the Policy/Complaint Procedure within 50 days of the date of this Decision and Order;
 9. That Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt receive training on state and federal anti-discrimination laws and provide a certification to the Commission within six months of the date of this Order that the training has been completed, the name of the trainer and a copy of the syllabus;
 10. That the respondent employer train all of its managers that work in Rhode Island on state and federal anti-discrimination laws and provide a certification to the Commission within six months of the date of this Order that the training has been completed, a list of the people who were trained, the name of the trainer and a copy of the syllabus.
- III. The attorney for the complainant may file with the Commission a Motion and Memorandum for Award of Attorney's Fees no later than 45 days from the date of this Order. The respondent employer, Rene Garcia, Erwin Vasquez, Jorge Montt and Carlos Montt may file a Memorandum In Opposition no later than 45 days after receipt of the complainant's Motion. The parties' attention is directed to Banyaniye v. Mi Sueno, Inc. and Jesus M. Titin, Commission File

No. 07 PPD 310 (Decision on Motion for Attorney's Fees 2009) for factors to be generally considered in an award of attorney's fees under the FEPA. If any party elects a hearing on the issues involved in the determination of an appropriate award of attorney's fees, the party should request it in the memorandum.

Decision and Order, pp. 21-22.

MOTION FOR FURTHER FINDINGS AND IMPOSITION OF PUNITIVE DAMAGES

The Complainant asks that the Commission assess punitive damages against the Respondents. The Commission has no authority to assess such damages. The Commission's authority to award relief, set forth in R.I.G.L. Section 28-5-24, does not include the imposition of punitive damages. R.I.G.L. Section 28-5-24 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.

(2) Where an unlawful employment practice has been established under § 28-5-7.3, the commission need not award hiring, reinstatement or upgrading with back pay if the respondent establishes by a preponderance of the evidence that it would have taken the same action in the absence of any unlawful motivating factor.

(3) In appropriate circumstances attorney's fees, including expert fees and other litigation expenses, may be granted to the attorney for the plaintiff if he or she prevails. Upon the submission of reports of compliance the commission, if satisfied with the reports, may issue its finding that the respondent has ceased to engage in unlawful employment practices.

(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.

The provision of the FEPA relating to punitive damages, R.I.G.L. Section 28-5-29.1, is a separate section and does not give the Commission authority to award punitive damages. It provides that:

In addition to the remedies provided in § 28-5-24, where the challenged conduct is shown to be motivated by malice or ill will or when the action involves reckless or callous indifference to the statutorily protected rights of others, **the court** may award punitive damages; provided, that punitive damages shall not be available against the state or its political subdivisions.

[Emphasis added.]

The FEPA is clear that only a court has the authority to award punitive damages. Therefore, the Commission dismisses Complainant's Motion that the Commission award punitive damages because the Commission lacks jurisdiction to consider it.

MOTIONS TO WITHDRAW

The attorney representing Furniture Mattress Warehouse, Inc. has filed a Notice of Withdrawal. The attorney representing Carlos Montt has filed a Motion to Withdraw. The complainant has filed Conditional Objections.

Commission Rules and Regulations do not cover the topic of the withdrawal of an appearance of an attorney. The Commission often uses the Superior Court Rules as a guideline for its procedures when there is no specific agency rule or practice. The Rhode Island Superior Court Rules of Practices Rule 1.5(a) provides as follows:

(a) Withdrawal of Attorney. No attorney appearing in any case will be allowed to withdraw without the consent of the court. Except where another attorney enters an appearance at the time of such withdrawal, all withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of his or her client, or the client files his or her address, and in either situation the address which is filed shall be the official address to which notices may be sent.

Factors to be assessed when determining whether to grant a withdrawal include whether continued representation would be a significant financial burden to the attorney, whether the request was presented at a critical point in the litigation to the detriment of the court or the client, whether counsel provided the client with sufficient advance notice, whether the attorney made reasonable efforts to protect the client's interest, whether there were matters pending when the attorney sought to withdraw and whether the client or opposing counsel objected. King v. NAIAD Inflatables of Newport, Inc., 11 A.3d 64, 67 (2010) (Superior Court erred in denying the attorney's motion to withdraw).

The Commission will schedule a hearing on the issue of whether to authorize the withdrawals.

MOTION FOR ASSESSMENT OF ATTORNEY FEES

The Commission will determine whether the attorneys for Furniture Mattress Warehouse, Inc. and Carlos Montt will be authorized to withdraw before it decides Complainant's Motion for Assessment of Attorney Fees.

ORDER

The Complainant's Motion for Further Finding and Imposition of Punitive Damages is dismissed by the Commission for lack of jurisdiction to determine it.

The Commission will hold a hearing to determine whether to authorize the withdrawal of the attorneys for Carlos Montt and Furniture Mattress Warehouse, Inc.

Entered this 2ND day of APRIL, 2012.



Camille Vella-Wilkinson
Hearing Officer



Rochelle Bates Lee

Rochelle Bates Lee
Commissioner



John B. Suss

Commissioner