

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

William J. FRITTS, Complainant)	
)	
v.)	Case No. 2013E012
)	
LO VOLTAGE, INC., Respondent)	Entered: December 9, 2015
)	

**INITIAL RECOMMENDED ORDER AND OPINION ON LIABILITY AND
REMEDIES**

On May 6, 2013, Complainant William J. Fritts (“Fritts” or “Complainant”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against his former employer, Respondent Lo Voltage, Inc. (“Lo Voltage” or “Respondent”). Fritts alleges that by terminating his employment, Lo Voltage engaged in unlawful sexual orientation, race and sex discrimination in violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). *See* Cook County Code of Ordinances (“County Code”), § 42-35(b)(1).

After a preliminary investigation, the Commission found that Fritts had enough evidence to merit a hearing on his charge of sexual orientation discrimination but reached the opposite conclusion with respect to his additional allegations of race- and sex-discrimination, leading to the dismissal of those charges. Evidentiary Determination Order (Apr. 21, 2015). Respondent, proceeding through counsel, filed a timely Motion to Reconsider, which was denied. Order Denying Reconsideration (July 9, 2015). Fritts’ remaining sexual orientation discrimination charge was assigned to Administrative Law Judge Joanne Kinoy for hearing on May 12, 2015. Notice of Administrative Hearing (May 12, 2015). Both parties appeared through counsel before Judge Kinoy on June 9, 2015, who set an initial scheduling order that anticipated a discovery period leading up to a November 3, 2015 hearing on the merits.

On September 1, 2015, Ross Molho, the attorney in this matter for Respondent, presented a motion to withdraw as counsel. Molho stated that despite repeated attempts he had been unable to communicate with his client since July, 2015. He indicated that he believed that Respondent was no longer a viable business. Judge Kinoy granted Molho’s request to withdraw and ordered Lo Voltage to appear within 21 days by alternate counsel or face default proceedings. Status Order (Sept. 1, 2015). Lo Voltage failed to retain new counsel or appear through any other corporate representative. And so, on October 1, 2015, a default judgment was entered and a hearing was held to determine the nature and amount of Fritts’ damages, if any. Default Order (Oct. 1, 2015).

At this default hearing, only Fritts testified. Counsel for Complainant, thereafter, filed a memorandum entitled “Plaintiff’s Request for Damages” (hereafter “Memorandum”) on October

15, 2015, specifying that Fritts was seeking \$100,000 in emotional damages as a remedy. This matter is now ready for decision.

Facts

Fritts' unrebutted testimony is summarized as follows:¹

1. Fritts is a homosexual male. (Tr. 15.) He was hired by Respondent as an office manager with varied human resources responsibilities and general duties. (Tr. 12, 13.)
2. Fritts began work for Respondent on October 22, 2012. Throughout his short employment, he performed well and worked closely with the president of the company, Cory Jones. Fritts was not criticized by Jones regarding his performance and enjoyed the work environment. (Tr. 12-14,17.)
3. Fritts disclosed his sexual orientation to co-worker Laura Jones about two-and-half weeks after he began working at Lo Voltage. (Tr. 15.) Laura Jones is Cory Jones' ex-wife (Tr. 15.) Several days later, on November 16, 2015, Cory Jones terminated Fritts' employment. (Tr. 18.) Cory Jones told Fritts that he was "not a good fit." (Tr. 18.)
4. After the termination there was an issue regarding payment of Fritts' last paycheck which ultimately resulted in a double payment. Fritts understood that the payroll service would reimburse the amount of the over payment to Respondent and told this to Cory Jones. Respondent, however, contacted the local police department which resulted in a police visit to Fritts' residence. No charges were filed or pursued. Respondent also sent one of Fritts' former co-workers to Fritts' home to retrieve the money. Fritts felt further harassed and frightened by the aggressive collection tactics. Ultimately, on advice of counsel, Fritts wrote a check to Respondent to resolve the matter. (Tr. 21-24.)
5. Fritts contends that many of Respondent's assertions filed with this Commission in response to his charge were untrue and hurtful. Respondent's criticisms of his performance were particularly upsetting. (Tr. 26.)
6. This termination was the first time Fritts had ever experienced discrimination. (Tr. 19.) He had heard stories about other people who had suffered discrimination, but never thought it would happen to him. He said that the termination adversely affected his confidence and self-esteem. He experienced hurt and felt that he had lost control over his life. (Tr. 19-21.)
7. He talked about his emotional injuries with his father, his mother and his partner. He did not seek medical attention because he did not have medical insurance. (Tr. 19-20, 31.)

¹ All citations to the transcript of the October 1, 2015 hearing are in the format of "Tr. ___."

