

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**  
69 West Washington Street, Suite 3040  
Chicago, Illinois 60602

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Deborah L. DAMKO, Complainant	)	
	)	
	)	Case No. 2009E029
v.	)	
	)	
MEDALLION PRESS, INC, Respondent	)	Entered: July 10, 2014
	)	

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**ORDER**

On April 17, 2009, Complainant Deborah L. Damko (“Damko”) brought this action against her former employer, Respondent Medallion Press, Inc. (“MPI”), for alleged violations of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). *See* Cook County Code of Ordinances (“County Code”), § 42-35(b)(1). Damko claims that MPI unlawfully terminated her from her position based on her sex and retaliated against her for filing a discrimination claim. Having completed its investigation into the charges, the Cook County Commission on Human Rights (“Commission”) now dismisses Damko’s complaint for a lack of substantial evidence.

**Background**

MPI is in the business of marketing and publishing non-fiction and genre fiction books. Compl. ¶ 7. It is a Florida corporation with its principal place of business in Florida. *Id.* at ¶ 5. During the time period relevant to Damko’s complaint, however, MPI maintained an office in St. Charles, Illinois.<sup>1</sup> Cp. Interview (June 27, 2013). This Illinois office provided MPI with access to its Cook County-based book distributor, Independent Publishers Group (“IPG”).<sup>2</sup> *Id.* at ¶ 11.

On or about January 17, 2005, Damko, a female, was hired by MPI as a Director of Sales. Compl. ¶ 8. By November 9, 2007, Damko had been promoted to Director of Sales and Marketing. *Id.* at ¶ 10. In this capacity, her duties included overseeing the distribution effort of MPI products by IPG. *Id.* at ¶ 11.

Damko claims that most of her employment duties for MPI revolved around working with IPG in Cook County, Illinois. In addition, she claims to have attended book fairs, staff meetings, staff lunches, and multiple trade shows in Cook County on behalf of MPI. Cp. Interview (June 27, 2013); Damko Aff. ¶ 12-15.

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<sup>1</sup> St. Charles is a city located in Kane County, Illinois.

<sup>2</sup> *See* Independent Publishers Group, “About Us,” online at <http://www.ipgbook.com/> (visited June 25, 2014).

In addition to working with IPG, MPI gave Damko the duty of managing and overseeing a male co-worker, Paul Ohlson (“Ohlson”). Compl. ¶ 15. As part of these responsibilities, on October 2, 2008, Damko sent an e-mail to Ohlson informing him to stop assigning work to an administrative assistant who was not under his supervision. *Id.* at ¶ 17.

Damko claims that after sending the e-mail, Ohlson became very upset. She alleges that Ohlson came into her office screaming, gesturing, indicating his interest to engage in physical contact with her, and thereby frightening her. *Id.* at ¶ 18-21. Afterwards, Damko received an e-mail from Adam Mock (“Mock”), supervisor at MPI, claiming that her October 2, 2008 e-mail to Ohlson “was ‘harsh.’” *Id.* at ¶ 23.

Over the course of the following week, neither side took any action in regards to Ohlson, and business appeared to carry on as usual. *Id.* at ¶ 24-25. On October 9, 2008, Damko left for a business trip to Germany. *Id.* at ¶ 26. As Damko recalls it, she returned from Germany on October 20, 2008, and called Mock the next morning to inform him that she would be working from home. According to Damko, Mock terminated her employment with MPI during that telephone conversation. *Id.* at ¶ 27-28; Cp Interview (June 27, 2013). Damko did not actually identify her termination as sex discrimination until at least November 11, 2008. Compl. ¶ 37. However, she now theorizes that Mock terminated her because she is a woman in order to promote a man, specifically Ohlson. *Id.* at ¶¶ 30-31. Ohlson did receive a promotion after Damko’s termination, though not to Damko’s former position, and was given some of Damko’s previous duties. *Id.*

Mock, for his part, claims that Damko’s dismissal was based solely on her employment performance and not her gender. Mock Interview (March 3, 2010). Mock stated in an interview with Commission staff that Damko had a history of an aggressive attitude and boasting of negative communications with employees, clients, and vendors. *Id.* Mock also asserted that Damko had poor supervisory skills. Questionnaire Resp. No. 16. Mock alleges that the reason for Damko’s termination stems from a final inappropriate act while in Germany. *Id.* While on this trip, per Mock, Damko misrepresented MPI’s views on IPG by claiming that MPI was “not impressed with the services IPG provided” and “that [IPG] was a boys’ club.” *Id.* Damko’s supposed actions required Mock to send an email to the President of IPG, addressing Damko’s comments and attempting to repair the relationship. *Id.*

In addition to disagreeing about why Damko was terminated, the parties disagree about what happened thereafter. Damko states that after she was terminated, Mock informed her that she would be receiving severance pay consisting of three months’ salary and health insurance through January 2009 from MPI. Compl. ¶ 36. Mock denies these specific figures, but acknowledged that MPI offered Damko a severance package conditioned on a release of claims, which Damko denied. Mock Interview (March 3, 2010); Questionnaire Resp. No. 14. In either case, both parties agree that no severance agreement was signed between Damko and MPI. Cp. Interview (June 27, 2013); Questionnaire Resp. No. 14.

