

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**SHARON SHERIDAN,
Complainant**

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PHRC CASE NO. 200500484

**PLUM ENTERTAINMENT LLC,
Respondent**

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. The Respondent is Plum Entertainment, LLC (hereinafter "Plum Entertainment"). (N. T. 27, 365, 369, 417).
2. Plum Entertainment was formed in or about 2004 and became a member of Five Plum LLC, a co-venture with the Women and Cancer Fund, (hereinafter "WCF"). (N. T. 365, 463, 486, 546).
3. Following Linda McCartney's death, Plum Entertainment was formed to attempt to produce a tribute music CD, ostensibly to raise money for cancer research. (N. T. 29, 365).
4. Carl Cutts, (hereinafter "Cutts") was the owner and President of Plum Entertainment. (N. T. 32, 255, 364).
5. Plum Entertainment had five members: Cutts, John Robertson, Michael Kurtz, Gary Zarzycki and Mark Ziegenfuss. (N. T. 417, 477, 545).
6. Cutts had a 51% ownership interest in Plum Entertainment. (N. T. 417, 479).
7. Cutts and John Robertson, (hereinafter "Robertson") each had a 33 and 1/3% creative share in Plum Entertainment, with each of the three other members having an 11% creative share. (N. T. 417, 479-480).

* 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
C. E. Complainant's Exhibit
R. E. Respondent's Exhibit
W.D. Deposition of Kerri Walsh

8. Each of the five members of Plum Entertainment had a 20% share of the operation. (N. T. 417, 479).
9. Robertson was Plum Entertainment's CEO. (N. T. 41, 255, 477).
10. Michael Kurtz's, (hereinafter "Kurtz") title was Product Manager. (N. T. 497).
11. Both Cutts and Robertson had signed employment agreements with Plum Entertainment which set forth their salaries and the terms and conditions of their employment. (N. T. 369, 481; C. E. 13, 17).
12. Kurtz was generally in Plum Entertainment's offices daily, received compensation for his services and was supervised by Cutts. (N. T. 490).
13. In the fall of 2004, Plum Entertainment also employed Eliana Kelly (hereinafter "Kelly") as Plum Entertainment's Arts and Repertoire Administrator. (N. T. 303, 359, 541).
14. Kelly was hired by Cutts and Robertson and worked primarily for Robertson. (N. T. 304, 305).
15. Kelly, Robertson and Kurtz normally worked 9:00 a.m. to 5:00 p.m., Monday through Friday, at Plum Entertainment's offices on Bridge Street in New Hope. (N. T. 34, 306).
16. Cutts had supervisory authority over Anne Marie Dorland, Plum Entertainment's bookkeeper. (N. T. 378-379).
17. The Complainant in this case is Sharon Sheridan (hereinafter "Sheridan"). (N. T. 26, 210-211).
18. In the late summer of 2004, Sheridan was looking to make a change from her job selling gift items for Roman, Inc. (N. T. 27, 203).

19. Sheridan had been with Roman, Inc. for approximately seven years and before Roman sold gift items for Enesco for ten years. (N. T. 203; R.E. 5).
20. Debbie Jay, a friend of Sheridan's, forwarded an e-mail she had received, which generally advised that a President of an entertainment company was looking for a personal assistant. (N. T. 27, 28, 51, 95).
21. Sheridan was interviewed by Cutts and Robertson for the position of Cutts' personal assistant. (N. T. 28).
22. During the interview, Cutts told Sheridan that Plum Entertainment was doing a 24 track CD/DVD as a dedication to Linda McCartney, with hopes of raising money for the WCF. (N. T. 29).
23. Cutts told Sheridan that the details of the assistant job would be developed as the project went along. (N. T. 29, 387).
24. During the interview, Cutts asked Sheridan if she had a boyfriend, to which Sheridan replied that she had a recent bad breakup and she was trying to make a change. (N. T. 29).
25. In late August 2004, Cutts hired Sheridan to be his personal assistant. (N. T. 27, 387).
26. Sheridan's salary was set at \$60,000 per year, and Sheridan testified that shortly after being hired, Cutts also offered Sheridan 5% of any money raised for the project. (N. T. 31, 188, 197, 231, 232, 244, 273; R.E. 1, at 9).
27. Initially, Sheridan began coming to Plum Entertainment's office at approximately 10:00 a.m. and would stay until approximately 6:00 p.m. (N. T. 32, 37).
28. Without specific tasks assigned to her, Sheridan attempted to help Kelly write

- a script for the head of WCF, Alicia Alvarez, (hereinafter "Alvarez"), looked for performance arenas, and assisted Kelly and Alvarez in creating an electronic press kit. (N. T. 32-33).
29. Often, Sheridan would just sit at her desk doing nothing. (N. T. 33).
 30. In the first few weeks of Sheridan's employment, Sheridan received a call at the office from a male friend. (N. T. 46).
 31. Cutts became upset, got up, threw papers and walked out saying "if everyone can have you, then they can have you." (N. T. 46, 323; R.E. 1, at 46).
 32. Cutts did not return to the office for several days. (N. T. 46).
 33. Sheridan repeatedly attempted to call Cutts who finally responded saying, "I emotionally couldn't take it" and that he had to go to Mars and Venus for a while, but was back now. "I'm going to get my emotions under control." (N. T. 46).
 34. On a separate occasion, while Sheridan and Cutts were sitting in a booth having lunch with Alvarez, Cutts kept moving closer and closer to Sheridan until she was wedged against the side. (N. T. 47, 49).
 35. Cutts informed Alvarez that Sheridan comforts him, so he needed to be close to her. (N. T. 49).
 36. Another time, while working at her computer in the office, Cutts was explaining a program and was standing so close to Sheridan that she was able to feel his privates pressed against her. (N. T. 50).
 37. As Sheridan attempted to move away, Cutts followed her with his body, causing Sheridan to freeze. (N. T. 50)
 38. Only when Sheridan began acting uncomfortable did Cutts move away. (N. T. 51).

39. In October 2004, Cutts called Sheridan saying that he had something important to talk to her about, that Sheridan should not come into the office, but just drive to the office parking lot and call him. (N. T. 37).
40. Cutts instructed Sheridan to drive north, that he wanted to see green trees. (N. T. 37).
41. Cutts and Sheridan went on a three hour drive, during which no business was discussed. (N. T. 37-38).
42. Near the end of the drive, Cutts asked Sheridan if she had spoken with Robertson.
43. He asked because he had seen her speaking with him the previous evening, that she had started the conversation and that as he watched her body language, he felt she had leaned in towards Robertson. (N. T. 38, 40, 41; R. E. 1, at 72).
44. Cutts instructed Sheridan not to go into the office unless he was there and not to talk either to Robertson or anyone else at the office. (N. T. 40-41, 189, 252-253; R.E. 1, at 23-24, 44, 71).
45. Sheridan was instructed to call Cutts each day to see if there was work and whether Sheridan was needed at the office. (N. T. 388, 395, 419; R. E. 1, at 23-24; R. E. 5, at 45).
46. On several occasions prior to November 8, 2004, Sheridan spoke with Cutts about his behavior. (N. T. 46).
47. By November 8, 2004, Cutts' inappropriate behavior towards Sheridan had become both more frequent and more advanced, causing Sheridan to begin to document incidents on her private calendar. (N. T. 42, 44, 46; C. E. 1).