8. Fritts was fearful of seeking new employment and did not know if he should disclose his sexual orientation to avoid similar discrimination. He did not want to reveal to prospective employers that he had been terminated. Interviews became very stressful and Fritts felt that he lacked his earlier confidence. (Tr. 25.)
9. On the day he was terminated Fritts cried. (Tr. 29.) Before the termination Fritts considered himself outgoing and busy. After the termination he became reluctant to engage in normal social activities such as going out to dinner with his partner. (Tr. 29-30.)
10. Fritts suffered stomach aches, insomnia, headaches and eating problems as a result of his treatment by Respondent. He had trouble getting out of bed and engaging in normal activities. (Tr. 30.)
11. The fact that Respondent stopped participating in this litigation makes Fritts feel that LoVoltage is going to be to get away with discriminating against him. (Tr. 26-27.)
12. It took Fritts five or six months to find new employment. He ultimately returned to his prior employment with the family business. His goal was to rebuild the business and he has been successful in these endeavors. (Tr. 25-26.)

Complainant Fritts is seeking emotional damages in the amount of \$100,000. Despite being unemployed for five or six months after his termination by Lo Voltage, he is not claiming back pay or any other consequential damages. His attorney asks leave to seek attorney's fees and costs if there is a favorable determination.

Discussion

The sole issue to be determined at this juncture is whether emotional injury damages are appropriate, and if so, how to calculate them. This Commission has clear precedent for the awarding of compensatory damages. *Garcia v. Winston, et. al.*, 2003H003-004, *6-7 (CCHRC May 16, 2006). The determination of the appropriate compensation for emotional damages is discretionary and not subject to any specific rules or calculations. This Commission has, however, adopted a framework in which to analyze claims for emotional injury damages. In considering an appropriate award for emotional distress damages, the Commission considers previous Commission and other tribunal decisions, as well as the following factors:

- (a) The extent of testimony concerning the emotional distress, *i.e.* was there negligible or merely conclusory testimony or was there detailed testimony revealing specific effects of the distress;
- (b) The length of the discriminatory conduct;
- (c) The type of discriminatory conduct, *i.e.*, when there were discrete acts occurring briefly or particularly egregious behavior accompanied by face to face conducts, . . . epithets and/or actual malice;

- (d) The duration of the effects of the discriminatory conduct;
- (e) Whether medical treatment was sought and/or whether there were and to what extent, physical manifestations or psychiatric manifestations related to the distress;
- (f) Whether the discriminatory conduct was so egregious that one would expect a reasonable person to experience severe emotional distress;
- (g) The vulnerability or fragility of the complainant due to past discriminatory experiences or pre-existing condition;
- (h) Whether the discriminatory act was accompanied by acts or threats of violence; and
- (i) Whether serious medical or psychological reactions to the discriminatory acts were present.

McClellan v. Cook County Law Library, 1996E026, *22 (CCCHR June 7, 1999).

Fritts testified briefly regarding his emotional damages. He appeared serious and credible, and this ALJ has no reason to challenge his sincerity or veracity. He, however, provided very few details or specific examples to support his claim for damages. While it is often very difficult to articulate the manifestations of emotional injury, Mr. Fritts' limited testimony coupled with the absence of any corroborating testimony (from family or friends) makes this record unfortunately thin.

There is no question that for some length of time, Fritts was traumatized by his discriminatory discharge. The symptoms he mentioned, stomach pains, headaches, insomnia and lack of interest in daily activities are all consistent with an emotional injury. There is no probative testimony, however, as to the frequency and/or duration of these symptoms. For example, the record is silent as to how many days, weeks or months Fritts felt unable to leave his bed and engage in social activities. Fritts also alluded to problems in dealing with interviews for new employment but provided no testimony as to frequency or content. There is also no evidence to support permanent or future injuries.²

Complainant correctly contends that medical evidence is not a necessary component of an award for emotional injuries. There are many legitimate and credible reasons that an individual may not seek medical attention. Fritts' lack of medical insurance and income are credible reasons for not having sought medical attention. It is common for people involved in work-related trauma

² Complainant suggests that Respondent's current financial status and the fact that it is no longer participating in the litigation has contributed to his emotional injuries. While there is understandable frustration from such a situation, there is no probative evidence in the record to suggest that the demise of the business three years after the discriminatory termination caused additional compensable emotional injuries. Therefore, this claimed element of damages will be disregarded. Complainant's contention that he was emotionally injured by untruths in the Respondent's submissions is compensable and has been considered in determining the award.

to seek out the help and support of friends and family. Consistent with this, Fritts credibly testified that he confided in his parents and his boyfriend.

