EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Vince Steele 4547 Thurston Lane, #6 Madison, WI 53711 Complainant vs. Highlander Motor Inn/Yichang Wang-Owner 4353 W. Beltline Hwy. Madison, WI 53711 Respondent	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER Case No. 3326

BACKGROUND

A public hearing in the above-captioned matter was commenced on June 1, 1994 in Room 120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard in the City of Madison, Wisconsin before Hearing Examiner Clifford E. Blackwell, III. The Complainant, Vince Steele, appeared in person and by his attorneys, Jeffrey Spitzer-Resnick and Rachel Spector. The Respondent, Highlander Motor Inn, appeared by its manager and partial owner, Yi Chang Wang, and its attorney, Robert Kasieta of the law firm of Bell, Metzner, Gierhart and Moore S.C. The hearing was adjourned on the motion of the Respondent and further proceedings were held on June 27, 1994 in the same location. Based upon the record of these proceedings, the Hearing Examiner makes the following Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. The Complainant is a Black or African American person.

2. The Respondent is a Wisconsin corporation doing business as the Highlander Motor Inn. Its business is that of a motor inn or motel. It is open to the public. Its principle place of business is located at 4353 West Beltline Highway, within the City of Madison.

3. In the early hours of April 18, 1993, the Complainant and his girlfriend, Kelly Nugent, were returning from a body building contest when they decided they needed lodging. They saw the sign for the Respondent's motel and noticed that the "Vacancy" sign was on.

4. The Complainant approached the office and noticed that the light in the office was off but that the door was open. Upon entering the office area, the Complainant found a bell and rang it two or three times to gain the attention of whoever was in charge.

5. Yi Chang Wang, the motel manager, came out of the back area. He spoke loudly or yelled at the Complainant about having been awakened.

6. After apologizing for wakening Wang, the Complainant asked if there was a one bedroom room available for the night. Wang indicated that there was not one available. The Complainant then asked if there was a two bedroom room available. Wang said that there was not and that he had no room for the Complainant.

7. The Complainant was angry and confused because of the vacancy light being on. He returned to his car and explained what had happened to his girlfriend. They waited to see if the vacancy light would be turned off. It was not. While the Complainant and Nugent waited, they observed a White couple approach the office of the motel and enter. The White couple did not leave and the vacancy light remained lit.

8. After observing the White couple, the Complainant asked Nugent to see if she would be given a room. She entered the dark office, rang the bell and was waited on. She was given a room for the night. Nugent is an Asian American.

9. At all times relevant to this complaint, the Complainant was ready, willing and able to pay for the room at the Respondent's motel and to pay in advance.

10. Wang has no recollection of the incident of April 18, 1993 or of ever having seen the Complainant or Nugent before the date of hearing.

11. The Highlander Motor Inn accepts referrals from Dane County Department of Social Services and the Salvation Army. These referrals are accepted without regard to race or membership in any other protected class. These referrals include many Blacks or African Americans.

12. The Dane County Department of Social Services and the Salvation Army would not refer clients to the Respondent for housing if the Respondent were known to discriminate.

13. The Respondent will exclude persons from its motel if a potential customer appears disruptive, refuses or is unable to pay or attempts to defraud the Respondent by having more people in the room than registered.

14. The Complainant's race was a substantial part of Wang's refusal to give him a room.

15. The Respondent had a room available to rent to the Complainant on April 18, 1993.

16. The Complainant suffered no economic or out of pocket loss as a result of the Respondent's refusal to rent him a room.

17. The Complainant experienced some short-term anger and upset as a result of the Respondent's action. The Complainant suffered no long-term emotional distress or injury as a result of the Respondent's actions.

18. The amount of $2,000 will compensate the Complainant for his short-term emotional injury.

19. Wang did not intend to act maliciously or without regard to the feelings and rights of the Complainant.

RECOMMENDED CONCLUSIONS OF LAW

20. The Complainant is a member of the protected class "race".

21. The Respondent operates a public place of accommodation or amusement within the meaning of MGO Sec. 3.23(2)(e).

22. The Respondent violated MGO Sec. 3.23(5)(a) by refusing to rent the Complainant a room for the night of April 18, 1993 based, in part, upon the Complainant's race.

23. The Complainant is entitled to be made whole for the injuries that he has- suffered as a result of the Respondent's illegal discrimination.

24. The Complainant did not demonstrate an entitlement to punitive damages.

RECOMMENDED ORDER

25. The Respondent shall cease and desist from any and all violations of the Ordinance.

26. The Respondent shall cease and desist from discriminating against the Complainant and shall not retaliate against him or any other person who may have aided or supported him in bringing this action.