48. Cutts' behavior also caused Sheridan to visit a doctor early in November 2004, seeking treatment for stress. (N. T. 52; C. E. 1).
49. On November 9, 2004, Cutts instructed Sheridan to remain at home while Kelly attended to the needs of a producer from England, because Cutts thought the producer had looked at Sheridan. (N. T. 52-53; R. E. 1 at 84).
50. The English producer gave Sheridan a stuffed dog which Cutts later threw on the floor. (N. T. 53).
51. After November 9, 2004, Cutts no longer wanted to work with this producer because he thought he was interested in Sheridan. (N. T. 53).
52. On the evening of November 9, 2004, Cutts and Sheridan attended a dinner meeting with the English producer where Cutts became intoxicated, put his arm around Sheridan and leaned on her as they walked through the restaurant. (N. T. 53, 54).
53. Because Cutts was intoxicated, Sheridan drove him home on the evening of November 9, 2004. (N. T. 54).
54. When Sheridan dropped Cutts off, Cutts invited Sheridan into his home and Sheridan refused saying "absolutely not." (N. T. 55).
55. Just before Sheridan left, Cutts told Sheridan to stop treating him like a rapist and "get in here." (N. T. 55; R. E. 1, at 18).
56. That night, Cutts called Sheridan's home telephone repeatedly and left several messages for her, including a message stating that her ex-boyfriend is not the man who loves you, "I do." (N. T. 54, 164, 166, 286).
57. On November 10, 2004, Sheridan discussed the events of November 9, 2004 with Kurtz, who told Sheridan that he felt sorry for her, and that Cutts had called him around 2:00 a.m. to tell him he told Sheridan he loved her but regretted saying it. (N. T. 56-57; R. E. 1, at 21, 40, 68).

58. Thereafter, Sheridan was not asked to work for several days until she called Cutts on November 14, 2004, requesting that Cutts meet her in the office on the 15th. (N. T. 57; R. E. 1, at 24).
59. During Sheridan's meeting with Cutts on November 15, 2004, she explained to him that his behavior towards her was inappropriate for an employment relationship. (N. T. 57; R. E. 1, at 24-25).
60. As Sheridan was explaining that she liked working for Plum Entertainment, but that there was a need for clarity regarding what Cutts could and could not say to her, Cutts abruptly stood and walked out. (N. T. 57-58; R. E. 1, at 24).
61. Later, Sheridan called Cutts, leaving him a message about how disrespectful he had been while she was attempting to tell him something important. (N. T. 50).
62. Eventually, Cutts called Sheridan, telling her that he never had feelings like this before and that Sheridan had hit him like a ton of bricks. (N. T. 58).
63. Cutts also told Sheridan that the day he interviewed her for the job, he felt that knew Sheridan from another life. (N. T. 58-59).
64. Sheridan told Cutts that she does not share his feelings and that she wanted to continue working on the project, but things had to get under control. (N. T. 59).
65. Cutts responded by telling Sheridan it would not surface again. (N. T. 59).
66. On November 17, 2004, Sheridan was out and had met a local producer, so she called Cutts to come meet him. (N. T. 59).
67. Cutts came, met the producer and left. (N. T. 60).
68. Later, when Sheridan called Cutts, Cutts told her he could not stand to see her hold someone else's hands. (N. T. 60; R. E. 1, at 27).

69. On November 25, 2004, Cutts told Sheridan that she could not socialize with Kelly. (N. T. 60-61; R. E. 1, at 28).
70. Sheridan responded by telling Cutts that she thinks Cutts does not want her to socialize with Kelly because Kelly is single, vivacious and very sociable, and if Sheridan is with Kelly, there is an opportunity to meet men. (N. T. 61; R. E. 1, at 29).
71. Cutts replied, "You're 100% correct." (N. T. 61).
72. In November 2004, Cutts offered to have Sheridan work on the other side of the office because, as he said, it was becoming difficult for him to be around Sheridan. (N. T. 61).
73. Cutts also offered to design a position for Sheridan with WCF, and when Sheridan declined, Cutts responded, "I don't think you understand. I'm offering to pay you to stay at home". (N. T. 62).
74. Sheridan declined, telling Cutts that would not be good for her self-esteem or her professionalism. (N. T. 62).
75. On December 13, 2004, Sheridan was at a dinner with Cutts, a local music producer and his wife. (N. T. 66-67).
76. That evening, near Sheridan's car, Cutts attempted to hug Sheridan, but she backed away. (N. T. 67; R.E. 1, at 30).
77. The following day, Cutts called Sheridan, asking if he made her feel uncomfortable when he went to touch her, to which Sheridan replied, "yes." (N. T. 67; R. E. 1, at 30).
78. Again, Cutts expressed to Sheridan that he had feelings for her, to which Sheridan replied that she did not want Cutts touching her and she does not want to hug him. (N. T. 67).

79. Later, while attending a Christmas party at Robertson's home, Sheridan told Robertson that Cutts was, "driving her nuts." (N. T. 510, 547-548).
80. Sheridan told both Robertson and his wife that Cutts had an interest in her and that he was strange. (N. T. 583, 587; R. E. 1, at 80).
81. Robertson told Sheridan they knew and they felt sorry for her. (N. T. 583-584; R. E. 1, at 80).
82. Other things Cutts did that offended Sheridan and made her concerned include:
- a) having a photograph of Sheridan on his cell phone. (N. T. 149; R.E. 1, at 45).
 - b) telling Sheridan her body is perfect the way it is and that in his mind he could tell what she would look like naked, even with her clothes on. (N. T. 151-152).
 - c) telling Sheridan her lips were perfect. (N. T. 152).
 - d) telling her he knew her from another world. (N. T. 152).
 - e) telling Sheridan's roommate, Kimberly Daigle, that he loved Sheridan. (N. T. 285).
 - f) calling Sheridan incessantly when she was out with Kelly. (N. T. 324).
 - g) having Sheridan in his office all day with the lights off and music playing. (N. T. 319).
 - h) Sending Sheridan poems. (R.E. 1, at 64-65).
 - i) telling Sheridan not to invite Kurtz to her home for a dinner party, because Kurtz was not allowed to come to her home. (N. T. 96).
 - j) telling Sheridan he would only call her at her home phone number and not her cell phone, causing Sheridan to have to stay home all the time. (N. T. 81, 197).
 - k) telling Kelly numerous times not to socialize with Sheridan. (N. T. 343-344).
 - l) making Sheridan's friend, Kerri Walsh, feel awkward and uncomfortable as Cutts tried to touch and grab Sheridan at a dinner party. (W.D. at 9-10, 16).
 - m) telling Walsh, who he just met, that he loves Sheridan so much, and no one will ever love her like he does. (W.D. at 5, 8-9).
83. In December 2004 and January 2005, Sheridan saw her family doctor because she was crying a lot and not sleeping. (R.E. 5, at 15 38, 41).
84. Sheridan was prescribed Wellbutrin for anxiety/depression. (N. T. 41).

85. Everyone in the office often witnessed Sheridan upset and crying over the way Cutts treated her. (N. T. 289, 292, 325, 507, 519).
86. By January 2005, Sheridan was crying more often and becoming more nervous. (N. T. 73).
87. On January 16, 2005, Sheridan accompanied Cutts to Atlantic City to meet with the Jersey Boys the following day. (N. T. 77-78).
88. While meeting with the Jersey Boys, Cutts leaned on Sheridan and inched closer and closer to her in the booth in which they were sitting. (N. T. 78, 172, 175; R.E. 1, at 32).
89. Cutts also told Sheridan not to have conversations with one of the group because he had seen her speaking with him. (N. T. 78).
90. In February, Sheridan and others, including Cutts, attended the Grammys in Los Angeles. (N. T. 80).
91. On February 14, 2005, while still in California, Cutts had a rose put at the door of Sheridan's hotel room. (N. T. 80; R.E. 1, at 34).
92. On February 28, 2005, Cutts called Sheridan, told her he could not talk, that he was too emotional, and he would call when he "got it together." (R.E. 1, at 36).
93. On March 3, 2005, once again, Cutts relayed to Sheridan his feelings for her, that he could not handle it and he was still trying to get it together. (N. T. 82, 84; R.E. 1, at 37).
94. On March 19, 2005, Cutts called Sheridan, and told her to meet him at a restaurant. (N. T. 85).
95. Sheridan met with Cutts, however no business was discussed as Cutts simply wanted to be near her socially. (N. T. 85).