## Discussion

The Human Rights Ordinance prohibits an employer from “directly or indirectly discriminat[ing] against any individual in hiring . . . discharge . . . or the term, privilege, or condition of employment on the basis of unlawful discrimination.” County Code, § 42-35(b)(1). Unlawful discrimination includes discrimination on the basis of an individual’s sex. *See id.* at § 42-31. The Human Rights Ordinance further prohibits any person from “retaliate[ing] against any person because that person in good faith has opposed that which the person reasonably believed to be unlawful discrimination, sexual harassment, or other violation of this article[.]” *Id.* at § 42-41(a).

### I. Jurisdiction

During the course of this investigation, MPI filed a motion to dismiss for lack of jurisdiction. The Commission denied this motion, reasoning that prior to an investigation, disputed facts rendered favorable resolution of the motion for MPI premature. *See Damko v. Medallion Press, Inc.*, 2009E029 (CCHRC Sept. 11, 2012). Having completed its investigation, the Commission reaffirms its prior decision on the merits.

The jurisdiction of this Commission to remedy unlawful discrimination in employment extends “to employment that is or would be in whole or *in part* in Cook County.” County Code, § 42-35(a)(1) (emphasis supplied). The protection of the Human Rights Ordinance to be free from unlawful discrimination and retaliation does not extend to employment taking place wholly outside of Cook County. The Commission’s investigation found that Damko’s employment duties caused her to be sufficiently involved in Cook County so as to be considered employed within the County for jurisdictional purposes. *See* Compl. ¶ 12. That MPI is a Florida-based corporation and that its Illinois office is in Kane County is not to the contrary.

The plain language of the Human Rights Ordinance is that the jurisdiction of the Commission will attach when “part” of the complainant’s employment is in Cook County. The relevant inquiry then is how much is a “part”? Here the Commission takes its cue from the Illinois Supreme Court, which in an analogous context found that a railroad company with no trackage in Illinois whatsoever was nonetheless subject the jurisdiction of the state courts because a superintendent of the railroad spent 60-80 percent of his time working in Illinois. *St. Louis-San Francisco Ry. Co. v. Gitchoff*, 68 Ill.2d 38,45 (1977) (noting that the percentage of time key employees spent in Illinois “goes beyond mere solicitation and constitutes sufficient substantial business.”); *see also Bell v. Don Prudhomme Racing, Inc.*, 405 Ill. App.3d 223, 230 (4th Dist. 2010) (to establish jurisdiction courts look for “whether defendants send agents” into the contested area, as well as, “the extent to which defendants send agents” into the contested area.).

Similarly, here, Damko, per her employment requirements, conducted extensive business for MPI with IPG, a distributor located in Cook County. Compl. ¶ 6. Damko took business trips

to Cook County as an agent, and on behalf, of MPI in order to further MPI's business interests. *Id.* at ¶ 11. The Commission's investigation found that Damko corresponded numerous times with IPG, as well as traveled into Cook County for book fairs, staff meetings, staff lunches, and multiple trade shows. Damko Aff. ¶ 12-15. The best evidence available to the Commission supports Damko's assertion that she spent 75 percent of her time with MPI working with IPG. Cp. Interview (June 27, 2013). By conducting a substantial portion of its business in Cook County through Damko, MPI made Damko's employment subject to the jurisdiction of this Commission.

## II. Sex Discrimination

Damko alleges that MPI terminated her because she is a woman, and suggests that MPI wanted to promote Ohlson, a man, into her position. Compl. ¶ 31. In its defense, MPI states that the reasons for Damko's dismissal turned on her poor supervisory skills and poor attitude with other staff members and vendors. Questionnaire Resp. No. 16. At the time of the charges, MPI further states that a woman succeeded Damko as Director of Sales and Marketing. *Id.*

In order to advance her claim, Damko must establish a *prima facie* case of employment discrimination, including: (1) that she is a member of a protected class under the Human Rights Ordinance, (2) that she suffered an adverse employment action, (3) that she met her employer's legitimate job expectations, and (4) that individuals who are similarly situated, yet not members of the same protected class, were treated more favorably. See *McCarroll v. Mulligan Management*, 2011E002, \*5 (CCHRC Jan. 8, 2014); *Grigsby v. Office of the Cook County Public Defender*, 2010E020 (CCHRC Oct. 28, 2013); *Rush v. Ford Motor Co.*, 1995E013 (CCHRC Sept. 13, 2000). These elements are distinct. The Commission cannot presume a discriminatory purpose from an adverse employment action alone. Instead, in a sex discrimination case such as this one, "the complaining party [must] *demonstrate*[] that sex . . . was a motivating factor" for the adverse employment action. *Chadwick v. WellPoint, Inc.*, 561 F.3d 38, 43-44 (1st Cir. 2009). Establishing a *prima facie* case of discrimination raises the rebuttable presumption of a violation of the Human Rights Ordinance. *Powell v. Northwestern University*, 2011E004, \*3 n.2 (CCHRC Feb. 14, 2014). The Commission, however, will dismiss such a claim if during the course of the Commission's investigation the respondent can articulate a legitimate, non-discriminatory reason for the adverse employment action and the complainant cannot point to substantial evidence that the respondent's proffered explanation is pretextual. *Id.* at \*3 n.2. An employer's actions in regards to proffered or adverse employment are not considered pretextual until a complainant can establish sufficient evidence of discriminatory intent.

