

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

FREDDIE THOMAS,	:	
Complainant	:	
	:	
v,	:	PHRC CASE NO. 200802003
	:	EEOC Charge No. 17F200960173
PROFESSIONAL 50 STATES	:	
PROTECTION,	:	
Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about October 8, 2008, Complainant, Freddie Thomas, (hereinafter "Thomas"), filed a PHRC Complaint against Professional 50 States Protection, in which Thomas alleged that he was terminated from his position as a Field Supervisor because of his religion, Christian. (O.D. 1; N.T. 15).
2. Under cover letter date March 27, 2009, the PHRC's Philadelphia regional office filed a Petition for Rule to Show Cause. (O.D. 1).
3. On March 30, 2009, PHRC Motions Commissioner Daniel L. Woodall, Jr., issued a Rule to Show Cause which, in effect, notified Professional 50 States Protection that it had until April 30, 2009 to file a properly verified answer to Thomas' complaint. (O.D. 2).
4. The Rule to Show Cause was properly served on Professional 50 States Protection on March 30, 2009. (O.D. 2).
5. Professional 50 States Protection did not file an answer. (O.D. 3).
6. On May 29, 2009, Motions Commissioner Woodall recommended to the full PHRC that Professional 50 States Protection be found liable for Thomas' allegation. (O.D. 4).
7. By Order dated June 22, 2009, the PHRC found Professional 50 States Protection liable for terminating Thomas because of his religion, Christian. (O.D. 4).

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

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

8. The June 22, 2009 Order was properly served on Professional 50 States Protection on June 22, 2009. (O.D. 4).
9. By letter dated February 1, 2010, Professional 50 States Protection was notified of the scheduling and location of a Public Hearing to determine what, if any, damages are appropriate. (O.D. 5).
10. On February 1, 2010, Professional 50 States Protection was properly served with the Notice of Scheduling and Location of Public Hearing. (O.D. 5).
11. A public hearing on the issue of what, if any, damages are appropriate was held on February 25, 2010 in Philadelphia, Pennsylvania.
12. As an employee of Professional 50 States Protection, Thomas held the position of Security Supervisor. (N.T. 14).
13. Thomas' wages were \$7.50 per hour. (N.T. 14, 22).
14. Thomas was terminated on September 26, 2008. (N.T. 11).
15. At the time of his termination, Thomas was working 56 hours a week earning \$420.00 per week. (N.T. 14, 22).
16. Almost immediately after being terminated, Thomas began to seek alternative employment. (N.T. 16).
17. Approximately a week and a half after being terminated by Professional 50 States Protection, Thomas began working as a delivery driver approximately 35 hours per week with Dejour Catering, a day labor assignment agency where he earned approximately \$8.50 per hour. (N.T. 17-18, 24).
18. In December 2008, Thomas' hours were reduced to approximately 20 hours per week and by January 2009, the delivery driver position with Dejour Catering ended. (N.T. 18-19, 25).

19. Approximately one and a half weeks after the delivery driver position ended, Thomas obtained employment with JGCPS LLC, a metro telephone distributor, where he worked approximately 35 hours per week, earning \$8.50 per hour. (N.T. 19, 30).
20. In April 2009, Professional 50 States Protection lost contracts it had in the state and, as a result, ended operations in the Commonwealth of Pennsylvania. (N.T. 11, 12).
21. Professional 50 States Protection is based in the state of Maryland. (N.T. 13).
22. With a compliment of approximately 25 employees based out of the same location in Philadelphia, Professional 50 States Protection had performed security services for contract clients in the Commonwealth for approximately 5 years before closing operations. (N.T. 24, 30, 32)
23. Thomas incurred travel-expenses in the amount of \$12.00 associated with his pursuit of his PHRC claim. (N.T. 20, 28).
24. Thomas also incurred out-of-pocket expenses in the amount of \$20.75 per week in the nature of being required to buy a trans pass to travel to work after his termination from Professional 50 States Protection. (N.T. 19-20, 29).

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission (“PHRC”) may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, Professional 50 States Protection’s failure to file a properly verified answer resulted in the entry of a judgment for Thomas on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Freddie Thomas, against Professional 50 States Protection. The Complainant's complaint alleged that Professional 50 States Protection terminated Thomas because of his religion, Christian. Thomas' complaint states a claim under Sections 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Thomas' verified complaint was filed on or about October 8, 2008. By correspondence dated March 27, 2009, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Commissioner Woodall for a Rule to Show Cause, indicating that Professional 50 States Protection had not answered Thomas' complaint. The petition declares that Professional 50 States Protection had been served with Thomas' complaint on October 28, 2008. The Petition also declares that on December 22, 2008, the Respondent attended a Fact Finding Conference. The petition further indicates that by letters dated December 22, 2008, and January 23, 2009, additional efforts had been made to obtain an answer from Professional 50 States Protection.