27. The Respondent shall pay to the Complainant $2,000 in compensatory damages for the Complainant's short-term emotional distress. This amount shall be paid within thirty days of this order's becoming final.

28. The Respondent shall pay to the Complainant the reasonable .costs including attorney's fees of bringing and maintaining this action. Within thirty days of this order becoming final, the Complainant shall file a petition along with supporting affidavits setting forth the Complainant's costs and attorney's fees. The Respondent may submit any objections to the Complainant's petition within fifteen days of the filing of the Complainant's petition and supporting affidavits. The Complainant may submit any materials in reply within ten days of the Respondent's filing of any objections. If necessary, the Hearing Examiner will hold further proceedings with respect to issues raised by the parties.

MEMORANDUM DECISION

This case represents a sad and difficult claim of discrimination. The Complainant, a Black or African American male, sought a room for the night at the Respondent's motel. Yi Chang Wang, a part owner of the Respondent and the manager of the motel, refused him a room. The Complainant was upset and offended that this could have happened to him. He observed a White couple enter the premises and apparently be served. He arranged for a form of a test to determine whether his race was the reason for his treatment. He asked his girlfriend, Kelly Nugent, an Asian American, to see if she could get a room. She entered where the Complainant had and was given a room.

Mr. Wang states that he has no recollection of the incidents described by the Complainant and Nugent. He further states that he regularly accepts customers of the Complainant's race referred to him by the Dane County Department of Social Services and the Salvation Army. Wang asserts that it makes no business sense for him to turn away any good customer. Wang also asserts that because as an Asian he has suffered from illegal discrimination, he would not engage in such discrimination himself.

Given Wang's failure or inability to account for the events of April 18, 1993, the issue of liability must clearly be decided in favor of the Complainant. The Commission utilizes the burden shifting

paradigm set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) and Texas Dent. of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). Though this approach was developed in the employment arena, it has been adopted in other areas such as housing discrimination. Phillips v. Hunter Trails Ass'n., 685 F. 2d 184 (7th Cir. 1982).

In applying this approach, the Complainant must first set forth a prima facie case of discrimination. If this occurs, the Respondent must then present a legitimate nondiscriminatory reason for its actions. If the Respondent sets forth such a reason, the burden shifts back to the Complainant to demonstrate that the Respondent's proffered reason is either not worthy of credence or is a pretext for other discriminatory motives. In any event, the ultimate burden to demonstrate discrimination remains with the Complainant. St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993).

The Complainant met his initial burden in this case. There is no question that the Complainant is a member of the protected class race or that the Respondent is a public place of accommodation or amusement. The Hearing Examiner accepts the Complainant's testimony that he was refused a room on April 18, 1993. The Complainant was credible in his testimony and it was corroborated by the testimony of his girlfriend, Kelly Nugent. The fact that the Complainant and Ms. Nugent have a prior relationship does not automatically render their testimony inherently unbelievable. Both testified in a straightforward and credible manner. Nugent's testimony was supported by the registration materials showing that she had indeed been provided a room on April 18, 1993.

The Respondent argues that the Complainant's testimony was not worthy of credence because of a degree of inconsistency with respect to the precise time and the length of time that elapsed during the April 18, 1993 incident. While it is true that the Complainant's testimony with respect to time was somewhat inconsistent, the inconsistencies were of a relatively small magnitude and are within the degree to be expected from one who is upset. The problems of fixing a precise time is complicated by the fact that this incident occurred late at night. The exact time of the incident and how long it took are not necessary to any element of the claim and are therefore relevant only marginally to the credibility of the Complainant. The Complainant's credibility is not significantly impaired by the inconsistencies that appear on the record.

The one issue remaining in the prima facie case analysis is whether the adverse action suffered by the Complainant was the result of his membership in a protected class. The Complainant points to three pieces of evidence in support of his claim. First, he contends that Wang's words to the effect that there was no room for "him" shows a discriminatory intent. There appears no reason for Wang to have indicated that there was no room for the Complainant instead of indicating that there was simply no room available to anyone unless Wang meant to convey something special about the Complainant. While it must be conceded that Wang's command of the English language appears to be less than complete, the Hearing Examiner found little difficulty in understanding Wang's testimony at hearing and Wang seemed not to have any great difficulty in understanding questions put to him. The Respondent's explanation of the incident concluding that there was simply a misunderstanding between Wang and the Complainant is not supported by the record.

