

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PAUL HOLMES,	:	
Complainant	:	
	:	
v,	:	PHRC CASE NO. 200704095
	:	EEOC Charge No. 17F200861226
FURNITURE SURPLUS, a/k/a	:	
FURNITURE SIR PLUS,	:	
Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about March 17, 2006, Complainant, Paul Holmes, (hereinafter "Holmes"), filed a PHRC Complaint against Furniture Surplus, in which Holmes alleged that he was terminated because of his race, African American. (O.D. 1).
 2. Under cover letter date October 20, 2008, the PHRC's Philadelphia regional office filed a Petition for Rule to Show Cause. (O.D. 2).
 3. On October 23, 2008, PHRC Motions Commissioner Daniel L. Woodall, Jr., issued a Rule to Show Cause which, in effect, notified Furniture Surplus that it had until November 24, 2008 to file a properly verified answer to Holmes' complaint. (O.D. 3).
 4. Furniture Surplus did not file an answer. (N.T. 11, 16).
 5. On January 30, 2009, Motions Commissioner Woodall recommended to the full PHRC that Furniture Surplus be found liable for Holmes' allegation. (O.D. 5).
 6. By Order dated February 23, 2009, the PHRC found Furniture Surplus liable for terminating Holmes because of his race, African American. (O.D. 5).
 7. A public hearing on the issue of what, if any, damages are appropriate was held on August 18, 2009 in Philadelphia, Pennsylvania.
- 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 for reference purposes:

O.D. Official Docket
N.T. Notes of Testimony
C.E. Complainant's Exhibit

8. Holmes began working for Furniture Surplus as a helper in November 2007. (N.T. 19).
9. Holmes' wages were \$10.00 per hour. (N.T. 19).
10. Holmes was terminated on January 24, 2008. (N.T. 23).
11. During the period from January 1, 2008 through January 24, 2008, Holmes earned \$1,400.00 as an employee of Furniture Surplus (C.E. 2)..
12. After being terminated by Furniture Surplus, Holmes began working approximately 32 hours per week with Labor Ready, a day labor assignment agency where he earned approximately \$6.50 per hour. (N.T. 24, 25, 27).
13. In late October 2008, Holmes was assigned to Victory Cab Company where he began to earn more than the amount he would have earned with Furniture Surplus. (N.T. 27, 28).
14. Holmes' assignment to Victory Cab Company has been permanent as he continues to work there. (N.T. 28).
15. Holmes incurred travel-expenses in the amount of \$100.00 associated with his pursuit of his PHRC claim. (N.T. 32).
16. Holmes does not seek reinstatement. (N.T. 30).

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, Furniture Surplus’ failure to file a properly verified answer resulted in the entry of a judgment for Holmes on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Paul Holmes, against Furniture Surplus, a/k/a Furniture Sir Plus. The Complainant's complaint alleged that Furniture Surplus terminated Holmes because of his race, African American. Holmes' complaint states a claim under Sections 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Holmes' verified complaint was filed on or about February 7, 2009. By correspondence dated October 20, 2008, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Commissioner Woodall for a Rule to Show Cause, indicating that Furniture Surplus had not answered Holmes' complaint. The petition declared that Furniture Surplus had been served with Holmes' complaint on March 4, 2008. The petition further indicated that by letters dated April 15, 2008, June 24, 2008 and July 17, 2008, efforts had been made to obtain an answer from Furniture Surplus.

On October 23, 2008, a Rule to Show Cause was issued, directing Furniture Surplus to respond on or before November 24, 2008. After Furniture Surplus failed to file a properly verified answer, on January 30, 2009, Motions Commissioner Woodall recommended a finding of liability to the full PHRC. On February 23, 2009, the full PHRC determined that Furniture Surplus terminated Holmes because of his race, African American.

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

The public hearing on the issue of appropriate damages was held August 18, 2009, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Norman G. Matlock, PHRC Assistant Chief Counsel. Furniture Surplus failed to attend public hearing.

Since liability had been found after Furniture Surplus failed to file a properly verified answer, the only question at the public hearing was what damages Holmes could establish.

