

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA E. MONTONDO,
Complainant

V.

KIEFFER RV SALES, LTD.
AND ERNEST A. KIEFFER,
Respondents

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DOCKET NO. E-92071D

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

CYNTHIA E. MONTONDO,	:	
	:	
Complainant	:	
	:	
v.	:	DOCKET NO. E-92071D
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KIEFFER RV SALES, LTD.	:	
	:	
AND	:	
	:	
ERNEST A. KIEFFER,	:	
	:	
Respondents	:	

STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required.

1. The Complainant herein is Cynthia E. Montondo, an adult female (hereinafter "Complainant").
2. The Respondent herein is Kieffer RV Sales, LTD., (hereinafter "Respondent, Kieffer RV Sales, LTD.>").
3. The Respondent, Kieffer RV Sales, LTD, at all times relevant to the case at hand, employed four or more persons within the Commonwealth of Pennsylvania.
4. The Respondent herein is Ernest A. Kieffer, (hereinafter "Respondent, Ernest A. Kieffer").

5. The Respondent, Ernest A. Kieffer, The President of Kieffer RV Sales, LTD., is a person within the meaning of the Pennsylvania Human Relations Act.

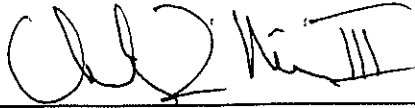
6. On or about June 15, 1999, the Complainant filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") at Commission Docket Number E92071D against the Respondents. A copy of the complaint will be included as a docket entry in this case at time of hearing.

7. On or about August 17, 1999, Respondents filed an answer to the complaint. A copy of the answer will be included as a docket entry in this case at time of hearing.

8. In correspondence dated May 11, 2000, Commission staff notified the Complainant and Respondents that probable cause existed to credit the allegations found in the complaint.

9. Subsequent to the determination of probable cause, Commission staff attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but was unable to do so.

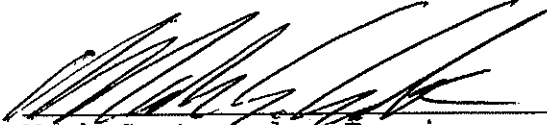
10. In correspondence dated August 31, 2000, Commission staff notified the Complainant and Respondents that a public hearing had been approved.



Charles L. Nier, III, Esquire
Assistant Chief Counsel
(Counsel for the Commission
in support of the complaint)

11/8/00

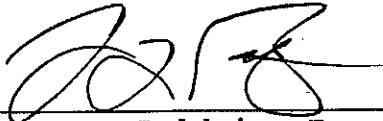
Date:



Mark Santangelo, Esquire
(Counsel for Respondent)

11/8/00

Date:



Bruce L. Baldwin, Esquire
(Counsel for Complainant)

11-8-00

Date:

FINDINGS OF FACT*

1. The Respondents are Kieffer RV Sales, Ltd., (hereinafter "RV Sales") and Ernest Kieffer, (hereinafter "Kieffer") president and owner of RV Sales. (N.T. 22, 148-149).
2. RV Sales, is a retailer and repairer of recreational vehicles, accessories, and parts. N.T. 57).
3. The Complainant is Cynthia E. Montondo, (hereinafter Montondo), a female. (N.T.17-20).
4. On July 2, 1997, Kieffer hired Montondo for a secretarial position. (N.T.16-18).
5. Montondo was compensated at a rate of eight dollars per hour. (N.T.19, C.E.2).
6. Montondo worked approximately fifteen hours per week until, on or about September 1, 1998, her work hours increased to thirty hours per week. N.T.19-20).
7. On or about November 1, 1998 through March 1999, Kieffer made several sexual propositions to Montondo. (N.T. 29-32).