Wang produced no evidence indicating that there was a misunderstanding. Instead, he relies on his claim that the incident did not occur because he does not recall it. Had Wang remembered the incident and ;indicated that he had difficulty communicating with the Complainant or came to an erroneous conclusion about the Complainant's reliability or condition, this would support the claimed defense. The Respondent asks the Hearing Examiner to speculate about the reasons for a misunderstanding that

the Respondent does not recall. The Hearing Examiner cannot engage in such speculation without some basis in the record.

The Respondent indicated that there were legitimate reasons for which Wang had turned down customers in the past. These were if the customer appeared to be disruptive or if the customer seemed unlikely to pay or if the customer was likely to bring more people to the room than the number indicated at the time of registration. Wang did not indicate that any of these factors applied to the Complainant. In fact, Wang testified that he did not recall the Complainant in any way. Given this lack of recall, the Hearing Examiner cannot conclude that Wang's singling out the Complainant for the lack of a room was for one of these other legitimate purposes. There is no basis on this record to conclude that the Complainant represented some sort of threat to Wang or the other customers. Equally there is nothing in this record to indicate that the Complainant was not willing or able to pay the Respondent's price in advance or that the Complainant intended to sneak another person into the room.

Second, the Complainant observed a White couple enter the Respondent's office shortly after he had returned to his car in the parking lot. The couple did not reappear and the vacancy sign did not go out. This gives the appearance that the Complainant was treated less favorably than a White couple. On this record, the Hearing Examiner cannot conclude that this incident by itself demonstrates that the Complainant's race was a significant factor in his being refused a room. There is no clear indication that the White couple seen by the Complainant were checking in. If they had already been registered at the time that the Complainant attempted to register, the fact that they did not reappear would be a neutral factor instead of one supporting the Complainant's position. Since the record does not disclose the actual status of the White couple at the time that they were observed by the Complainant and Nugent, the Hearing Examiner cannot reach the conclusion that race was a motivating factor in the Complainant's treatment based upon this incident alone.

The third circumstance pointed to by the Complainant is his girlfriend's ability to obtain a room so shortly after the Complainant's failure. Ms. Nugent is a Korean American who is, on this record, not of the Complainant's race. For Wang to have provided her with a room so soon after the Complainant was denied a room leads strongly to the conclusion that the Complainant's race was a factor in the Complainant's treatment.

At the time of hearing, Wang indicated that he believed that Nugent was an African American because of the darkness of her skin tone. Other witnesses indicated that Nugent's skin was deeply tanned but that she did not appear to be an African American. There was some testimony to the effect that Nugent had the appearance of a person of mixed heritage. Nothing in the record convinces the Hearing Examiner that Nugent, on April 18, 1993, would have appeared to be anything but an Asian American woman. The Hearing Examiner believes that Nugenfs skin tone would likely have been much less dark in April of the year as opposed to the end of June given that the darkness appears to have been sun related.

The Complainant having made out the above prima facie case of discrimination, the burden shifts to the Respondent to demonstrate that the Complainant's treatment was as a result of some legitimate nondiscriminatory practice or policy. In general, the Respondent does not even attempt to provide such an explanation. Essentially the Respondent's position is that the incident did not occur and if it occurred, it must have been for one of the legitimate reasons for which Wang had refused rooms to others in the past or as the result of a misunderstanding between Wang and the Complainant. As previously indicated the record fails to disclose that any of the potentially legitimate reasons actually applied to the Complainant. There is no reason to believe that the Complainant was disruptive or was

likely to disturb other customers of the Respondent. The Respondent denied having seen the Complainant on April 18, 1993 and did not point to any conduct of the Complainant that would support a belief that he would have been disruptive. Equally, there is nothing in the record to support a belief that the Complainant was unwilling to pay the full price for the room in advance. Nothing in the record indicates that the Complainant would have brought anyone to the room other than his girlfriend.

The remaining arguments of the Respondent are intended to cast doubt on the likelihood that Wang's actions were motivated by discrimination. First, the Respondent contends that Wang has been the victim of discrimination in the past and is therefore not likely to discriminate against someone else. There was no showing of such treatment of Wang in the past or present. While there is emotional appeal to this argument, there is nothing to demonstrate that it has any factual or historical basis. To the contrary, history is replete with examples of how one minority group has in turn mistreated other minority groups. More than mere assertion that Wang's past has made him a benevolent member of society is necessary to prove the assertion. There is no such additional evidence in this record.