Section 9(f) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such 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, hiring 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, and including a requirement for report of the manner of compliance.

The function of the remedy in employment discrimination cases is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. See Albermarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975); PHRC v. Alto-Reste Park Cemetery Association., 306 A.2d 881 (Pa. S. Ct. 1973).

The first aspect we must consider regarding making Holmes whole is the issue of the extent of financial losses suffered. When complainants prove an economic

loss, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Company, Inc., 684 F2d 1355, 29 FEP Cases 1259 (11th Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a “reasonable means to determine the amount [the complainant] would probably have earned...” PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Commonwealth Ct. 1975), *aff’d*. 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. See Green v. USX Corp., 46 FEP Cases 720 (3rd Cir. 1988).

In this case, Holmes was employed by Furniture Surplus from November 2007 through January 24, 2008. During his employment, he earned \$10.00 per hour. Indeed, for the three and ½ week period from January 1, 2008 through January 24, 2008, a W-2 from Furniture Surplus shows that Holmes earned \$1,400.00. This averages out to approximately \$400.00 per week – \$1,400.00 divided by 3 ½ weeks = \$400.00 per week.

Following his termination, Holmes testified that he made reasonable attempts to mitigate his damages. The evidence shows that shortly after being terminated by Furniture Surplus, Holmes began to be assigned work through Labor Ready, a day labor assignment agency. Holmes testified that between his termination and late October 2008, he worked approximately 4 days a week, 8 hours a day, at the rate of \$6.50 per hour. Holmes offered that in late October he began to earn more than he would have earned with Furniture Surplus had he not been terminated. Accordingly, the period he lost wages was January 24, 2008 through approximately October 24, 2008.

Had Holmes remained at Furniture Surplus and he would have earned approximately \$400.00 per week - \$400.00 x 39 weeks = \$15,600.00. Holmes wages

while a day laborer for Labor Ready for the 39 week period between January 24, 2008 and October 24, 2008 are calculated as – 4 days a week x 8 hours a day x \$6.50 per hour x 39 weeks = \$8,112.00. Accordingly, in that period, Holmes lost \$7,488.00 - \$15,600.00 minus \$8,112.00 = \$7,488.00.

Because Holmes does not seek either reinstatement, we turn to Holmes' claim for certifiable travel expenses. Holmes testified that he made approximately 5 trips to Philadelphia and regarding matters involving his PHRC claim. Holmes testified that he paid approximately \$20.00 in parking expenses each time he traveled to Philadelphia. Accordingly, he is entitled to an award of \$100.00 for certifiable travel expenses.

An appropriate order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PAUL HOLMES,
Complainant

v,

FURNITURE SURPLUS, a/k/a
FURNITURE SIR PLUS,
Respondent

:
:
:
:
:
:
:
:
:
:

PHRC CASE NO. 200704095
EEOC Charge No. 17F200861226

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Holmes suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

September 30, 2009
Date

By: 
Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PAUL HOLMES,	:	
Complainant	:	
	:	
v,	:	PHRC CASE NO. 200704095
	:	EEOC Charge No. 17F200861226
FURNITURE SURPLUS, a/k/a	:	
FURNITURE SIR PLUS,	:	
Respondent	:	

FINAL ORDER

AND NOW, this 26th day of October, 2009 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations 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 into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.

ORDERS

1. That Furniture Surplus shall cease and desist from: terminating employees because of their race.


2. That Furniture Surplus shall pay Holmes the lump sum of \$7,488.00 which amount represents lost wages following Holmes termination.
3. That Furniture Surplus shall pay additional interest of 6% per annum on the back pay award calculated from January 24, 2008 until payment is made.
4. That Furniture Surplus shall reimburse Holmes \$100.00, which represents certifiable travel expenses incurred by Holmes in matters involving his complaint.
5. That, within thirty days of the effective date of this Order, Furniture Surplus shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Norman G. Matlock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8th Street, Suite 501, Philadelphia, PA 19107.

**PENNSYLVANIA HUMAN RELATIONS
COMMISSION**

By: 

Stephen A. Glassman
Chairperson

Attest:



Daniel D. Yun
Secretary