* The foregoing "Stipulations of Fact" are incorporated herein as if fully set forth 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:

N.T. Notes of Testimony
J.E. Joint Exhibit
C.E. Complainant's Exhibit
S.F. Stipulations of Fact

8. On or about November 1, 1998 through March 1999, Kieffer made several inappropriate statements to Montondo, such as comments about her breasts, her sexual relationship with her husband, and describing sexual encounters with Montondo in his dreams. (N.T.29-35).
9. Kieffer gave Montondo condoms on two occasions and asked her to have sex with him. (N.T.30-32).
10. Kieffer touched Montondo's breasts and buttocks on several occasions without consent. (N.T.29, 32).
11. While Montondo was working at her desk, Kieffer approached her from behind and unhooked Montondo's bra strap. (N.T. 32-33).
12. Kieffer unzipped his pants in front of Montondo and exposed his genitals. (N.T.29-30).
13. Kieffer frequently inquired about Montondo's sexual relationship with her husband by asking her if she had "gotten any lately". (N.T.22).
14. Using his office computer, Kieffer displayed pornographic images to Montondo and commented on the images and Montondo's genitals. (N.T.36-38).
15. On May 3, 1999, Montondo gave Kieffer notice of her resignation, effective in five weeks. (C.E. 1, N.T.45-46).
16. On or about May 27, 1999, Kieffer terminated Montondo's position. (N.T.48-49).
17. Other than Montondo there were no eyewitnesses to Kieffer's touching or propositioning of Montondo.(N.T. 66-69).

18. At no time during her employment did Montondo encourage, laugh at, or welcome any of Kieffer's behavior. (N.T.39).
19. Montondo repeatedly advised Kieffer that the conduct was unwelcome, asked him not to touch her, and asked him to get away from her. (N.T.30-39).
20. Kieffer's typical response to Montondo's statements was to laugh and treat the incidents as jokes. (N.T.30-33).
21. Kieffer berated Montondo in the presence of other employees and customers for clerical errors. (N.T.43).
22. At the time of the conduct identified in paragraphs 8 thru 22, RV Sales maintained a sexual harassment policy which provides that an employee must report any incidents of sexual harassment "whenever they occur to their immediate supervisor. Such incidents will be promptly and independently investigated." (N.T.J.E.1).
23. Kieffer was the direct supervisor of Montondo. (N.T.50, 149).
24. Montondo had no other supervisor or any other person within her chain-of-command to whom she could report the instances of sexual harassment. (N.T.149-150).
25. Kieffer was responsible for implementing RV Sales' sexual harassment policy as well as conducting investigations into complaints. (N.T.149).
26. In accordance with the policy, Montondo repeatedly advised Kieffer that his conduct was unwelcome. (N.T.30-39).
27. Kieffer did not enforce the sexual harassment policy, nor act in any way to terminate his conduct. (N.T.30-32).
28. RV Sales' sexual harassment policy also provides that employees who believe

they did not receive adequate consideration after making their complaints known to management, may file a complaint with the Commonwealth of Pennsylvania Human Relations Commission. (J.E.1).

29. On or about June 15, 1999, in accordance with RV Sales' sexual harassment policy, Montondo filed a complaint with the PHRC alleging unlawful discrimination on the part of Kieffer, and RV Sales. (N.T. 51, C.E. 1).
30. Montondo suffered headaches, diarrhea, and loss of sex drive, both during her employment and for several months afterward. (N.T. 22-46).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter PHRC) has jurisdiction over the parties and the subject matter of the case.
2. The parties have fully complied with the procedural prerequisites to convene a public hearing.
3. The Complainant, Cynthia Montondo, is an individual within the meaning of section 5(a), of the Pennsylvania Human Relations Act (hereinafter PHRA).
4. The Respondent, Kieffer RV Sales Ltd is an employer within the meaning of section 4(b) and 5(a) of the PHRA.
5. The Respondent Ernest A. Kieffer, is a person within the meaning of section 4(a) of the PHRA.
6. Montondo established "*prima facie*" case of unlawful discrimination by showing)
 - A) she is a member of a protected class;
 - B) she was a victim of unwelcome sexual harassment attributable to the Respondents;
 - C) the harassment was based on sex;
 - D) the harassment affected a term, condition or privilege of employment; and
 - E) Respondent had constructive or actual notice and failed to remedial action.
7. Respondents articulated a legitimate non discriminatory reason for its action.
8. Montondo proved by a preponderance of the evidence that the articulated reasons are not worthy of credence.

