

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**KIMBERLY GUERIN, Complainant**

v.

**RAINBOW CONSTRUCTION, and A-1 STEEPLEJACK, Respondents**

**DOCKET No. 200163589**

**FINDINGS OF FACT\***

1. The Complainant herein is Kimberly Guerin, (hereinafter "Guerin"), an adult female who resides at 333 North Broadway, Wingap, Pennsylvania. (N.T. 14).
2. The Respondents herein are Rainbow Construction and A-1 Steeplejack, (hereinafter collectively referred to as "Respondents"). (stipulation found at N.T. 33).
3. Guerin filed an amended complaint docketed at 200163589 with the PHRC on or about July 5, 2002, alleging that she was sexually harassed from November 21, 2001 through December 8, 2001, and constructively discharged because her sex, female. (O.D. 1).
4. PHRC Harrisburg Regional Office staff served the amended complaint at 200113589 on the Respondents on September 18, 2002. (O.D. 1).
5. The Respondents failed to file a properly verified answer to Guerin's amended complaint.
6. On January 24, 2003, PHRC Harrisburg Regional Office staff filed and served on the Respondents a "Petition for Rule to Show Cause Pursuant to 16 Pa. Code §42.33(c)"(O.D. 1).
7. On January 28, 2003, PHRC Motions Commissioner Sylvia A. Waters, issued and caused to be mailed to the Respondents, a Rule to Show Cause Order which extended another opportunity to the Respondents to file a properly verified answer on or before February 28, 2003.

\*To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact to reference purposes:

N.T. Notes of Testimony  
O.D. Official Docket

8. Having received no answer, the PHRC, on April 28, 2003, issued an Order which provided "that probable cause is found and judgment is hereby entered for the Complainant on the issue of liability . . ." (O.D. 3).
9. The PHRC's Order of April 28, 2003, was mailed to the Respondents that same day. (O.D. 3).
10. From April 28, 2003, through July 1, 2003, Commission staff made numerous attempts to contact the Respondents in an effort to engage in conciliation efforts. (O.D. 4).
11. By letter dated September 29, 2003, the Permanent Hearing Examiner requested the assistance of the Northampton County Sheriff's Department to serve the Respondents with a Notice of Public Hearing. (O.D. 12).
12. A Return of Service dated October 14, 2003, indicates that the Northampton County Sheriff's Department served the Respondents with the Notice of Public Hearing. (O.D. 13).

13. Having been duly notified, the Respondents appeared at the Public Hearing held on December 2, 2003.
14. On November 23, 2001, Guerin was initially hired to work up to 20 hours per week at the rate of \$20.00 per hour in the position of Administrative Assistant/Secretary. (N.T. 14, 43, 47, 50).
15. On or about Wednesday, December 5, 2001, Guerin was told that the owner of the Respondents, David Klo, (hereinafter "Klo"), would hire someone else unless Guerin agreed to work full-time. (N.T. 17).
16. Guerin expressed a willingness to go to full-time status and was told by Klo to start full-time immediately. (N.T. 17).
17. The last day Guerin worked for the Respondents was December 8, 2001. (N.T. 16).
18. On or about August 2001, Guerin had been given a conditional offer of employment by Real Estate Broker Michael Baxter. (N.T. 20).
19. The condition of the August 2001 offer of employment was that Guerin would first have to successfully complete a real estate course of study and pass a test. (N.T. 20).
20. Guerin finished the real estate program in December 2001, and took the requisite test in January 2002, which she passed. (N.T. 19).
21. During the public hearing, the parties stipulated that Guerin seeks no damages beyond February 1, 2002. (N.T. 22).
22. Guerin calculates her lost back pay as: \$20 per hour – 35 hours a week – for the seven week period between December 8, 2001 and February 1, 2002: Total - \$4,900.00. (N.T. 22, 23; 25).
23. Following her constructive discharge, Guerin attempted to find alternate work in the interim period between December 8, 2001, and February 1, 2002. (N.T. 28).

### **CONCLUSIONS OF LAW**

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, the Respondents' failure to file a properly verified answer or to respond to a Rule to Show Cause resulted in the entry of a judgment for the Complainant on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.