96. Approximately 15 times previously Cutts had Sheridan meet him at restaurants where no business had been discussed. (N. T. 86).
97. By March 26, 2005, Sheridan was back to see her doctor as she felt more depressed over Cutts' behavior and his attempted manipulation of her life. (N. T. 87).
98. Sheridan only saw Cutts once in March 2005, but remained available for work by telephone. (N. T. 8).
99. In April 2005, Sheridan continued to call Cutts as instructed and sometimes he would answer and sometimes he would not. (N. T. 91-92; R.E. 1, at 39).
100. Sheridan did not see Cutts in April 2005. (N. T. 216).
101. On May 2, 2005, Cutts called Sheridan's home 11 times to discuss her attendance at a bachelorette party on April 30, 2005, to which she should not have gone. (N. T. 93, 234).
102. Sheridan informed Cutts that he could not tell her how to conduct her personal life. (N. T. 95-96).
103. On May 4, 2005, Cutts told Sheridan that she was not allowed to go to her friend's wedding on May 6, 2005 because her friend is a "bad person." (N. T. 95, 235).
104. Cutts told Sheridan to decide what was more important, her job or her personal life. (N. T. 96).
105. On May 10, 2005, by telephone, Sheridan talked with Cutts, telling him that many of his actions are inappropriate, and that he is interfering with her personal life. (N. T. 98, 239).
106. Sheridan reviewed her past career with Cutts, that now she had no duties, that she was not accomplishing anything, and that Cutts should compensate her for his behavior and just let her pursue another career. (N. T. 98-99).

107. Cutts told Sheridan that he would give her whatever she wants, he just wants her to be happy. (N. T. 100, 240)
108. Sheridan told Cutts she would get back to him in a few days after she had calmed down. (N. T. 100, R.E. 1, at 5, 62).
109. The next day, May 11, 2005, Cutts called Sheridan 8 times. (N. T. 100; R.E. 1, at 6).
110. On May 11, Cutts hand-delivered Sheridan's paycheck to her home. (N. T. 118).
111. On May 12, 2005, Sheridan e-mailed Cutts, and asked him to stop calling, telling him she was upset and as they agreed, she would get back to him in a few days. (N. T. 101; C.E. 2).
112. Cutts then called Sheridan two times on May 12, 2005. (R.E. 1 at R. E. 6, 48).
113. On May 13, 2005, Sheridan consulted an attorney, seeking a letter directed to Cutts that formally expressed just how offended Sheridan was about Cutts' continuing behavior, and to submit a proposed plan that Sheridan believed was consistent with terms they had discussed on May 10, 2005. (N. T. 102, 103, 254, 268; C.E. 3).
114. Sheridan also enclosed a personal note to Cutts in which Sheridan expressed how sorry she was that Cutts had developed unrequited feelings but that his repeatedly and inappropriate crossing of boundaries had detrimentally affected her professionally, emotionally, mentally and physically. (N. T. 104-105; C.E. 3).
115. When Cutts received the letter from her attorney he threw it away. (N. T. 402-403).

116. On or about May 23, 2005, the attorney's letter was resent to Cutts, this time certified. (N. T. 114, 271; C.E. 5).
117. On May 23, 2005, Cutts sent Sheridan an e-mail requesting that Sheridan come to the office to answer the telephone. (N. T. 109, 111, 192, 414; C.E. 4).
118. Under other circumstances, Sheridan would have gone to the office to answer the office phones, however Sheridan and her attorney were waiting for Cutts' response to the May 13, 2005 letter. (N. T. 193, 584).
119. Neither Cutts nor anyone else at Plum Entertainment ever answered the attorney's letter. (N. T. 270, 272, 276, 407).
120. Cutts simply decided to do nothing after receiving the letter. (N. T. 407).
121. The next communication Sheridan had with Plum Entertainment was on June 6, 2005, when she called and left messages for Robertson and Dorland attempting to learn her status. (N. T. 119).
122. By letter dated June 14, 2005, Robertson informed Sheridan that, effective May 20, 2005, she had been terminated. (N. T. 120; C.E. 7).
123. Even before Sheridan received Robertson's termination notice, Sheridan had begun to find another job. (N. T. 121, 122, 124; R.E. 5 at 20).
124. By June 9, 2005, Sheridan was interviewing with other employers, seeking alternative employment. (R.E. 5 at 20).
125. Sheridan attended job fairs, checked newspapers, called friends, used career builders, gave out resumes and interviewed with numerous potential employers. (N. T. 122, 124; R.E. 5, at 20-21).
126. On June 23, 2005, Sheridan interviewed with Viva International Group for a Sales Representative position. (R.E. 1, at 16).

127. On or about July 17, 2005 Sheridan began working for Viva International Group, training to sell optical frames. (N. T. 123; C.E. 8)
128. For the six months Sheridan worked for Viva International Group, she earned approximately \$3,000 per month plus commission. (N. T. 126; R.E. 5, at 12).
129. After Viva International Group, Sheridan next worked for Safilo, again as a sales representative selling eyeglasses. (N. T. 127; C.E. 5, at 6).
130. Generally, Sheridan's wages with Safilo amounted to \$4,000 per month, plus 5% of commissions. (N. T. 140, 225; R.E. 5, at 7-8).
131. Sheridan earned approximately \$10,000 every six months in commissions. (N. T. 230).
132. Sheridan worked from her home for both Viva International Group and Safilo, incurring expenses she would not have had, had she remained an employee of Plum Entertainment. (N. T. 130; R.E. 5, at 24-25).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over Sheridan, Plum Entertainment and the subject matter of Sheridan's complaint under the Pennsylvania Human Relations Act (hereinafter "PHRA").
2. The parties and the Commission have fully complied with the procedural prerequisites to convene a Public Hearing.
3. Plum Entertainment is an employer within the meaning of Section 4(b) and 5(a) of the PHRA.
4. The Complaint filed in this case satisfies the filing requirements found in §9 of PHRA.
5. Section 5(a) of the PHRA, prohibits employers from discriminating against individuals in their employment because of their sex.
6. Section 5(d) of the PHRA, prohibits employers from retaliation against an individual because such individual has opposed any practice forbidden by the PHRA.
7. Sheridan has established by a preponderance of the evidence that Plum Entertainment unlawfully discriminated against her by subjecting her to a hostile work environment because of her sex, female, in violation of Section 5(a) of the PHRA, and by discharging her in retaliation for her opposition to a practice forbidden by the PHRA, in violation of Section 5(d) of the Act.
8. Whenever the Commission concludes that a Respondent has engaged in an unlawful practice, the Commission shall issue a cease and desist order and it may order such affirmative action as in its judgment will effectuate the purposes of the PHRA.

OPINION

This case arises on a complaint filed by Sharon Sheridan (hereinafter "Sheridan") against Plum Entertainment, LLC, (hereinafter "Plum Entertainment") on or about August 17, 2005, at PHRC Case Number 200500484. In her two-count complaint, Sheridan generally alleged that she was subjected to a hostile work environment and that she was terminated when she opposed her working conditions. Sheridan's claims allege that Plum Entertainment violated Sections 5(a) and 5(d) of the Pennsylvania Human Relations Act of October 27, 1955. P.L. 744, as amended, 43 P.S. §§951 *et. seq.* (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit Sheridan's allegations of discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. Those efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on August 1 and 2, 2007, in Montgomeryville, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The record was held open to take additional depositions. On October 2, 2007, a deposition of Kerri Walsh was taken and submitted into the record. The Post-Hearing Brief on behalf of the state's interest in the complaint was received on April 8, 2008. Although afforded the opportunity to do so, Plum Entertainment has not filed a Post-Hearing Brief.