9. Montondo established a prima facie case of unlawful discrimination by exposure to a hostile work environment and discharging her because of her sex under section 5(a) of the PHRA by showing:
 - A. Montondo suffered intentional discrimination because of her sex;
 - B. the discrimination against Montondo was pervasive and regular;
 - C. the discrimination detrimentally affected Montondo;
 - D. the discrimination would have detrimentally affected a reasonable person of the same sex, in the same position;
10. The testimony of Kieffer is not credible.
11. Montondo established a prima facie case of unlawful/constructive discharge by Kieffer RV Sales under section 5(a) of the PHRA by showing:
 - A. That Montondo reasonably perceived the working conditions to be intolerable;
 - B. A reasonable person in the same position would have felt compelled to resign.
12. Kieffer articulated a nondiscriminatory reason for Montondo's discharge.
13. Montondo proved by a preponderance of the evidence that Kieffer's articulated reasons were pretextual.
14. Montondo established a prima facie case under section 5(e) that Ernest Kieffer aided and abetted Kieffer RV Sales Ltd in the commission of unlawful discriminatory acts prohibited by the PHRA by showing:
 - A. Respondent Kieffer was Montondo's direct supervisor;
 - B. Respondent affirmatively engaged in discriminatory conduct;

C. Respondent was acting within the scope of his employment while engaging in discriminatory conduct

D. Respondent RV Sales and Ernest Kieffer constructively acted with a community of purpose to commit unlawful discriminatory conduct;

15. Ernest Kieffer is individually liable under 5(e) for aiding and abetting an unlawful discriminatory practice.
16. Complainant is entitled to individual relief.
17. Under Section 9 of the PHRA, the Commission may issue a cease and desist, award back pay, and other affirmative relief.

OPINION

The case arises from a complaint filed on or about June 15, 1999 at Docket No. E-92071D, by Cynthia E. Montondo (hereinafter "Montondo") individually, against Kieffer RV Sales Ltd. (hereinafter "RV Sales") and Ernest A. Kieffer (hereinafter "Kieffer") president and owner of RV Sales. In her complaint, Montondo alleged that from November 1998 until May 27, 1999, Kieffer sexually harassed her by propositioning her for sex, touching and grabbing her breasts and buttocks, repeatedly showing her pornographic materials on a computer, and walking into a bathroom occupied by Montondo. (C.E.#1). The complaint alleges that Kieffer created a hostile work environment, aided and abetted RV Sales to commit unlawful discriminatory practices, and constructively/unlawfully discharged her. Montondo's complaint alleges violations of section 5(a) and 5(e) of the Pennsylvania Human Relations Act, of October 25, 1995, P.L. 744, as amended, 43 P.S. §§ 951 et. seq. (hereinafter "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. These efforts were unsuccessful in resolving the matter and the case was approved for public hearing. The public hearing was held on August 30, 2001, in Reading, Pennsylvania. The case was held before a PHRC Commissioner Panel, consisting of Commissioner M. Joel Bolstein, Esquire (Chair), Commissioner Elizabeth Umstattd, and Commissioner Daniel D. Yun. Phillip Ayers, Permanent Hearing Examiner, served as Panel Advisor. Bruce L. Baldwin, Esquire, appeared on behalf of Ms. Montondo and the State's interest in the matter was overseen by Charles L. Nier, III,

Assistant Chief Counsel, PHRC. Mark Santangelo, Esquire, appeared on behalf of the Respondents. Post hearing briefs were submitted simultaneously by both parties on or about February 14, 2002.

Section 5(a) of the PHRA states "it shall be an unlawful discriminatory practice...for any employer because of the ...sex...of any individual... to bar or to discharge from employment such individual...or to otherwise discriminate against such individual...with respect to compensation, hire, tenure, terms, conditions or privileges of employment..." .

In order to prevail in this matter, Montondo must show she is a victim of sexual harassment. Montondo must establish:

- A) She is a member of a protected class;
- B) she was a victim of unwelcome sexual harassment
Attributable to the Respondents;
- C) the harassment was based on sex;
- D) the harassment affected a term, condition or
Privilege of employment; and
- E) Respondent had constructive or actual notice
And failed to remedial action.