The next argument of the Respondent is that because it accepts African Americans and members of other protected classes as referrals from the Dane County Department of Social Services and the Salvation Army that it would not discriminate against other persons particularly since to do so might jeopardize the Respondent's contracts with these agencies. While this argument makes logical sense, it does nothing to explain the events of April 18, 1993. One may hypothesize that it is one thing to accept a homeless family or a referral who has already been processed through the requirements of some agency and quite another matter to be faced with a single, unknown individual in the middle of the night after having been awakened from sleep. While the possible threat to a source of income might deter one from discrimination, it is equally possible that since discrimination is based upon an unreasoning stereotype of a group of people that logic may be overridden or ignored by the assumption that one will not get caught.

There are similar objections to the Respondent's final argument that the Respondent only makes money if it rents rooms. It is illogical to turn away a paying customer if there are rooms available. Wang testified that there were some circumstances in which he would turn away a potential customer even though rooms were available. Accepting the fact that customers could be turned away for arguably legitimate reasons, it is not much of a step to accept that one could be turned away for illegal reasons. Again, nothing in this argument demonstrates what actually happened on April 18, 1993 and is only intended to enhance Wang's credibility as opposed to the credibility of the Complainant and Nugent.

The Respondent fails to meet his burden to present a legitimate nondiscriminatory reason for the treatment of the Complainant. The Hearing Examiner need not move to the next step in the analysis because discrimination has been demonstrated.

The Hearing Examiner must next determine what remedy is appropriate and will make the Complainant whole. MGO Sec. 3.23(9)(c)2.b., Rules of the Equal Opportunities Commission, Rule 17. The Complainant suffered no economic or out-of-pocket loss. He did not have to travel any additional distance or pay a higher rate to stay at a different motel. He and Nugent were able to eventually obtain a room at the Respondent's motel as a result of Nugent's effort.

The question of damages for emotional injuries or losses is more difficult. The Commission has awarded such damages in a variety of cases. Wilker v. Bermuda's Night Club, Case No. 3221 (Ex. Dec. (07/10/89), Ossia v. Rush, Case No. 1377 (Ex. Dec. 06/07/88), Nelson v. Weight Loss Clinic of

America, Inc. et al., Case No. 20684 (Ex. Dec. 09/29/89). The Commission's ability to make such awards has been upheld in the case of State of Wisconsin ex. rel. Caryl Sprague v. City of Madison and City of Madison Equal Opportunities Commission, Dane County Circuit Court Case No. 93 CV 113 (September 30, 1994). In order to prevail and to show such damage, a Complainant need not provide expert testimony or show evidence of a disabling psychological injury. Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (Ct. App. 1985); Seaton v. Sky Realty Co., 491 F. 2d 634 (7th Cir. 1974); Harris v. Forklift Systems, Inc., 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993). One may infer the injury from the totality of the circumstances. Chomicki, supra; Seaton, supra. In this case, the evidence supporting an award is mixed and is somewhat contradictory. On one hand, the Complainant testified that he felt the sting of discrimination and that he was hurt and upset by the fact that he had been denied a room by Wang. On the other hand, in response to the Respondent's interrogatories the Complainant stated that he was not seeking compensation for emotional damages or injuries. The testimony of Nugent also casts some cloud on the extent of the Complainant's emotional injuries. She indicated at hearing that the Complainant did not appear to be greatly upset when he returned to the car.

As indicated above, the Hearing Examiner must recommend an order that adequately redresses the injuries done to the Complainant. The testimony of the Complainant is one factor to be considered in making this recommendation. To this end, the Hearing Examiner believes that an award of $2,000 should redress the harm done to the Complainant.

The testimony at hearing of both the Complainant and Nugent does not support an award in the range suggested by the Complainant in his post-hearing briefs. The Complainant's testimony that he suffered some compensable injury was elicited only with lengthy and pointed questioning by his attorney. In general, the Complainant did not describe the manner in which he had suffered as a result of the Respondent's discrimination.

Despite this lack of direct testimony from the Complainant, the Hearing Examiner finds that the recommended award is necessary to redress the Complainant for the Respondent's discriminatory act. Some degree of emotional injury can be inferred from the circumstances of this case. The Complainant was denied a room to which he was entitled and for which he was willing to pay. This occurred late at night and the Complainant had to report his failure to obtain a room to his girlfriend. These facts support the award. In the case of Perez v. Affiliated Carriage Systems. Inc., Case No. 20938 MEOC 06/03/92, (Ex. Dec. 12/30/91), the Hearing Examiner awarded the Complainant $2,000. In that case the Complainant testified to the economic and family problems that flowed from his discriminatory termination. Similarly, in Leatherberry v. GTE Directories Sales Com., Case No. 21124 (MEOC 04/14/93, Ex. Dec. 01/05/93), the Hearing Examiner found the Complainant's testimony and that of her husband compelling regarding the outrageous conduct by the Respondent which was directed at the Complainant and resulted in significant emotional injury. The Hearing Examiner awarded $25,000 for emotional damages. The Complainant in the present case did not produce the same type of evidence to support his claim of emotional injury. In Sprague v. Rowe and Hacklander-Ready, Case No. 1462 (MEOC 02/10/94), the Commission awarded the Complainant $3,000 for her emotional injuries based upon her testimony of how she felt as a result of potential roommates' denial of her application because of her sexual orientation. In Chung v. Paisans, Case No. 21192 (Ex. Dec. on liability 02/10/93) the Complainant was awarded $750 for her emotional damages because of a total lack of convincing evidence about her injuries.