Section 5(a) of the PHRA provides in relevant part:

It shall be an unlawful discriminatory practice...for any employer because of the ...sex...of any individual...to...discriminate against such individual...with respect to...terms, conditions or privileges of employment... (43 P.S. §955(a)).

Section 5(d) of the PHRA provides in relevant part:

It shall be an unlawful discriminatory practice...[f]or any...employer...to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act... (43 P.S. §955(d)).

The contrast between Sheridan's and Cutts' version of Sheridan's work environment makes the initial determination regarding credibility extremely important. Generally, Cutts denied either that he was jealous of Sheridan or that he had a romantic interest in Sheridan. (N. T. 426, 427). Cutts also flatly denied ever touching, grabbing or kissing Sheridan. (N. T. 429, 465). Further, Cutts stated that it was Sheridan who called him with personal calls all the time and wanted to attend evening events with him. (N. T. 437). Also, Cutts submits that at one point Sheridan told him that she thought he had some affection for her and wanted a relationship with her, but he told Sheridan that he did not. (N. T. 428). In response to Sheridan's assertion that Cutts had rubbed his privates against her, Cutts denied this occurred. (N. T. 447-48).

In stark contrast to Cutts' denials, Sheridan's comprehensive testimony generally outlined her need to become increasingly assertive to counter an ever present campaign as Cutts attempted to establish a relationship with her. Sheridan's testimony described herself as the target of Cutts' relentless attention and a continuing preoccupation by Cutts, who wished for a relationship with Sheridan. Sheridan's testimony painted Cutts as an unwanted, tireless pursuer who displayed jealousy, threw tantrums, and brooded for long periods when rejected. Rather than working in an environment of trust and mutual respect, Sheridan offered that Cutts' behavior was dominated by a possessiveness of her, controlling and extremely manipulative. Sheridan's version finds Cutts' world as becoming increasingly narrow, where he went so far as to neglect business to focus on Sheridan. Sheridan's version portrayed herself as unable to understand why Cutts refused to accept her painfully clear, repeated message that she did not have feelings for him. Further, Sheridan credibly described her increased sensations of fear, frustration and anger that collectively caused her life to

slowly disintegrate into emotional turmoil, anxiety and which ultimately negatively affected her physical and emotional well-being.

During his testimony, Cutts' credibility grew dim. Indeed, Cutts began by offering that Sheridan's job deficiency was that she got mad really easily and that he did not know why. (N. T. 389). When deposed earlier, Cutts testified that he did not think Sheridan had any job deficiencies. (N. T. 389). Cutts then described Sheridan as a very capable employee who had received no warnings and had no deficiencies. (N. T. 389). Interestingly, Cutts also indicated that Sheridan periodically cried or became angry. (N. T. 389). His initial suggestion that Sheridan had a job deficiency was almost immediately self-contradicted.

Next, at the hearing Cutts, denied that he had instructed Sheridan not to speak with Robertson. (N. T. 392). Again, in an earlier deposition, Cutts testified that he had told Sheridan not to talk with Robertson. (N. T. 393). Although Cutts subsequently tried to minimize this stark contradiction by saying he told Sheridan she did not have to speak with Robertson, the substantial credibility slip had already occurred. *Id.*

At the hearing, Cutts suggested that he does not recall there having been an extended time when Sheridan was told not to report to work. (N. T. 394). In his deposition, Cutts acknowledged that there had been such a time. (N. T. 394-95).

Another telling area deals with Cutts' testimony about what he did upon receipt of Sheridan's attorney's May 16, 2005 letter. At the hearing, Cutts said that "maybe" he threw the letter in the garbage. (N. T. 400-401). Cutts was then confronted with his deposition testimony that said, in effect, within three seconds of receiving the letter, he had it in the garbage where it belongs. (N. T. 402). When Cutts was then asked again about the letter, he said he threw the letter away. (N. T. 403).

This particular event highlights the depth of Cutts' distorted judgment and the shell of denial he had built around himself. While Sheridan was seeking to regain some

normality in her life, Cutts' refuge was willful blindness, up to the point that it finally become impossible for him to separate his fantasy world from reality. Throughout the period of Sheridan's employment, Cutts constantly pushed into a shadowy background the clear signs of Sheridan's rejection of him. It is clear that Cutts acted in ways contrary to emotional balance and common sense. It seems that Cutts viewed the things he did as innocent, when in fact, his inappropriate behavior was slowly turning Sheridan's life into a nightmare.

Cutts was envious and his actions were fraught with jealousy. He was suspicious and overly sensitive, at times calling Sheridan incessantly to check where she was, and dictate who she should and should not socialize with. Cutts even tried to keep Sheridan away from business associates who he imagined were interested in her. His pathetic desperation seemed to drive Cutts to do and say various things for which he would later express regret. Clearly, Cutts' behavior was borne from the opposing forces of hope and anxiety. Despite Sheridan repeatedly and bluntly telling him that she did not reciprocate his feelings, Cutts refused to give up. Ultimately, Cutts' suffocating behavior and unwillingness to accept that Sheridan did not want to be in a relationship with him drove Sheridan, in both desperation and frustration, to an attorney for help. Indeed, Sheridan's life had been dramatically altered by the destructive form of Cutts' actions as he attempted to find a way to satisfy his insatiable longing for Sheridan. The manifestations of Cutts' desires came at the expense of Sheridan's right to a work place free from harassment.

With the exception of pressing his privates against Sheridan on one occasion, Cutts' behavior was not overtly sexual. Regardless, harassment on the basis of sex which creates a "hostile environment" violates the PHRA. Pa. Bulletin, Vol. 11, No. 5 (January 31, 1981). See Hoy v. Angelone, 691 A.2d 476 (Pa. Supp. 1997) aff'd 720 A.2d 745 (Pa. 1998); see also Hall v. Gus Construction Company, Inc., 842 F.2d 1010,

1014, 46 FEP Cases 573 (8th Cir. 1988). In Hall, the 8th Circuit reviewed the question of whether only conduct of a sexual nature should be considered in a harassment claim, and concluded that the predicate acts underlying the harassment do not need to be clearly sexual in nature, citing Hicks v. Gates Rubber Co., 833 F.2d 1406 (10th Cir. 1987), and McKinney v. Dole, 765 F.2d 1129, 38 FEP Cases 364 (D.C. Cir. 1985). Any harassment of an employee that would not have occurred but for the sex of the employee may, if sufficiently severe or pervasive, create a hostile work environment. What is necessary is that the conduct must have been unwelcome and the employee must regard the conduct as undesirable or offensive. See Moylan v. Maries County, 792 F.2d 746, 40 FEP Cases 1788 (8th Cir. 1986).

The Hoy case sets forth elements a Complainant must prove to establish a hostile environment claim. The elements are:

1. the Complainant suffered intentional discrimination because of her sex;
2. the discrimination was either severe or pervasive and regular;
3. the discrimination detrimentally affected the Complainant;
4. the discrimination would detrimentally affect a reasonable person of the same sex in that position; and
5. the existence of respondeat superior liability.

Hoy at 480 (*citing* Andrews v. City of Philadelphia, 895 F.2d 1469, 1483 (3rd Cir. 1990)); see also Kunin v. Sears Roebuck and Co., 175 F.3d 289, 293 (3rd Cir. 1999), cert. denied, 528 U.S. 964 (1999).