Firstly, Montondo is a member of a protected class, female. Secondly, the record before the Commission contains numerous examples of unwelcome sexual overtures, statements and physical touching directed at Montondo. The record also reflects that these incidents of harassment were based on her sex. Furthermore, the harassment affected the terms and conditions of her employment in that Montondo

suffered physically and mentally as a result of the harassment. Lastly, since Kieffer was President of RV Sales, he had actual notice of the harassment and failed to take any remedial action. Accordingly, Montondo has established a *prima facie* case of unlawful discrimination based on sexual harassment.

The Respondent asserted that Montondo fabricated the incidents and that there was no harassment. Upon review of the record we find that the testimony of Kieffer is not credible. A number of Montondo's allegations were corroborated by other witnesses. For example, Kieffer asserted that he never made any sexual remarks to Montondo. This testimony was contradicted not only by Montondo, but three other witnesses. Kieffer's standard greeting to anyone was - - "Did you get any lately?" Three witnesses, Donna Lango, David Lango and Kevin Andes all testified to hearing Kieffer use this particular greeting.

Secondly, Kieffer stated that he never viewed or had knowledge of anyone viewing pictures of nude women or other pornographic material on the office computer. (N.T. 140). Once again, this testimony was contradicted by Montondo and other witnesses. Mr. And Mrs. Lango, Mr. Andes and Montondo testified that Kieffer showed them pornographic images on the computer screen. Lastly, the incidents concerning Montondo were similar to incidents encountered by Donna Lango several years before. All of the above instances show a lack of credibility on the part of Kieffer. Accordingly, we find that Montondo has shown that she was the victim of sexual harassment, and that Kieffer's assertions that the events never happened are without merit.

Since Montondo's allegations involve discrimination by sexual harassment, she must establish the existence of a hostile work environment by showing that: (1)

Montondo suffered intentional discrimination because of her sex; (2) The discrimination was pervasive and regular; (3) The discrimination detrimentally affected Montondo; (4) The discrimination would have detrimentally affected a reasonable person of the same sex, in the same position; and (5) Respondent Superior existed. Hoy v. Angelone, 691 A.2d 476 (Pa Super. 1997).

First, Montondo must establish that she suffered intentional discrimination because of her sex. Courts have held that in situations where the hostile work environment consisted of unwelcome sexual advances, it is clear that sexual discrimination is based upon sex. Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Other courts have held that discrimination based sex is implicit where the discrimination involves sexual propositions, pornographic material, and explicit conversation. Andrews v. City of Philadelphia, 895 F.2d at 1482, n.3.

In this case, there is ample evidence that Montondo suffered discrimination because of her sex. In her testimony, Montondo related numerous incidents of Kieffer fondling and rubbing her breasts and buttocks. (N.T.29,32). She also related several comments Kieffer made about her breasts, inquiries into her sexual relationship with her husband, as well as propositioning her for sex. (N.T.32-35, 22, 29-32). Clearly, these acts were of a sexual nature and were aimed directly at Montondo. These acts by themselves indicate that Montondo suffered intentional discrimination because of her sex.

Second, Montondo must show the harassment was pervasive and regular as to alter the conditions of employment and create a hostile work environment. EEOC policy indicates that unwelcome touching of intimate body area is sufficient to alter the conditions of the work environment. EEOC Policy Guideline on Current Issues of

Sexual Harassment (March 19, 1990). Courts have held that single incidents of unwanted intentional touching can constitute actionable harassment. Barret v. Omaha National Bank, 584 F. Supp. 22 (D.Neb.1983) aff'd 726 F. 2d 424 (8th Cir. 1984).

In this case, Montondo testified that she was subject to Kieffer's unwelcome physical advances from November 1998 through March 1999. (N.T. 29, 32-32,36). These incidents consisted of Kieffer touching Montondo's breasts and buttocks. Montondo also related an incident where Kieffer grabbed her around her waste and simulated sexual movements while standing directly behind her. (N.T.28, 29 32-33, 36). Montondo also testified that Kieffer persisted in his sexual advances and accompanied them with frequent sexual propositions and descriptions of his sexual fantasies. (N.T.28-29, 34).