Complainant has cited in his Memorandum many cases in which victims of employment discrimination have been awarded large damage emotional injury awards equaling or exceeding \$100,000. The precedents provided, however, bear little similarity to the facts presented here and many of the cases are presented in the posture of a defendant's request for a remittitur. Complainant has also not provided any precedent or factual comparisons from this Commission or parallel administrative tribunals.³

Complainant relies specifically on two cases, attached to his Memorandum, in support of his claim for a large emotional injury award. In *O'Sullivan v. City of Chicago*, 474 F. Supp. 2d 971 (N.D. Ill. 2007), three experienced police officers were harassed and abused professionally for years in retaliation for filing complaints against a superior. While the plaintiffs did not provide psychiatric or medical testimony, each plaintiff, as well as family members spoke in detail about the long term destruction of their physical and mental health. The court notes that the effect of continual and long term harassment had a devastating effect on each officer's chances of even maintaining employment in their chosen law enforcement careers. The jury in *O'Sullivan* awarded damages ranging from \$25,000 to \$200,000.

In contrast, Fritts' skills as an office manager and human resource specialist appear to be readily transferable. Respondent's discriminatory actions while reprehensible were short lived, rapid and decisive. Fritts was not, unlike the plaintiffs in *O'Sullivan* subjected to years of debilitating and career destroying retaliation. As Fritts has shown, he has been able to find alternate employment, even though it is in the family business.

The second case cited by Complainant, *Leyshon v. Diehl Controls N. Am., Inc.*, 407 Ill. App. 3d 1 (1st Dist. 2010), is also not helpful. That case was premised on a defamation claim arising in the context of a contractual employment relationship. The damages are not comparable in any meaningful context.

Instead, a recent Illinois Appellate case, *Windsor Clothing Store v. Martin R. Castro, Chairman, Illinois Human Rights Commission, et. al*, 2015 Ill. App. (1st) (Sept. 23, 2015), provides helpful guidance. In *Windsor*, the complainant, an African-American woman suffered race discrimination in a retail store when she was continually followed around by sales staff and security. She alleged continuing emotional injuries affecting her ability to enter stores. She alleged that her injuries were exacerbated by the company's failure to acknowledge the

³ Examples of awards for emotional injuries in Cook County Commission cases: award of \$3,500 for emotional distress noting that an award must be directly related to the incidents complained of (*Gluszek v. Stadium Sports Bar and Grill*, 1993E052 (CCHRC Mar. 16, 2003)); Award of \$50,000 where as a result of the discrimination, Complainant stayed in bed for two weeks and was subsequently hospitalized and suffered long term effects (*Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants*, 1996E101 (CCHRC Sept. 10, 1998)); award of \$35,000 after Complainant endured 14 months of retaliatory actions and threats with Complainant's testimony supported by additional testimony from her husband and evidence of medical treatment (*McClellan v. Cook County Law Library*, 1996E026 (CCHRC June 7, 1999)); award of \$6,500 for emotional injuries resulting from retaliatory discharge after complaining of discrimination (*Pirrone v. Wheeling Industrial Clinic*, 1997E005 (CCHRC Apr. 12, 2001)); and award of \$2,000 after discrete acts of homophobic harassment over a short period of time supported by somewhat boilerplate testimony (*Conway v. Trans Action Database Marketing, Inc.*, 1999E010 (CCHRC Mar. 13, 2003)).

discriminatory conduct of racial profiling by employees. She did not seek medical attention. The Illinois Human Rights Commission awarded the plaintiff \$25,000 to compensate for emotional injuries. The appellate court upheld that award stating that it fell within the sound discretion and expertise of the agency and was consistent with legislative purpose of the statute.

Fritts' claim for emotional injury damages is meritorious. He was discriminatorily discharged and subjected to threatening behavior when police and later a co-owner confronted him at his house regarding a paycheck overpayment. By his own account, this discriminatory conduct was the first time that he been confronted with workplace discrimination. The symptoms and emotions that he suffered in the time period immediately following the termination are consistent with the factual record. The discriminatory conduct of Lo Voltage was, however, decisive and short lived. Complainant was employed for a very short period of time prior to being illegally discharged. He was not subjected to homophobic verbiage or insults as part of his work or discharge. While Fritts undoubtedly experienced a professional setback, his chosen career path was not destroyed by Lo Voltage's unlawful conduct. The absence of long term or permanent emotional injuries or physical manifestations of emotional injuries is consistent with the discrimination at issue here. An award of \$25,000 is appropriate given the record before the Commission.

It is hereby recommended:

1. That Respondent pay to Complainant \$25,000 (twenty five thousand dollars) to compensate for emotional injuries;
2. That Respondent be assessed fines and penalties as determined by the Commission; and
3. That Complainant be awarded her reasonable attorney's fees and costs.

Pursuant to the Commission's procedural rules, the parties have 21 days from the date of this order in which to file any objections to this Initial Recommended Order and Decision. CCHRC Pro. R. 470.100(B). Judge Kinoy will then address any objections and issue a Final Recommended Order and Opinion. CCHRC Pro. R. 470.100(C). This Opinion and Order is not final or appealable until approved and issued by the Cook County Commission on Human Rights.

December 9, 2015

/s/ Joanne Kinoy
Administrative Law Judge
Commission on Human Rights