First, Sheridan clearly suffered at the hands of Cutts because she is a woman. Here, Sheridan would not have been plagued by Cutts' actions, his longing, his jealousy, and his possessiveness had she not been a woman. Sheridan has presented sufficient evidence to meet the first requisite element of a *prima facie* showing.

Next, Sheridan must establish that the cause of the hostile environment was either severe or pervasive and regular. In assessing this element, all of the circumstances present should be considered. Harris v. Forklift System, Inc., 510 U.S. 17, 22-23 (1993).

The Post-Hearing Brief on behalf of the state's interest in the complaint points to the case of Anderson v. Deluxe Homes of Pa., Inc., 311 F. Supp. 2d. 637 (M.D. Pa. 2001). In Anderson, for a period of over two months, a male manager and a male co-worker made statements and engaged in conduct directed towards a female employee that the court found sufficient to prove discrimination because of sex. *Id* at 645. The manager's alleged actions include:

1. saying, "maybe I can be the one to turn your luck around" in response to the female employee saying she hoped she would have better luck the next day.
2. saying, "you are like a magnet. I cant seem to keep from hanging around you; you are absolutely beautiful".
3. while the female employee was on a ladder, the manager stated, "Don't worry, if you fall, I will catch you, and I won't let you go. You look real nice today." Then he smiled and winked.

The male co-worker's alleged actions include:

1. on several occasions, asking to see her socially. She refused.
2. calling her "Barbie", refusing to use her real name, and encouraging others to call her "Barbie".
3. when she was in the immediate vicinity, whistling and hissing at her.
4. when she was standing on a bench, he grabbed her leg, looked at her "private parts" and said "now that's a pretty sight".
5. putting his hands around her waist saying, "what is that, about a 22 inch waist?".
6. once he touched her breast.
7. when she told him to leave her alone, he responded, "just remember, I know where you live."
8. one day she was wearing a sweatshirt with the words "Bongo Jeans"; he grabbed his crotch and said, "you could make my jeans bongo anytime."
9. stating to her, "my dick's bigger than Bruce Walton's. Why would you want him?".
10. making "tongue motions" she believed were intended to simulate oral sex.

The court noted that some of the alleged principal harasser's actions were constant, and he allegedly touched her three times. This, the court said, meets the

“pervasive” standard. The court also noted that some of the alleged conduct would be considered “severe”.

In the case of Ellison v. Brady, 54 FEP Cases 1346 (9th Cir. 1991), an abusive work environment was found where a male co-worker asked a female unnecessary questions and hung around her desk, asked her out for a drink after work, asked her to go to lunch several times, and wrote her a note saying that he cried over her and was in turmoil. When the female showed the note to her supervisor and had another male co-worker tell the male who had asked her out that she was not interested in him, the female then received a three paged typed letter that frightened her. Ellison at 1349. In part, the letter read:

I know that you are worth knowing with or without sex ... Leaving aside the hassles and disasters of recent weeks, I have enjoyed you so much over these past few months. Watching you. Experiencing you from O so far away. Admiring your style and elan ... Don't you think it odd that two people who have never even talked together, alone, are striking off such intense sparks ... I will (write) another letter in the near future.

Subsequently, management moved the male employee to another state, told him several times to leave the woman alone and not to contact her in any way. Despite this, more letters were sent to the female seeking a relationship. *Id.*

In focusing on the perspective of the victim, the court in Ellison found the conduct was sufficiently severe and pervasive to alter the conditions of employment and create an abusive working environment. The court reasoned that well-intentioned compliments by co-workers or supervisors can form the basis of a harassment claim if a reasonable victim of the same sex considered the comments sufficiently severe or pervasive to alter a condition of employment and create an abusive working environment. The proscription against harassment is aimed at the consequences or effect of actions and

not the motivation of the actor. Ellison, at 1351, *citing* Roger v. EEOC, 454 F.2d 234 (5th Cir. 1971), *cert. denied*, 406 U.S. 957 (1972). The court further observed that the male harasser might see himself as a modern-day Cyrano de Bergerac who only wanted to woo the female. Even though there was no evidence of ill will, the female victim did not see the actions as trivial, but was found to be justifiably shocked and frightened. *Id.* At 1354.

Here, the evidence establishes that Sheridan was victimized in a manner far greater than the female employee in Ellison. Cutts visited upon Sheridan unwelcome sexual conduct and pervasively plagued her with constant manifestations of his longing to develop a relationship with her. Sheridan could not have been more clear that she considered Cutts' behavior inappropriate and that she did not want a romantic relationship with him. Despite the clarity of Sheridan's rejections, Cutts continued to press the issue, making Sheridan's work environment abusive. Between September 2004 and June 2005, examples of what Sheridan endured include the following:

1. on one occasion, Cutts stood so close to Sheridan that his privates were pressed against her and as Sheridan moved away, Cutts moved with her. (N. T. 50).
2. on several occasions, Cutts became visibly upset when Sheridan received calls from male friends at the office. (N. T. 46, 323).
3. on several occasions, while sitting in restaurant booths, Cutts would move closer and closer to Sheridan until he had physically wedged himself next to her. (N. T. 47-49, 78, 172, 175; R.E. 1, at 32).
4. Cutts told Alvarez that he needed to be close to Sheridan because she comforts him. (N. T. 49).
5. Cutts had Sheridan, take him on a three hour drive, during which no business was discussed, but where Sheridan was instructed not to speak with Robertson. (N. T. 37-41; R.E. 1, at 23-24, 44, 71).
6. Cutts did not permit Sheridan to be in the office unless he was present. (N. T. 40-41, 189, 252-53).
7. Cutts instructed Sheridan to call him each day to determine if there was work for her. (N. T. 388, 395, 419).
8. when Cutts believed a male producer was interested in Sheridan, Cutts transferred Sheridan's professional duties from Sheridan to another employee. (N. T. 52-53; R.E. 1, at 84).
9. at times, Cutts would repeatedly call Sheridan's home. (N. T. 54, 286-87).

10. several times, Cutts declared that he loved Sheridan. (N. T. 54, 58, 169, 166, 285, 286).
11. Cutts told Sheridan that her body and lips are perfect and he could tell how she would look naked. (N. T. 151-52).
12. Cutts would send Sheridan poems. (R.E. 1, at 64-65).
13. Cutts told Sheridan he would only call her home number and not her cell phone, forcing Sheridan to stay home. (N. T. 81, 197).
14. Cutts periodically attempted to hug and kiss Sheridan. (N. T. 66-68, 320-22).
15. several times Cutts put his arm around Sheridan's waist. (N. T. 321-22).
16. on several occasions, Cutts told Sheridan that he had feelings for her, but that he would try to control his feelings. (N. T. 57-59, 82-84; R.E. 1, at 36).
17. Cutts instructed Sheridan to stop socializing with a co-worker because he feared Sheridan might meet men. (N. T. 51, 61-62; R.E. 1, at 29).
18. on approximately 15 occasions, Cutts had Sheridan meet him at restaurants where no business would be discussed. (N. T. 86).

The listed incidents of Cutts' actions sufficiently rise to the level of regular and pervasive incidents that collectively create a hostile work environment. Certainly, Cutts' behavior far exceeded the male harasser's behavior described in Ellison. Additionally, the harasser here was Sheridan's boss, where in Ellison, the harasser was a co-worker. Indeed, at one point, Cutts asked Sheridan which was more important, her job or her personal life? (N. T. 96).