Even in the face of Montondo's consistent refusals and warnings to cease his conduct, Kieffer persisted in his unwelcome conduct and continued to harass her. Clearly, as in this case, where a supervisor persists in touching employees in a sexual manner, and these advances are not only unwelcome, but are adamantly rebutted, the work environment becomes hostile.

Montondo must also show that she was detrimentally affected by the discrimination. A subjective showing that the discrimination affected the complainant is necessary to support the allegations and provides grounds upon which relief can be granted. Andrews v. City of Philadelphia, 895 F.2d at 1483. In the present case, Montondo testified that she repeatedly thwarted Kieffer's sexual advances and verbal harassment by telling him his comments were unwelcome, and she warned him not to touch her. (N.T.30-39). From these warnings, it is clear that Montondo felt

threatened by Kieffer's advances. Furthermore, Montondo testified that Kieffer's conduct had an impact on her physical and emotional well-being. (N.T.45). Montondo testified that she suffered from headaches, diarrhea, and sexual problems at home due to the verbal and physical harassment from Kieffer. Montondo further testified that the harassment was the reason why she finally decided to leave RV Sales. (N.T.45). From this undisputed testimony, we conclude that the sexual nature of the harassment detrimentally affected Montondo.

Along with the subjective showing of a detrimental affect on the Complainant, there must also be an objective showing of a detrimental affect. The Complainant must establish that a reasonable person of the same sex, in the same situation would also have been detrimentally affected by the discrimination. This standard is designed to protect employers from the "hypersensitive" employee, while also serving to protect the quality of work environments. Andrews v. City of Philadelphia, 895 F.2d at 1483. The question becomes whether the conduct was so offensive that it would affect a reasonable person who seeks to interact with colleagues and clients in a professional manner, and without the interference of sexual harassment. Andrews, citing Bennet v. Corroon & Black Corp., 845 F.2d 104, 106 (5th Cir. 1988).

After reviewing the above mentioned testimony concerning the sexual nature of Kieffer's harassment, it is clear that Montondo was not a "hypersensitive" employee. Rather, she acted as a reasonable person in rebutting Kieffer's advances. She did not encourage his conduct, nor did she laugh or conduct herself in the same manner. (N.T.39-40). Furthermore, the conduct was not innocuous that a reasonable person would not have been affected by the discrimination. The conduct was so degrading and overtly sexual that a reasonable person would have

considered the situation intolerable. A reasonable person would have also been convinced that the conduct would not have subsided because it lasted for at least seven months. (N.T.22-68).

Lastly, the complainant must establish the existence of Respondeat Superior. Liability exists where the Respondent knew or should have known of the sexual harassment and failed to take prompt remedial action to remedy the situation. Andrews v. City of Philadelphia, 895 F.2d at 1486. PHRC guidelines on sexual harassment, impute liability to an employer regardless of their knowledge or authorization of the discriminatory acts, for the conduct of its supervisory employees. Pa. Bull., Vol. 11, No. 5 (January 31, 1981). The United States Supreme Court also added that an employer is liable for unlawful harassment whenever the harasser is of sufficiently high-rank that may be treated as the employer's "alter ego". Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998). In cases where the harasser is an "alter ego" the unlawful discrimination is automatically imputed to the employer. Id. at 2284. The Supreme Court also provided examples of supervisory employees whose harassment could be imputed to the employee, including: president, owner, partner and corporate officer. Id. 15 2285.

In this case, the harasser, Ernest Kieffer, is president and owner of the Respondent RV Sales. (N.T.149-150). In acting as such, Kieffer exercised his corporate authority while engaging in the harassment, sufficiently to qualify him as an "alter ego." Kieffer was Montondo's direct supervisor (N.T.50). By acting in his capacity as president, owner and direct supervisor, his harassing conduct is automatically imputed to the employer, RV Sales. Therefore, Respondeat Superior existed.