As a woman, Damko is part of a category of persons protected by the Human Rights Ordinance, and her termination was undoubtedly adverse treatment. However, Damko does not have substantial evidence to demonstrate that her termination from MPI was based on her sex. The facts are disputed as to whether or not Damko met her employer's reasonable performance standards, especially with respect to the management of her co-workers.

This leaves Damko with only two pieces of evidence to support her claim of sex discrimination. The altercation she had with Ohlson on or about October 2, 2008, and the fact that Ohlson, who took on *part* of her duties after her dismissal, was indeed a male. Compl. ¶ 30. Neither is substantial evidence of sex discrimination. There is no evidence that the altercation between Damko and Ohlson was gender dependent or that Mock would have considered a similar email from a male supervisor to be “less harsh.” The Commission takes notice of the fact that Damko had the authority to discipline Ohlson for his conduct towards her, but apparently declined to do so. Questionnaire Resp. No. 25. Moreover, the Commission’s investigation shows that neither Ohlson nor any male employee of MPI was the beneficiary of Damko’s termination. It is perfectly reasonable for a subordinate to assume some of the duties of his or her boss, after the head of a department is terminated. This subordinate is in the best position to maintain continuity of service. In addition, the Director of Sales and Marketing job did not immediately pass to Ohlson, but instead was given to another female employee.<sup>3</sup> Questionnaire Resp. No. 16.

### **III. Retaliation**

Finally, Damko asserts that MPI retaliated against her by withdrawing the severance package allegedly promised to her when she filed this sex discrimination claim. In order to prevail on this retaliation claim, Damko must show (1) that she sought to exercise a right protected by the Human Rights Ordinance; (2) that she suffered adverse treatment that is reasonably likely to deter the complainant or others from engaging in protected activity and (3) that there is a causal connection between the protected activity and the adverse employment action. *See Washington v. Cook County*, 2005E065, \*4 (CCHRC Sept. 26, 2013).

There is no question that filing a complaint with this Commission is the exercise of a right protected by the Human Rights Ordinance. Damko’s claim fails, however, because MPI’s supposed withdrawal of its severance package is not the type of adverse treatment the anti-retaliation provision of the Human Rights Ordinance is intended to protect against. The Commission’s investigation finds that MPI offered Damko a severance package *on the condition that she would release all claims against MPI*. Questionnaire Resp. No. 16. The withdrawal of a conditional severance package offer when a former employee refuses to provide his or her former employer with such release does not dissuade employees from filing a claim under the Human Rights Ordinance. Instead, the employee’s refusal is better understood as a rational calculation that the human rights claim he or she is being ask to release is worth more than the

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<sup>3</sup> The Commission need not infer anything from this fact alone, but observes that the promotion of women leadership is consistent with the fact that MPI’s Chief Executive Officer is a woman. There are also at least seven women employed at the company and prominently displayed on the company’s website. *See* Medallion Media Group, “Contact,” online at <http://medallionmediagroup.com/contact/> (visited June 26, 2014). That is not to say that women employers cannot practice sex discrimination, but only to observe that the Commission cannot justify an adverse assumption of discrimination from the simple fact that a woman has been terminated from a position of authority in the workplace. *See also* Melissa A. Childs, *The Changing Face of Unions: What Women Want From Their Employers* 390-391 (2000).

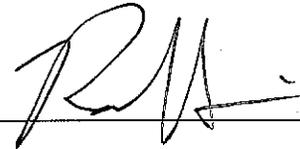
severance package his or her employer has put on offer.<sup>4</sup> Section 42-41(a) of the Human Rights Ordinance is not designed to give such employees a second bite at the apple if their initial calculations about the relative value of their claims turn out to be incorrect.

### Conclusion

For the foregoing reasons, the Commission orders that complaint 2009E029 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date this order.

July 10, 2014

By delegation:

A handwritten signature in black ink, appearing to read 'R. Hakim', is written over a horizontal line.

Ranjit Hakim  
Executive Director of the Cook County  
Commission on Human Rights

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<sup>4</sup> The Commission notes that Damko frankly admitted to Commission investigators that she never characterized her treatment at MPI as sex discrimination until after her employer threatened to revoke its severance package offer. Cp. Interview (June 27, 2013) (noting that Damko did not think about making a discrimination complaint until after MPI's correspondence regarding the severance agreement).