Next we consider whether Cutts' behavior subjectively interfered with Sheridan's work performance. Indeed, Cutts' actions detrimentally affected Sheridan in several ways. First, Sheridan was often left waiting at home while Cutts would disappear feeling sorry for himself or make it know that he was unable to be around Sheridan. Next, Cutts' jealousy and possessiveness of Sheridan resulted in the withdrawal of job duties from Sheridan for fear that she might be attracted to another man. Further, Sheridan credibly testified to a steady deterioration of her physical and mental well-being as a result of the anxiety and stress brought on by Cutts' inappropriate behavior. Sheridan could not have been any more clear and direct to Cutts that she considered his actions inappropriate, that he was suffocating her, and that she wanted no part of a

relationship with Cutts outside of a professional working relationship. Clearly, Sheridan has substantially shown an interference with her work performance.

Next, Sheridan must show that her reaction was not idiosyncratic or hypersensitive, but that a reasonable woman subjected to Cutts' behavior would have been detrimentally affected by Cutts' conduct. In this regard, when a woman makes it painfully clear to a pursuer that the attentions visited upon them are unwanted, but the pursuer forges ahead anyway, a woman would reasonably begin to develop a concern that may well turn to fear when the repeated rebuffs are ignored. Jealousy, possessiveness and controlling behavior visited on anyone are frequently destructive not only to the victim, but the harasser as well. We find that the work environment of a reasonable woman in Sheridan's position would have similarly slowly disintegrated into emotional confusion, turmoil and anxiety.

With respect to the final element of the requisite *prima facie* showing, Cutts was part owner of Plum Entertainment and Sheridan's direct supervisor. Also, clearly, Cutts had the power to both hire and fire Sheridan, and to establish her job responsibilities and work schedules. Since Cutts was Sheridan's supervisor, his actions would create automatic liability if his conduct is found to rise to the level of a tangible adverse employment action. Durham Life Ins. Co., v. Evans, 166 F 3d 139, 152 (3rd Cir. 1999).

Tangible employment actions include discharges, promotion denials, demotions and other actions where there is a significant loss of a job benefit. Assuming, arguendo, that there was no tangible employment action taken, an employer may raise a two-part affirmative defense: (1) that the employer exercised reasonable care to prevent and promptly correct any harassment; and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. Faragher v. City of Boca Raton., 524 U. S. 775, 807 (1998).

First, Plum Entertainment had no sexual harassment policy. Absolutely no mechanism was in place to try to prevent harassment in any way. Further, very early in her employment, Sheridan began to realize that Cutts' behavior was becoming inappropriate and making her uncomfortable. By early November 2004, Sheridan first confronted Cutts about his behavior. Cutts' actions, rather than stop, grew more frequent and desperate. Throughout her employment, Sheridan had to repeatedly discourage Cutts' preoccupation with her and continually tell him that she objected to his inappropriate conduct.

Beyond making her objections painfully clear to Cutts, Sheridan also informed Robertson that Cutts had, "been driving her nuts." (N. T. 510, 547-548). Robertson's response was simply to tell Sheridan he felt sorry for her. (N. T. 583-584). The effect of Cutts' inappropriate conduct was obvious to everyone who worked for Plum Entertainment, as Sheridan was often seen upset and crying at work.

Even Kelly, when she was told she was terminated in January 2005, specifically told Robertson that Sheridan had a, "great case for sexual harassment", and that he should be more concerned. (N. T. 345-347, 571-572). Here, no affirmative defense is available to Plum Entertainment to counter Sheridan's showing of *respondeat superior*. Accordingly, Sheridan has successfully proven a *prima facie* case of harassment that created a hostile work environment.

Plum Entertainment's general defense is that Cutts did not harass Sheridan in any way. Earlier, Cutts' credibility was evaluated and found lacking in all critical respects. Plum Entertainment's defense is wholly rejected and we find that Sheridan was sorely victimized by Cutts' misguided and self-defeating amorous pursuits. Cutts' incessant pursuit of Sheridan made her feel suffocated and dramatically altered her emotional and physical well-being.

Turning to Sheridan's retaliation claim, we analyze her allegation in three parts: (1) Sheridan must demonstrate a *prima facie* case of retaliation; (2) Plum Entertainment then has the burden of pointing to evidence that there was a legitimate non-retaliatory reason for terminating Sheridan; and (3) if Plum Entertainment meets this production burden, Sheridan must demonstrate that the proffered legitimate reason is merely a pretext for impermissible retaliation. See, e.g. Tomka v. Seiler Corporation, 66 F.32 1295, 1308; 68 FEP Cases 1508 (2nd Cir. 1995).

In order to establish a *prima facie* case of retaliation, Sheridan must show:

1. that she engaged in a protected activity by objecting to a hostile work environment;
2. that Plum Entertainment knew of Sheridan's objection;
3. that Sheridan was subsequently terminated; and
4. that there is a casual connection between Sheridan's objection and her termination.

Robert Wholey Company v. PHRC, 606 A.2d 982, 983 (Pa. Cmwlth. Ct. 1992).

Here, Sheridan established a *prima facie* case of retaliation. She frequently complained directly to Cutts about his inappropriate behavior. When Cutts failed to address her concerns, she approached Robertson at a Christmas party at Robertson's home. Most significantly, Sheridan then sent a letter, written by her attorney in May 2005. Clearly, Cutts heard Sheridan's continual objections as did Robertson, however, Cutts' relentless pursuit of Sheridan continued for months. Cutts at times even expressed shame for his self-defeating impulses and actions, yet he was powerless to change his behavior. Throughout, Cutts was sunk so deeply into a state of denial that when he initially received Sheridan's attorney's letter he threw it away. Clearly, Sheridan was terminated. Although Robertson lacked the authority to terminate her, he directed a letter to Sheridan dated June 14, 2005, informing her that effective May 20, 2005, she had been terminated.

Finally, Sheridan must show a casual connection between her objection and her termination. Here, a casual connection was established by, among other things, the evidence of only a few days between Sheridan's formal objection through her attorney and the effective date of her termination. Wholey Company, 606 A.2d at 984. Before Sheridan had an attorney direct a formal objection to Cutts' behavior, each time Sheridan objected, Cutts would disappear for a time, leaving Sheridan without direction or an assignment. Towards the end of Sheridan's employment, Cutts cut Sheridan entirely out of the loop for extended periods. Here, Sheridan has shown a developing pattern of antagonism that culminated in Sheridan's termination when she finally put her objections in writing.

Since Sheridan has successfully established the requisite *prima facie* case, we turn to Plum Entertainment's suggestion that Sheridan was terminated for a legitimate reason. Plum Entertainment suggests that Sheridan's presence was requested in the office to meet a pressing need, but that Sheridan failed to come to work. (N. T. 524). In an e-mail dated May 23, 2005, Cutts told Sheridan that he was still looking for a replacement for Kelly and that until he found someone, he was asking Sheridan to come into the office to maintain a presence there. (R.E. 1, at 12 and Exhibit 13). Robertson testified that he told Cutts to get Sheridan to come into the office to either help him with documents, help answer telephones or at least greet people, but, to his understanding, Sheridan had refused, saying, "I'm not coming in." (N. T. 523, 526).

The reason offered by Plum entertainment for Sheridan's termination is sufficient to rebut the *prima facie* showing. In order to prevail, Sheridan must establish that the stated reason is a pretext for retaliation. On this point, we first observe that Plum Entertainment had terminated Kelly in January. Plum Entertainment would have us believe that suddenly, a few days after Sheridan formalized her objections and

approximately 5 months after Kelly's termination, a need arose requiring Sheridan's presence in the office.

Furthermore, Cutts was fully aware that his inappropriate behavior had caused Sheridan to speak with him by telephone on May 10, 2005, where she expressed, yet again, that she was extremely upset, that he was interfering with her personal life and that she could not handle it any longer. (N. T. 98; R.E. 1, at 5).