However, even if the employer can show that it took prompt remedial action, it can raise a defense to the "alter ego's" conduct. Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998). In the instant case, however, there is no substantiated evidence that Kieffer, or RV Sales took any action to remedy the harassment. More importantly, RV Sales' sexual harassment policy in effect at the time of the alleged harassment, stated that employees shall report all incidents of harassment to their immediate employer. (J.E.#1). The policy also stated that the allegations will be immediately investigated. Here, there is no evidence whatsoever that Kieffer took any reasonable steps to investigate Montondo's harassment claim.

Kieffer had actual knowledge of the harassment inasmuch as he was the harasser. Montondo made it quite clear that his conduct was unwelcome and offensive, yet Kieffer did nothing to remedy the situation. (N.T.22-68). In this case, Kieffer was the direct supervisor, the one person with the sole responsibility to investigate and alleviate the discriminatory conduct. In Yates v. Avco Corp., the Sixth Circuit explained, that in situations where the harasser is the sole official charged with enforcing a company's sexual harassment policy, that actual reporting of alleged harassment will be discouraged. Yates v. Avco Corp., 819 F.2d 630, 635 (6th Cir. 1987).

In this case, Kieffer took no action despite Montondo's repeated rebuttals and warnings. (N.T.30-39). Instead, Kieffer treated Montondo's reactions as jokes and laughed at her. (.T.30-32). Montondo was left with no recourse except to resign her position and eventually report her allegations to the PHRC. (N.T. 51, C.E. #1). Montondo complied fully with RV Sales sexual harassment policy, yet Kieffer took no action and, therefore, Kieffer's harassment is imputed to RV Sales.

In conclusion, the Complainant has proved the existence of a hostile work environment, in violation of section 5 (a) of the PHRA. In particular, the Complainant was subject to pervasive and regular discrimination from her direct supervisor, due to her sex. The discrimination had a detrimental affect on the Complainant. The conditions of the work environment would have a detrimental affect on a reasonable person. Therefore, Respondent Kieffer RV Sales, is subject to liability for violating the PHRA for creating an intimidating, hostile, and offensive work environment, based on the Complainant's sex.

In addition, it is clear that Montondo has shown that Kieffer aided and abetted Kieffer RV Sales LTD in the commission of unlawful discrimination. Kieffer was Montondo's supervisor and he affirmatively engaged in discriminatory conduct. He also acted within the scope of his employment and had a community of purpose with Kieffer RV Sales LTD in committing the unlawful discrimination.

Having found that the Complainant has shown unlawful discrimination, we now move to the issue of determining the appropriate remedy. The Commission has broad discretion in fashioning a remedy. Section 9 of the Act provides:

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 findings of fact, and shall issue and cause to be served on such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action including, but not limited to, herein, reinstatement or upgrading of employees with or without back pay. . . and any other verifiable, reasonable but-of-pocket expenses caused by such unlawful discriminatory practice. 43 P.S. §959 (f).

The remedy serves two purposes. The first is to insure that the state's

interest in eradicating unlawful discriminatory practices is vindicated. This interest is served by the entry of a cease and desist order against the Respondent. The second purpose of any remedy is to restore the injured party to his/her status before the discriminatory action and make him/her whole. Consolidated Rail Corp. v. Pennsylvania Human Relations Commission, 582 A.2d 702, 708 (1990).

In the matter before the Commission, the specific nature of the remedy is clear. First, Respondents Kieffer RV Sales, LTD and Ernest A. Kieffer are ordered to cease and desist from unlawfully discriminating against individuals because of their sex, female.

Next Montondo is entitled to an award of back pay, with an award of interest on the back pay. Brown Transport Corp v. Cmwlth., Pa. Human Relations Commission, 133 Pa. Cmwlth Ct.845, 578 A.2d 555 (1990). When Montondo was terminated, she was earning \$8.00 per hour. (N.T. 19). Both parties agreed that she worked from 9:00 a.m. – 3:00 p.m., Monday through Friday. Montondo worked an average of 28.80 hours per week for a salary of \$230.46 per week. After the Montondo was terminated, she went to work for Limerick Lighting at the same hourly rate (\$8.00), but she received six fewer hours per week than with Respondent Kieffer RV Sales, LTD.

