

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and Opportunities ex rel. Erica Vazquez	:	Commission on Human Rights and Opportunities
v.	:	
	:	CHRO No. 1050064
	:	HUD No. 01-10-0052-8
James Conti, aka Jim Conti individually And d/b/a/ Sun Management Company	:	
	:	<b>date</b>

**FINAL DECISION – HEARING IN DAMAGES  
AFTER THE ENTRY OF AN ORDER OF DEFAULT**

***Preliminary statement***

The complainant, Erica Vazquez, filed an affidavit of illegal discriminatory conduct filed with the commission on November 3, 2009 and amended on February 16, 2010. In her affidavit, she alleged that the respondent, James Conti aka Jim Conti individually and d/b/a Sun Management Company, violated Title VIII, 42 USC §§ 1981 and 1982, and General Statutes §§ 45a-58 (a) and 46a-64c (a). According to the affidavit, the respondent denied Ms. Vazquez an opportunity to rent and subjected her to pejorative statements due to her race, Hispanic; sex, female; and familial status, single mother.

On November 29, 2010, pursuant to General Statutes § 46a-83 and § 46a-54-46a of the Regulations of Connecticut State Agencies, the commission's executive director entered an order of default against the respondent for failing to file an answer under oath.

On March 31, 2011, a hearing was held to determine the relief necessary to eliminate the discriminatory practice and make the complainant whole. The hearing was continued to June 3, 2011. The complainant and the commission appeared to prosecute the action. The respondent **did/did not appear**. The record closed on , the due date for the filing of post-hearing briefs.

### ***Findings of fact*** (FF)

References to testimony in the transcript are designated as "Tr." followed by the page number. The commission's exhibits are designed by "CHRO Ex." followed by the exhibit number. Based upon the pleadings, exhibits and testimony, the following facts relevant to this decision are found:

1. All procedural, notice and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the complaint and render a decision. (Tr. Commission's Exs )
2. The complainant is a member of one or more protected classes, being

## ***Analysis***

I

The respondent must file an answer under oath to the affidavit. General Statutes § 46a-83 (a); Regs., Conn. State Agencies § 46a-54-43a. If the respondent fails to file the answer, the executive director or his designee is authorized to enter an order of default. General Statutes § 46a-83 (i); Regs., Conn. State Agencies § 46a-54-46a. Upon the entry of the order of default, the presiding human rights referee shall “enter, after notice and hearing, an order eliminating the discriminatory practice complained of and making the complainant whole.” § 46a-83 (i).

### § 46a-60

With respect to her claim that the respondent violated § 46a-60 (a), making the complainant whole includes awards for back pay, less unemployment compensation and interim earnings that the complainant received or could have earned through reasonable diligence; reinstatement; prospective monetary relief (front pay); and prejudgment and postjudgment compounded interest on the awards of front and back pay. General Statutes § 46a-86 (b); *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights & Opportunities*, 237 Conn. 209, 228 – 29 (1996); *Silhouette Optical Limited v. Commission on Human Rights & Opportunities*, 10 Conn. L. Rptr. No. 19, 603 – 604 (February 28, 1994). In addition, the presiding human rights referee shall order the respondent to pay to the commission the amount of

unemployment compensation paid to the complainant, which the commission shall then transfer to the appropriate state agency. General Statutes § 46a-86 (b). Emotional distress damages and attorney fees, however, are not available for violations of § 46a-60. *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 97 (1995).

The deduction for interim earnings and amounts that the complainant could have earned through reasonable diligence is often referred to as mitigation of damages. In determining the amount of back pay damages, the complainant “has a duty to make reasonable efforts to mitigate damages. . . . What constitutes a reasonable effort under the circumstances of a particular case is a question for the trier. . . . Furthermore, we have concluded that the breaching party [respondent] bears the burden of proving that the nonbreaching party [complainant] has failed to mitigate damages.” (Citations omitted; internal quotation marks omitted.) *Ann Howard’s Apricots Restaurant, Inc. v. Commission on Human Rights and Opportunities*, 237 Conn. 209, 229 (1996).