In past conversations, Cutts had offered to pay Sheridan to just stay home. (R.E. 1, at 54). During the May 10, 2005 telephone conversation, Sheridan reviewed the positions she held for the 17 year period before working for Plum Entertainment. (N. T. 98-99). She then summarized her time with Plum Entertainment as one where she never had specific duties and felt like she was neither doing nor accomplishing anything. (N. T. 99). She told Cutts that she wanted to be active and do a good job for the project, but the time had come for Cutts to let her pursue another career. (N. T. 99). She related that she had already confronted Cutts numerous times about his behavior, but his inappropriate actions just continued. (N. T. 239-240).

Cutts then asked Sheridan what she wanted and again offered to pay Sheridan to just stay home. (N. T. 236). Cutts told her he only wanted her to be happy. (N. T. 240). An outline of a verbal agreement to resolve the matter was reached (C.E. 5), and the conversation ended with Sheridan telling Cutts she was extremely upset and would call him in a few days after she had the chance to calm down. (N. T. 100; R.E. 1, at 5, 54).

The following day, Cutts called Sheridan eight times. (N. T. 100; R.E. 1, at 5, 48). On the 12th of May, 2005, Sheridan e-mailed Cutts requesting that he stop calling as he was again disregarding the turmoil he caused by constantly calling her. (C.E. 2). Subsequently, Cutts called two additional times, finally prompting Sheridan to meet with a lawyer on May 13, 2005 for help.

Sheridan's lawyer then wrote to Cutts, articulating Sheridan's harassment concerns and outlining the terms of an agreement that Sheridan suggested she and Cutts had reached on May 10, 2005. Cutts was informed that if he failed to respond to the letter within seven days, there would be consideration of legal action. (C.E. 3). Plum Entertainment's ultimate response was to totally ignore Sheridan's attorney's letter and terminate Sheridan. Considered as a whole, the evidence presented established that Sheridan was terminated in retaliation for opposing Cutts harassment. Accordingly, consideration of a suitable remedy is appropriate.

The PHRC has broad equitable power to fashion relief. Section 9 of the Pennsylvania Human Relations Act (hereinafter, "PHRA") states in pertinent part:

(f)(1) 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 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, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, 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.....

43 P.S. § 959(f)(1).

In Murphy v. Cmwlth., Pa. Human Relations Commission, 506 Pa. 549, 486 A.2d 388 (1985), the Pennsylvania Supreme Court commented on the extent of the Commission's power, stating: "We have consistently held that the Commissioners, when fashioning an award, have broad discretion and their actions are entitled to deference by a reviewing court." Murphy, 486 A.2d at 393. The expertise of the Commission in fashioning a remedy is not to be lightly regarded. The only limitation upon the Commission's authority is that its award may not seek to achieve ends other

than the stated purposes of the Act. Consolidated Rail Corp., v. Pennsylvania Human Relations Commission, 152, A.2d 702, 708 (Pa. Cmwlth. 1990).

The purpose of the remedy awarded under the PHRA is two-fold, First, the remedy must ensure that the Commonwealth's interest in eradicating the unlawful discriminatory practice found to exist is vindicated. Vindication of this interest is non-discretionary. It necessitates the entry of an order, injunctive in nature, which requires a Respondent to cease and desist from engaging in unlawful discriminatory practices.

The second purpose of any remedy focuses on entitlement to individual relief. This purpose is not only to restore the injured party to her pre-injury status and make her whole, but also to discourage future discrimination. Williamsburg Community School District v. Pennsylvania Human Relations Commission, 512 A.2d 1339 (Pa. Cmwlth. 1986). As a deterrent, a back pay award provides the catalyst to cause a self examination and evaluation of an employer's employment practices.

With respect to entitlement to individual relief, several other matters must be addressed. First, regarding Sheridan's harassment claim, although it is clear that Sheridan suffered embarrassment and humiliation as a result of Cutts' inappropriate behavior, the PHRA does not authorize a monetary award for emotional damages for such a claim. The remedy available for instances of hostile work environments is generally limited to a cease and desist order. Secondly, where a complainant demonstrates that economic loss has occurred, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Co., Inc., 684 F2d 1355 (11th Cir. 1982). In fact, once liability is established, the burden of proof shifts to the employer to demonstrate that monetary relief is not proper. U.S. v. International Brotherhood of Teamsters, 431 U.S. 324 (1997); Franks v. Bowman Transportation Co., 424 U.S. 474 (1976). It is axiomatic that the calculation of the back pay award need not be exact. It is only necessary that the method used be reasonable. Uncertainties in general, should

be resolved against a discriminating employer. Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974). The question of mitigation of damages is a matter that lies within the sound discretion of the Commission. Consolidated Rail Corporation, *cited supra*, 582 A.2d, at 708. Moreover, the burden is on the employer to demonstrate any alleged failure to mitigate. Cardin v. Westinghouse electric Corp., 850 F.2d 996, 1005 (3rd Cir. 1988). See generally, State Public School Building Authority v. M.M. Anderson Co., 410 A 2d 1329 (Pa. Cmwlth. 1980) (the party who has caused the loss has the burden of showing that the losses could have been avoided through the reasonable efforts of the damaged party). Finally, the PHRC is authorized to require that affirmative measures be taken in an effort to prevent any further harassment or retaliation actions. Consol. Rail Corporation, 582 A.2d at 708.

Since emotional damages may not be awarded, the first aspect we must consider to make Sheridan whole is the extent of financial loss suffered. Here, the Post-Hearing Brief on behalf of the complaint, in effect, argues that Sheridan should be reimbursed for loss of salary through April 2008 (adjusted by subtracting her interim earnings) plus two additional years of front pay in lieu of an order reinstatement. The Post-Hearing Brief on behalf of the complaint also briefly observes that Sheridan received dental benefits while an employee of Plum Entertainment. Also, the Post-Hearing Brief makes a passing reference to an amount equal to 5% of the profits raised by the project.

With respect to whether Sheridan would be entitled to an award of 5% of the profits raised, we find that this was not a component of Sheridan's compensation. If anything, Cutts mentioned this to Sheridan early in her employment in an pathetic attempt to endear himself to her. Cutts used the prospect of financial gain in an effort to loosen Sheridan's likely rejection of his future overtures. In no other way was 5% of any profits raised a part of Sheridan's compensation package. The fact that the Post-

Hearing Brief on behalf of the complaint only mentioned it once suggests this was understood.

At the time of her termination, Sheridan was earning \$60,000.00 per year. Additionally, since she already had health insurance, Sheridan asked to receive compensation in lieu of the cost of health insurance. (N. T. 31-32). However, Plum Entertainment did not give her additional compensation but carried Sheridan on its' health care plan instead.

Here, Sheridan's lost wages between May 20, 2005 and April 8, 2008 are calculated as follows:

	1,153.85 per week	
2005 - 32 weeks @ \$1,153.85	=	36,923.20
2006 -	=	60,000.00
2007 -	=	60,000.00
2008 - 14 weeks @ \$1,153.85	=	<u>16,153.90</u>
May 20, 2005 – April, 2008 –		
Total wages lost.....		\$173,077.10

Of course, interim wages must be deducted from this amount. Here, Sheridan was diligent in seeking to secure other employment. In fact, Sheridan began to look for another job before she received Plum Entertainment's termination letter. (R.E. 1, at 6). As early as June 9, 2005, Sheridan was interviewing with another potential employer, (R.E. 5, at 20), and by June 21 and 22, she was attending job fairs distributing resumes. (N.T. 222; R.E. 5, at 21).

In July 2005, Sheridan was hired by Viva International (hereinafter "Viva") and on July 17, 2005 began a training program to become a sales representative selling optical frames. Sheridan remained with Viva only a few months where she earned approximately \$3,000.00 per month plus commissions. (N.T. 126; R.E. 5, at 12).