Based upon the above record, the Respondents shall pay Montondo \$3,287.36 which represents back pay from May 27, 1999 through September 19, 1999. The Respondents shall also pay Montondo an additional \$682.72, which represents Montondo's wage difference, from September 20, 1999 through April 28, 2000. That date is when Montondo's earnings either equaled or exceeded her earnings with Respondents. Interest shall be added to both awards. The specific

award of back pay is appropriate because the Respondents have failed to present any evidence that Montondo failed to mitigate her damages. A review of the record indicates that the Montondo did make an honest effort to mitigate her damages in this matter.

Furthermore, the Commission may require affirmative action measures in fashioning its remedy. Accordingly RV Sales, should be required to provide training to all of its management employees regarding their responsibility to insure that all employees are treated in a non-discriminatory manner. Also, Kieffer should be required to undergo training regarding his responsibility to insure that all employees are treated in a non-discriminatory manner.

Finally, in this matter, Commission Counsel has requested compensatory damages for the embarrassment and humiliation suffered by the Complainant. Such damages, however, are not available under the Pennsylvania Human Relations Act. The specific section of the PHRA which allows for embarrassment and humiliation damages is clearly restricted to housing cases. Section 9(f)(1) of the Pennsylvania Human Relations Act.

An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA E. MONTONDO,
Complainant

v.

KIEFFER RV SALES, LTD.,
AND ERNEST A. KIEFFER,
Respondents

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DOCKET NO. E-92071-D

RECOMMENDATION OF HEARING PANEL

In consideration of the entire record in the above captioned matter, the Hearing Commissioner Panel finds that Montondo has proven that the Kieffer RV Sales unlawfully discriminated against her by subjecting her to a hostile work environment and discharged her because of her sex, female. The Hearing Panel also finds that Kieffer aided and abetted the creation of the hostile work environment and the constructive discharge.

It is, therefore, the Hearing Panel's Recommendation that the attached Stipulations of Fact, 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 Hearing Panel recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: M. Joel Bolstein
Commissioner M. Joel Bolstein

Daniel D. Yun
Commissioner Daniel D. Yun

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CYNTHIA E. MONTONDO,
Complainant

v.

DOCKET NO. E-92071-D

KIEFFER RV SALES, LTD
AND ERNEST A. KIEFFER,

FINAL ORDER

AND NOW, this 23rd day of September, 2002, after 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 Hearing Panel. Further, the Commission adopts said findings of Fact, Conclusions of Law and Opinion as its own finding 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. RV Sales and Kieffer shall cease and desist from discriminating against persons because of their sex.
2. RV Sales and Kieffer shall be jointly and severally liable to pay Montondo an amount of \$3,287.36, which represents back pay from May 27, 1999 through September 19, 1999. RV Sales and Kieffer shall, jointly and severally, further pay Montondo \$682.72, representing Montondo's wage differential, from September 20, 1999 through April 28, 2000, the date when Montondo's earnings equaled or exceeded her earnings with Respondents. Interest shall be calculated at the rate of 6% per annum until December 31, 1999 and at the rate of eight percent for calendar year 2000, and at the rate of nine percent thereafter.
3. RV Sales shall provide training to all of its management employees regarding their responsibility to insure that all employees are treated in a non-discriminatory manner consistent with the provisions found in the Pennsylvania Human Relations Act as well as their responsibility to appropriately respond to allegations of sexual harassment, within thirty days of the date of the Final Order.
4. Kieffer shall undergo training regarding his responsibility to insure that all employees are treated in a non-discriminatory manner consistent with the provisions found in the Pennsylvania Human Relations Act as well as his

responsibility to appropriately respond to allegations of sexual harassment, within thirty days of the date of the Final Order.

5. The Respondents shall report the means by which it will comply with the order, in writing, to Charles L. Nier, III, Assistant Chief Counsel, Philadelphia Regional Office within thirty days of the date of this order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Carl E. Denson
Carl E. Denson, Chairperson

ATTEST:

By: Russell S. Howell
Russell S. Howell, Assistant Secretary