

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

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William J. FRITTS, Complainant	)	
	)	
v.	)	Case No. 2013E012
	)	
LO VOLTAGE, INC., Respondent	)	Entered: January 14, 2016
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	)	

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**ORDER AND OPINION ON LIABILITY AND REMEDIES**

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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. Evidentiary Determination Order (Apr. 21, 2015) (dismissing the charges of race- and sex-discrimination).<sup>1</sup> 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. Molho 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).

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<sup>1</sup> Respondent, proceeding through counsel, filed a timely Motion to Reconsider, which was denied. Order Denying Reconsideration (July 9, 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. Respondent did not file a brief or attempt to belatedly appear in opposition. Per Commission Rule 470.100, Judge Kinoy issued an Initial Recommended Order and Opinion on Liability and Remedies in this matter on December 9, 2015, proposing an award to Fritts of \$25,000 in emotional damages. Initial Recommended Order (Dec. 9, 2015). Neither party filed an objection to Judge Kinoy’s Initial Recommended Order and so she issued a Final Recommended Order on January 6, 2016, that included no material changes to the findings of fact, conclusions of law or recommended relief. Final Recommended Order (Jan. 6, 2016).

Now, pursuant to Commission Rule 470.105, this Commission adopts Judge Kinoy’s Final Recommended Order in this matter. The Commission finds that Lo Voltage engaged in unlawful sexual orientation discrimination in violation of the Human Rights Ordinance and awards Fritts \$25,000 in compensatory damages. The Commission also issues a fine payable to Cook County of \$100 for the ordinance violation. County Code, § 42-34(c)(1)(k). Fritts may, if he so chooses, file a petition within 21 days of the date of this order for an award of reasonable attorneys’ fees and costs. *See* CCHR Pro. R. 470.110.

## **BACKGROUND**

Judge Kinoy found the facts in this case to be as follows based on Fritts’ un rebutted testimony at the default hearing held on October 1, 2015:

Fritts is a homosexual male. FF1. He was hired by Lo Voltage on October 22, 2012, as an office manager with varied human resources responsibilities and general duties. FF1-2. The President of Lo Voltage, Cory Jones, fired Fritts from this position three-and-a-half weeks later. FF2-3.

Throughout Fritts’ short employment at Lo Voltage, he performed well and initially worked closely with Cory Jones. FF2. Cory Jones did not, at any point, criticize Fritts’ work performance, and Fritts enjoyed the work environment at Lo Voltage. FF2.

About two-and-a-half weeks into working at Lo Voltage, Fritts disclosed his sexual orientation to a co-worker. FF3. This co-worker was also Cory Jones’ ex-wife. FF3. Days later, on November 16, 2015, Cory Jones terminated Fritts’ employment. FF3. Cory Jones told Fritts that he was “not a good fit.” FF3.

After his termination, there was an issue regarding the payment of Fritts’ last paycheck, which ultimately resulted in Fritts receiving a double payment from Lo Voltage. FF4. Fritts believed that Lo Voltage’s payroll service would reimburse the amount of the over-payment to Lo Voltage and told this to Cory Jones. FF4. Nonetheless, Lo Voltage contacted the local police department, which resulted in a visit to Fritts’ residence by a police officer. FF4. No charges were filed or pursued. FF4. Lo Voltage next sent one of Fritts’ former co-workers to Fritts’ home to retrieve the money. FF4. Fritts felt further harassed and frightened by the aggressive collection tactics. FF4. Ultimately, on advice of counsel, Fritts wrote a check to Lo Voltage for the excess payment to resolve the matter. FF4.

On the day he was terminated Fritts cried. FF9. Before the termination, Fritts considered himself outgoing and busy. FF9. After the termination he became reluctant to engage in normal social activities such as going out to dinner with his partner. FF9.

This termination was the first time Fritts had ever experienced discrimination. FF6. He had heard stories about other people who had suffered discrimination, but never thought it would happen to him. FF6. Fritts testified that the termination adversely affected his confidence and self-esteem. FF6. He experienced hurt and felt that he had lost control over his life. FF6.

Fritts was fearful of seeking new employment and did not know if he should disclose his sexual orientation to avoid similar discrimination. FF8. He did not want to reveal to prospective employers that he had been terminated. FF8. Interviews became very stressful, and Fritts felt that he lacked his earlier confidence.<sup>2</sup> FF8. While Fritts 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. FF7. It took Fritts five or six months to find new employment. FF12. He ultimately returned to his prior employment with the family business. FF12.