## II

The complainant also alleged that the respondent violated § 46a-58 (a) when it terminated her employment because of her age. Section 46a-58 (a) states: “It shall be a

discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability.” The complainant alleged that the specific law of the United States that the respondent violated is the ADEA when it terminated her employment on account of her age. Although age discrimination is within the purview of § 46a-60, it is not included within the protections of § 46a-58. “[T]here are some forms of discrimination that are prohibited under § 46a-60, such as discrimination due to age or marital status, that are not within the purview of § 46a-58 (a) and that, therefore, § 46a-58 would be inapplicable.” *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 357 (1996). Because age is not enumerated as a protected basis under § 46a-58 (a), this claim must be dismissed. *Id*; *Poeta-Tisi v. Griffin Hospital*, 2006 WL 1494078, 8 (Conn. Super.) **familial status not enumerated; make sure 46a-58 is up to date**

**OR**

**Race and sex enumerated in 46a-58**

The complainant also alleged that the respondent violated § 46a-58 (a) when it terminated her employment because of her age. Section 46a-58 (a) states: “It shall be a

discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability.” The complainant alleged that the specific law of the United States that the respondent violated is the \_\_\_\_\_ when it \_\_\_\_\_ her employment because of \_\_\_\_\_ .

Because the complainant’s Title VII allegation<sup>1</sup> is based on claims that the respondent terminated him on the basis of his religion and sex and because religion and sex are enumerated in § 46a-58 (a) as protected bases, the respondent’s violation of § 46a-58 (a) entitles the complainant and the commission to the remedies available under General Statutes § 46a-86 (c). *Commission on Human Rights and Opportunities v. Board of Education of the Town of Cheshire*, 270 Conn. 665, 727 (2004). Remedies available under § 46a-86 (c) include awards for reasonable attorney’s fees, costs and emotional distress. *Commission on Human Rights & Opportunities ex rel. Peoples v Belinsky*, 1988 WL 492460, 5 (Conn. Super.). While emotional distress damages are not available for a § 46a-58 (a) claim arising from § 46a-60; *Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 346 (1996); in this case, the complainant’s § 46a-58 (a) claim is not in conjunction with his § 46a-60 claim but rather arises from the respondent’s unlawful employment practice under Title VII.

For several reasons, it is apparent that emotional distress damages are available for a violation of § 46a-58 (a) arising from an unlawful employment practice under Title VII. First, General Statutes § 1-2z provides that: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or workable results, extratextual evidence of the meaning of the statute shall not be considered.” Section 46a-58 (a) plainly and unambiguously makes a “deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States” a “discriminatory practice in violation of this section . . . .” In this case, the respondent deprived the complainant of his rights under Title VII to a work environment free of sex discrimination. Nor would it be an unworkable result for a violation of federal laws to be a violation of this section; rather, such a result would be consistent with the historic remedial purposes of this chapter.

Second, in *Trimachi v Connecticut Workers Compensation Committee*, the court determined that “General Statutes 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws.” 2000 Conn. Super. LEXIS 1548, 21.

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<sup>1</sup> Title VII provides in relevant part: “It shall be an unlawful employment practice for an employer . . . to discharge any individual . . . because of such individual’s race, color, religion, sex, or national origin . . . .” 42 U.S.C. § 2000e-2 (a) (1).

Third, the Connecticut Supreme Court concluded that, under § 46a-58 (a), the commission could prosecute violations of General Statutes §§ 10-15c and 10-4b. The court further determined that the remedies available under General Statutes §46a-86 (c) apply to violations of § 46a-58 (a). *Commission on Human Rights & Opportunities v Board of Education of the Town of Cheshire*, supra, 270 Conn. 665. The court's rationale in finding that violations of state education statutes are within the purview of § 46a-58 (a) is equally applicable in finding that violations of federal discrimination law are also within the purview of § 46a-58 (a).

Therefore, the respondent's deprivation of the complainant's rights under Title VII to a work environment free of sex discrimination constitutes a violation of § 46a-58 (a) and enables the complainant and commission to seek the remedies available to them under § 46a-86 (c).

The criteria to be considered for awarding an emotional distress award are: (1) most importantly, "the subjective internal emotional reaction of the complainant to the discriminatory experience which he has undergone . . . [2] whether the discrimination occurred in front of other people; [3] the degree of offensiveness of the discrimination and [4] the impact on the complainant." (Citations omitted; internal quotation marks omitted.) *Commission on Human Rights & Opportunities ex rel. Harrison vs. Greco*, CHRO case no. 7930433, Memorandum of final decision, p. 15, June 3, 1985; *Peoples v. Belinsky*, supra, 1988 WL 492460, 6.

The complainant need not present medical testimony to establish emotional harm. *Commission on Human Rights & Opportunities ex rel. Malisa McNeal-Morris v. Czeslaw Gnat*, CHRO Case No. 9950108, p. 7 (January 4, 2000); *Thomas v. Mills*, supra, CHRO Case No. 951048, pp. 6-7. A complainant's own testimony may suffice. *McNeal-Morris v. Gnat*, supra, CHRO Case No. 9950108, p.7.