On March 30, 2009, a Rule to Show Cause was issued, directing Professional 50 States Protection to respond on or before April 30, 2009. After Professional 50 States Protection failed to file a properly verified answer, on May 29, 2009, Motions Commissioner Woodall recommended a finding of liability to the full PHRC. On June 22, 2009, the full PHRC determined that Professional 50 States Protection terminated Thomas because of his religion, Christian. A copy of the Recommendation and Order was subsequently served on the Respondent on June 22, 2009.

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

The public hearing on the issue of appropriate damages was held February 25, 2010, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Brandon J. Brigham, Public Interest Law Fellow, assigned to the PHRC Philadelphia regional office. Professional 50 States Protection failed to attend public hearing.

Since liability had been found after Professional 50 States Protection failed to file a properly verified answer, the only question at the public hearing was what damages Thomas could establish.

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

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to reimbursement of certifiable travel expenses in matters involving the complaint, hiring reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice...as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

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

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

In this case, at the time of his termination on September 26, 2008 from Professional 50 States Protection Thomas was earning \$420.00 per week – 56 hours per week average @ \$7.50 per hour.

Following his termination, Thomas testified that he made reasonable attempts to mitigate his damages. Indeed, the evidence shows that shortly after being terminated by Professional 50 States Protection, Thomas began an almost immediate search to find alternative work. Thomas testified that approximately a week and a half after his termination he became employed as a delivery driver for Dejour Catering. Thomas testified that from the time of his employment with Dejour Catering until December 2008, he worked approximately 35 hours per week earning \$8.50 per hour. Thomas offered that, due to business slowing, in December 2008, his hours were reduced to approximately 20 hours per week. Subsequently, in January 2009, the catering delivery position ended.

Following his employment by Dejour Catering, Thomas next found employment with JGCPS, LLC, a Metro phone distributor. While employed with JGCPS, LLC, Thomas worked approximately 35 hours per week and earned \$8.50 per hour.

The evidence shows that in June 2009, Professional 50 States Protection lost service contracts for services rendered in Pennsylvania. As a result, Professional 50 States Protection ceased operations in Pennsylvania in June 2009. Thomas testified that when Professional 50 States Protection moved from Pennsylvania, Professional 50 States Protection did not offer any of its Pennsylvania employees an opportunity to work at another location outside the state.

Given that Thomas' employment would have ended in June 2009 due to the fact that Professional 50 States Protection moved from Pennsylvania, calculations of back pay lost must end in June 2009. Accordingly, the following calculations of back pay lost are made:

Lost earnings between September 26, 2008 until April 2009

– 216 days or 31 weeks:

\$420.00 per week x 31 weeks - \$13,020.00

Interim earnings:

Dejour Catering

October 10, 2008 – December 1, 2008
6 weeks @ 35 hours x \$8.50 - \$1,785.00

December 1, 2008 – January 6, 2009
5 weeks @ 20 hours x \$8.50 - \$850.00

JGCPS, LLC

January 22, 2009 – April 30, 2009
14 weeks @ 35 hours x \$8.50 - \$4,165.00

Total Interim wages - \$6,800.00

Lost wages minus interim wages - \$6,220.00

Next, we turn to Thomas' claim for certifiable travel expenses. Thomas testified that he made approximately 6 trips to the PHRC Philadelphia regional office regarding matters involving his PHRC claim. Thomas testified that he paid approximately \$2.00 for the subway each time he traveled to the Philadelphia regional office. Accordingly, he is entitled to an award of \$12.00 for certifiable travel expenses.

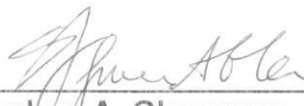
Finally, Thomas testified that while working for Professional 50 States Protection, he could walk to work as the facility was within several blocks of his home. However, after being terminated, Thomas incurred an expense of \$20.75 per week for a Trans Pass which he had to use to both seek alternative employment and once alternative employment was found, to travel to work each day. Accordingly, Thomas incurred additional out-of-pocket expenses of \$643.25 – 31 weeks @\$20.75 per week.

An appropriate order follows:

3. That Professional 50 States Protection shall pay additional interest of 6% per annum on the back pay award calculated from September 26, 2008 until payment is made.
4. That Professional 50 States Protection shall reimburse Thomas \$12.00, which represents certifiable travel expenses incurred by Thomas in matters involving his complaint.
5. That Professional 50 States Protection shall reimburse Thomas \$643.25, which represents out-of-pocket expenses incurred by Thomas.
6. That, within thirty days of the effective date of this Order, Professional 50 States Protection shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Norman G. Matlock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8th Street, Suite 501, Philadelphia, PA 19107.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:



Stephen A. Glassman
Chairperson

Attest:



Daniel D. Yun
Secretary