Only a few months after Sheridan began working for Viva, she obtained employment with Safilo Services, LLC. (hereinafter "Safilo"), as a sales representative

selling eyeglass frames. (N.T. 127, 140; R.E. 5, at 6). With Safilo, Sheridan earned approximately \$4,000.00 per month plus 5% commissions. (R.E. 5, at 6). Sheridan testified that she also earned approximately \$10,000.00 every six months in commissions. (N.T. 230). Sheridan testified that because the jobs with both Viva and Safilo were sales jobs, she incurred additional expenses she did not have while a Plum Entertainment employee. In this regard, Sheridan offered that in 2006, she incurred self-employed health insurance costs of \$6,515.00. Additionally, Sheridan testified that she incurred other expenses for such things as gas, tolls, telephone, samples, insurance on the products she sold, and customer appreciation gifts. A review of C.E. 10, Sheridan's 2006 IRS 1040, Schedule C, reveals the following expenses that Sheridan would not have had if she had continued working for Plum Entertainment:

Car expenses (other than leasing her vehicle and expense she had while an employee of Plum Entertainment	\$5,516.00
Insurance	\$ 740.00
Supplies	\$2,351.00
Travel	\$2,290.00
Meals and Entertainment.....	\$1,029.00
Other expenses:	
Telephone:	\$ 2,278.00
Postage	\$ 312.00
Gifts to Customers	\$ 350.00
Samples	<u>\$ 6,436.00</u>
Total other expenses	\$ 9,376.00
Total Schedule C Expenses.....	\$21,302.00
Health Insurance	<u>\$ 6,515.00</u>
Total additional expenses	\$27,817.00

In 2005, had Sheridan remained an employee of Plum Entertainment she would have earned:

\$1,153.85 x 29 weeks \$33,461.65

In 2005, Sheridan's W 2 from Viva and 1099-Misc from Safilo, (C.E. 9), show that she earned the following:

Viva	\$ 9,834.92
Safilo	<u>\$ 8,116.84</u>
Total	\$17,951.76

Although the record does not specifically reflect her additional earnings in commissions, Sheridan testified that she earned approximately an additional \$10,000.00 every 6 months. Accordingly, for the purpose of calculating her lost wages for 2005, we determine her earnings were \$27,951.76. From this figure we then deduct ½ of \$27,817.00, the amount of additional expenses she earned in 2006. This calculation is as follows:

Earnings	\$27,951.76
Minus ½ of \$27,817.00	<u>\$13,908.50</u>
2005 earnings	\$14,043.26

Accordingly, Sheridan's back pay award for 2005 is as follows:

Amount Sheridan would have earned	\$33,461.65
Minus amount earned	<u>\$14,043.26</u>
2005 lost back pay	\$19,418.39

In 2006, Sheridan earned \$54,481.00 (C.E. 10), working for Safilo. Had Sheridan remained with Plum Entertainment she would have earned \$60,000.00.

The following calculations reflect the back pay lost by Sheridan in 2006:

Lost wages form Plum Entertainment.....	\$60,000.00
Safilo wages	\$54,481.00
Minus expenses	<u>\$27,817.00</u>
Minus Net Wages.....	<u>\$26,664.00</u>
Total back pay lost 2006	\$33,336.00

Since no records were offered for 2007, we estimate that Sheridan's lost wages for 2007 are the same as 2006.

The post-hearing brief on behalf of the State's interest in the complaint seeks back pay for 2008 through April 5, 2008, a period of approximately 14 weeks. Calculating the weekly lost wages at \$641.08 per week we find that from January 1, 2008, through April 5, 2008, Sheridan lost the following:

$$\$33,336.00 \div 52 = \$641.08$$

$$\$ 641.08 \times 14 \text{ weeks} = \dots\dots\dots \$ 8,975.12$$

Accordingly, through April 5, 2008, Sheridan's lost wages are as follows:

2005	\$19,418.39
2006	\$33,336.00
2007	\$33,336.00
2008	<u>\$ 8,975.12</u>
Total Lost Wages	\$95,065.51

Additionally, the post-hearing brief on behalf of the complaint submits that in lieu of reinstatement, Sheridan should receive an additional 2 years of front pay. We find this argument to be reasonable. Accordingly, the following front pay calculation is made:

$$\$33,336.00 \times 2 \text{ years} = \dots\dots\dots \$66,672.00$$

Further, the PHRC is authorized to award interest on the back pay award. Goetz v. Norristown Area School District., 16 Pa. Cmwlth. 389, 328 A.2d 579 (1975).

The PHRC may also require affirmative measures designed to prevent future discrimination. In this regard, the Post-Hearing Brief on behalf of the complaint seeks a training component as part of an award. Such a requirement is certainly appropriate. In addition we find that Plum Entertainment had no harassment policy. To ensure that Plum Entertainment has an effective policy, Plum Entertainment shall present the PHRC

Philadelphia regional office, within thirty days, a plan outlining the steps it intends to take to prevent harassment and retaliation from occurring. Such a plan should include an intention to affirmatively raise the issues of harassment and intimidation expressing strong disapproval, the development of appropriate sanctions, a method to inform employees of their right to raise issues of harassment and instructions to employees how to raise such issues.

The required plan should also include the development of methods to sensitize all concerned and a plan of education and training of all Plum Entertainment employees in the detection, correction, and prevention of harassment and retaliation.

Finally, the plan must be acceptable to the PHRC Philadelphia regional office.

An appropriate order follows.

3. That Plum Entertainment shall pay to Sheridan, within 30 days of the effective date of this order, the lump sum of \$95,065.51 which amount represents back pay lost for the period between May 21, 2005 through, April 5, 2008.
4. That Plum Entertainment shall pay to Sheridan additional interest at the rate of 6% per annum on the back pay award, calculated from May 21, 2005, until payment has been made.
5. That Plum Entertainment shall pay to Sheridan the lump sum of \$66,672.00, which represents front pay from April 5, 2008 to April 5, 2010.
6. That by February 28, 2009, Plum Entertainment shall fashion and implement internal policies and procedures for effectively accepting and resolving employee complaints of harassment. Such policies and procedures shall be subject to review by the PHRC Philadelphia regional office and must be found acceptable by them. Further, the policies and procedures must include, at a minimum, a prohibition of all forms of discrimination, including harassment and retaliation; and an effective grievance procedure calculated to resolve claims of harassment and to encourage employees who feel themselves victimized to come forward with their complaints.
7. That Plum Entertainment shall conduct appropriate sensitivity training on work-place harassment and acceptable work-place behavior and shall conduct training on the employment provisions of the Pennsylvania Human Relations Act, Pennsylvania Human Relations Commission regulations, Title VII of the Civil Rights Act, the Americans with Disabilities Act and the Age Discrimination in Employment Act. Pennsylvania Human Relations Commission staff shall participate in the training and shall review all training materials before the training is conducted. The training will be given to all employees at Plum Entertainment and shall take place by February 28, 2009.

8. That within thirty days of the effective date of this order, Plum Entertainment shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Charles L. Nier, III, Assistant Chief Counsel, Philadelphia Regional Office, 711 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130-4088.

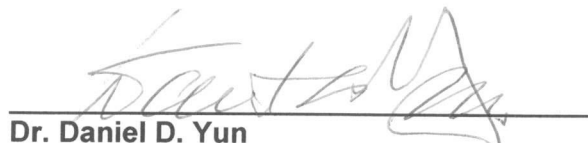
PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:



Stephen A. Glassman
Chairperson

ATTEST:


Dr. Daniel D. Yun
Secretary