The award for emotional distress damages must be limited to compensatory, rather than punitive, amounts. *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986). "That such compensatory damages may be incapable of precise mathematical computation and necessarily uncertain does not, however, prevent them from being awarded. That damages may be difficult to assess is, in itself, insufficient reason for refusing to award them once the right to damages has been established." (Internal quotation marks omitted.) *Commission on Human Rights & Opportunities ex rel. Cohen v. Menillo*, CHRO Case No. 9420047, pp. 12-13 (June 21, 1995)(citing *Griffin v. Nationwide Moving & Storage Co.*, 187 Conn. 405, 420 (1982); *Commission on Human Rights & Opportunities ex rel. Lynne Thomas v. Samuel Mills*, CHRO Case No. 9510408, p. 8 (August 5, 1998)(also citing *Griffin v. Nationwide Moving & Storage Co.*, 187 Conn. 405, 420 (1982).

Awards for emotional distress have ranged from \$1,500 to \$75,000. Thoughtful surveys and analysis of these awards can be found in *McNeal-Morris v. Gnat*, supra, CHRO Case No. 9950108 pp. 7-9 (January 4, 2000) and also in *Commission on Human*

Rights and Opportunities ex rel. Deborah and Raymond Aguilar v. Nancy and Ralph Frenzilli, CHRO Case No. 9850105, pp. 9-15 (January 14, 2000).

### ***Conclusions of law***

As a result of the entry of a default order against the respondents for their failure to file an answer under oath, a hearing in damages was held to determine the relief necessary to eliminate the discriminatory practice and to make the complainant whole. The commission and the complainant presented sufficient credible and detailed evidence from which damages can be awarded for

Factors support and mitigating against the complainant's claim for emotional distress

The commission and the complainant, however, did not provide sufficient credible evidence or a legal basis to support the complainant's claims for .

### **Order**

Based on the foregoing, it is hereby Ordered:

1. The respondent is ordered to pay the complainant \$ \_\_\_\_\_ in back pay. Back pay is calculated at the complainant's average compensation rate of \$ \_\_\_\_\_ per week for the date of his termination, \_\_\_\_\_, to the date of judgment ( \_\_\_\_\_ ) for a total of \$ \_\_\_\_\_ less the complainant's mitigation totaling \$ \_\_\_\_\_ (unemployment compensation benefits of \_\_\_\_\_, FF \_\_\_\_\_; workers' compensation benefits of \$ \_\_\_\_\_, FF \_\_\_\_\_; and compensation from \_\_\_\_\_ of \$ \_\_\_\_\_, FF \_\_\_\_\_).
2. The respondent shall pay the complainant \$ \_\_\_\_\_ in prejudgment interest awarded on the back pay award of \$ \_\_\_\_\_, calculated at the rate of 10 percent per annum compounded annually.
3. The respondent shall pay the complainant \$10,000.00 in emotional distress damages.
4. The respondent shall pay the complainant front pay in the amount of \$ \_\_\_\_\_, representing his average compensation of \$ \_\_\_\_\_ for \_\_\_\_\_ weeks. As \_\_\_\_\_, an order of reinstatement is not a viable option. The award is reasonable as to the amount of time for reasons including:
5. The respondent shall pay the complainant postjudgment interest on the back pay and front pay awards at the rate of 10 percent per annum, compounded annually.

6. The respondent shall pay the complainant \$     in reimbursement of medical expenses incurred by the complainant that would have been paid through the respondent's medical insurance program.
7. The respondent shall pay to the commission the sum of \$     in reimbursement for unemployment compensation benefits paid to the complainant by the State of Connecticut. The commission shall then transfer such amount to the appropriate state agency.
8. Pursuant to General Statutes § 46a-60 (a) (4), the respondent shall not engage in or allow any of its employees to engage in any conduct against the complainant.
9. Should prospective employers seeking references concerning the complainant ever contact it, the respondent shall provide only the dates of said employment, the last position held and rate(s) of pay. In the event additional information is requested in connection with any inquiry regarding the complainant, the respondent shall require written authorization from the complainant before such information is provided, unless required by law to provide such information.
10. The respondent shall cease and desist from all acts of discrimination prohibited under federal and state law and shall provide a nondiscriminatory work environment pursuant to federal and state law.

11. Pursuant to General Statutes § 46a-54 (13), the respondent shall post the commission's posters concerning equal employment in conspicuous locations visible to all employees and applicants for employment.

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Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

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