Fritts also testified that many of Respondent's assertions in filings with this Commission in response to his complaint were untrue and hurtful. FF5. Respondent's criticisms of Fritts' work performance were particularly upsetting. FF5. When Lo Voltage stopped participating in this proceeding, Fritts worried that Lo Voltage was going to be able to "get away" with discriminating against him. FF11.

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These facts as found by Judge Kinoy are not against the manifest weight of the evidence, and, as such, the Commission adopts them as its own findings of fact in this matter. *See* CCHR Pro. R. 470.105(B).

## DISCUSSION

Lo Voltage is in default in this matter and so its liability for a violation of the Human Rights Ordinance based on Fritts' un rebutted testimony is presumed. *See* Default Order (Oct. 1, 2015). Fritts is seeking emotional damages in the amount of \$100,000 as his sole remedy for this violation.<sup>3</sup> Judge Kinoy recommended a recovery of \$25,000. This Commission adopts the recommendations of its hearing officers when they are legally correct and not contrary to the evidence presented at an administrative hearing. CCHR Pro. R. 470.105(B).

This Commission has clear precedent for the awarding of compensatory damages. *Garcia v. Winston, et. al.*, 2003H003-004, \*6-7 (CCHRC May 16, 2006). Generally speaking, 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

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<sup>2</sup> In addition, Fritts suffered stomach aches, insomnia, headaches and eating problems. FF10. He had trouble getting out of bed and engaging in normal activities. FF10.

<sup>3</sup> Despite being unemployed for five or six months after his termination by Lo Voltage, Fritts is not claiming back pay or any other consequential damages.

framework within which to analyze claims for emotional injury damages. In calculating an appropriate award for emotional distress damages, the Commission may consider 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 (CCHRC June 7, 1999).

Fritts testified briefly in this case. Judge Kinoy observed Fritts' testimonial demeanor as being serious and credible, and she found no reason to question his sincerity or veracity. Judge Kinoy did note, however, that Fritts provided very few details or specific examples to support his claim for emotional damages. While it is often very difficult to articulate the manifestations of an emotional injury, Fritts' limited testimony coupled with the absence of any corroborating testimony (from family or friends) makes the record supporting his claim for significant emotional damages 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 was 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 the frequency or content of these problems. There was also no evidence to support a finding that Fritts' injuries are permanent or that additional injuries would occur in the future.<sup>4</sup>

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 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 \$100,000.00. 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, which is its own high legal hurdle. Complainant has also not provided any precedent or factual comparisons of awards from this Commission or parallel administrative tribunals.<sup>5</sup>

Complainant relies specifically on two cases in support of his claim for a large emotional injury award here. 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 *O'Sullivan* 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.

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<sup>4</sup> 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.

<sup>5</sup> 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, 2005)); 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)).

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.

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 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-worker) confronted him at his house regarding a paycheck overpayment. By his own account, this discriminatory conduct was the first time that Fritts had confronted 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, as recommended by Judge Kinoy, is appropriate given the record before the Commission.

Moreover, in addition to awarding damages to the injured parties, the Human Rights Ordinance empowers this Commission to levy fines against violators of the County's anti-discrimination law. Such fines may not be less than \$100 and not more than \$500 per offense. County Code, § 42-34(c)(1)(k). The Commission will issue a fine at the lower end of this scale in light of the fact that Lo Voltage may be in receivership. The Commission does not wish to jeopardize full compensation to Fritts under such circumstances by imposing its own stiffer penalty.

## CONCLUSION

For the foregoing reasons, the Commission hereby finds that Lo Voltage VIOLATED

Section 42-35(b) of the Human Rights Ordinance and ORDERS RELIEF on complaint 2013E012 as follows:

1. Lo Voltage must pay Fritts his actual damages (including emotional distress) of \$25,000 on or before 45 days from the date of this Order;
2. Lo Voltage must pay Cook County a fine of \$100 on or before 45 days from the date of this Order; and
3. Lo Voltage must pay Fritts' reasonable attorneys' fees, if any, and duplicating costs incurred in pursuing the complaint before the Commission and submitted in accordance with Commission Rule 470.110;

Any party may request reconsideration of this Order within 30 days of receipt pursuant to the procedures set out in Commission Rule 480.100(C).

January 14, 2016

COOK COUNTY COMMISSION ON  
HUMAN RIGHTS:



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Kenneth A. Gunn,  
Chairperson