### **OPINION**

This case arose on an amended complaint filed by Kimberly Guerin, (hereinafter "Guerin") against Rainbow Construction and A-1 Steeplejack, (hereinafter collectively referred to as "Respondents"). Guerin's amended complaint at PHRC Case No. 200163589 alleged that from November 21, 2001 to December 8, 2001, Guerin was sexually harassed and that on December 8, 2001, Guerin was

constructively terminated because of her sex, female. Guerin's amended complaint states claims under Section 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Guerin's verified amended complaint was filed on or about July 5, 2002. By correspondence dated January 24, 2003, the Pennsylvania Human Relations Commission ("PHRC") Harrisburg regional office petitioned Motions Commissioner Waters for a Rule to Show Cause, indicating that the Respondents had not answered Guerin's amended complaint. The petition declared that the Respondents had been served with the amended complaint on September 18, 2002. The petition further indicated that, by correspondence dated December 22, 2002, and January 15, 2003, the Respondents were notified that their failure to properly answer Guerin's amended complaint could result in a judgment being entered for Guerin.

On January 28, 2003, a Rule to Show Cause was issued, directing the Respondents to respond on or before February 28, 2003. After no response was filed, on April 8, 2003, Motions Commissioner Waters recommended a finding of liability to the full PHRC. On April 28, 2003, the full PHRC determined that on or about November 21, 2001, to December 8, 2001, Guerin was sexually harassed, and on December 8, 2001, constructively discharged because of her sex, female.

The public hearing on the issue of appropriate damages was held December 2, 2003, in Easton, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Stephanie Chapman, PHRC Assistant Chief Counsel. The Complainant's case was presented by Karl F. Longenbach, Esquire. David Klo, owner of the Respondents, appeared and was assisted by Angelo Rosetti.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for a public hearing on the issue of appropriate damages.

Since liability had been found after the Respondents failed to file a properly verified answer, the only question at the public hearing was what damages Guerin could establish. Under Section 9(f)(1) of the PHRA, the PHRC is empowered to order the Respondent "to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint . . . reinstatement . . . with or without back pay . . . and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice . . . as, in the judgment of the Commission, will effectuate the purposes of this act . . ."

Guerin presented neither evidence of any loss of work associated with the complaint Guerin filed nor certifiable travel expenses. Additionally, Guerin does not seek reinstatement. All Guerin seeks is the amount of \$4,900.00 which represents back pay lost for the period between December 8, 2001, and February 1, 2002. We find that this amount is a reasonable calculation of the wages Guerin lost as a result of the Respondents constructive discharge of Guerin.

Additionally, the PHRC is authorized to award interest on a back pay award. Goetz v. Norristown Area School District, 16 Pa. Cmwlth. Ct. 389, 328 A.2d 579 (1975). Here, the interest rate shall be calculated at nine percent. (Computation of interest penalties, Act 1982-266 amended).

Accordingly, relief is ordered as directed with specificity in the final order which follows.

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**KIMBERLY GUERIN, Complainant**

**v.**

**RAINBOW CONSTRUCTION, and A-1 STEEPLEJACK, Respondents**

**DOCKET No. 200163589**

**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Kimberly Guerin suffered damages. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

Carl H. Summerson, Permanent Hearing Examiner

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**KIMBERLY GUERIN, Complainant**

v.

**RAINBOW CONSTRUCTION, and A-1 STEEPLEJACK, Respondents**

**DOCKET No. 200163589**

**FINAL ORDER**

**AND NOW**, this 26<sup>th</sup> day, of February 2004, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Commission Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

**ORDERS**

1. That, jointly and severally, the Respondents shall pay to Guerin within 30 days of the effective date of this Order the lump sum of \$4,900.00, which amount represents back pay lost for the seven week period after Guerin's constructive discharge on December 8, 2001.
2. That, jointly and severally the Respondents shall pay additional interest of nine percent per annum on the back pay award.
3. That, within 30 days of the effective date of the Order, the Respondents shall report to the Commission on the manner of its compliance with the terms of this Order by letter addressed to Stephanie Chapman, Esquire, in the Commission's Harrisburg regional office.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By: Steven A. Glassman, Chairperson

Attest: Sylvia A. Waters, Secretary