In the present case, the quality and weight of the testimony about emotional injuries to the Complainant was more like that in Perez or Sprague than that in either Leatherberry or Chung. There was some testimony, unlike Chung, but it was not so compelling as that in Leatherberry.

The Complainant argues that because the discrimination in this case closely resembles that which necessitated the adoption of Title II of the Civil Rights Act of 1964 that a large compensatory award should be made. This argument misses the mark. The fact that discrimination in public places of accommodation or amusement still exists today, does nothing to compensate the Complainant for his actual injuries. An award for this purpose would more closely follow the rationale for punitive damages. In this case, the Complainant did not demonstrate an entitlement to punitive damages. Though the Commission has awarded such damages in a small number of cases, such awards represent an extraordinary exercise of the Commission's powers and should not be imposed without a sound evidentiary basis. That basis is lacking in this case.

In order to be made whole, the Complainant must receive an order requiring the Respondent to pay his costs including a reasonable attorney's fee related to the pursuit of this complaint. Such orders represent the norm for prevailing complainants. Harris v. Paragon Restaurant Group. Inc. et al., Case No. 20947 (Ex. Dec. 08/08/94, Ex. Dec. 09/27/89); Meyer v. Purlie's Cafe South, Case No. 3282 (Ex.: Dec. 03/20/95); Watkins v. LIRC, 117 Wis. 2d 753, 345 N.W.2d 482 (1984).

Signed and dated this 24th day of March of 1995.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Vince Steele 4547 Thurston Lane, #6 Madison, WI 53711 Complainant vs. Highlander Motor Inn/Yichang Wang-Owner 4353 W. Beltline Hwy. Madison, WI 53711 Respondent	COMMISSION DECISION AND FINAL ORDER Case No. 3326

BACKGROUND

The Complainant, Vince Steele, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission) on July 22, 1993. The complaint alleged that the Respondent, Highlander of Madison, Inc. d/b/a Highlander Motor Inn, refused to rent him a room for the night at least in part because of his race. The allegations of the complaint were investigated and an

Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant on the basis of the Complainant's race in provision of a public place of accommodation or amusement was issued on November 8, 1993. The parties were offered the opportunity to conciliate the complaint but such efforts proved unsuccessful.

Subsequent to the failure of conciliation, the complaint was transferred to the Hearing Examiner for a public hearing on the allegations of the complaint. The hearing was originally noticed for June 1, 1994. After approximately 45 minutes of testimony, the Hearing Examiner stayed the proceedings to allow the Respondent to conduct additional discovery on the Complainant's claim for damages. The hearing was recommenced and completed on June 27, 1994. After the parties had an opportunity to present written arguments, the Hearing Examiner issued his Recommended Findings of Fact, Conclusions of Law and Order on March 24, 1995.

The Hearing Examiner concluded that discrimination had occurred but found that there were no out-of-pocket damages and awarded the Complainant $2,000 to compensate him for emotional damages stemming from the embarrassment and humiliation of having been denied a room. The Hearing Examiner also ordered the Respondent to cease discriminating in violation of the ordinance and ordered the Respondent to pay the Complainant's costs including a reasonable attorney's fee incurred in bringing the action.

On April 4, 1995, the Respondent appealed the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order to the Commission. The parties submitted written arguments in support of their respective positions. The Commission met on August 10, 1995 to consider the Respondent's appeal. Participating in the Commission's discussions were Commissioners Bruskewitz, Greenberg, Houlihan, Johnson, Mufoz, Verriden and Washington.

DECISION

The Respondent challenges both the finding of discrimination and the damages awarded by the Hearing Examiner. With respect to the finding of discrimination the Respondent essentially repeats the same arguments that he raised before the Hearing Examiner and adds that the Hearing Examiner erred in his interpretation of the facts.

After review of the record and the arguments of the parties, the Commission concludes that the Hearing Examiner's determination that the Respondent had denied the Complainant a room for the night, at least in part because of the Complainant's race in violation of the ordinance, is supported by substantial evidence in the record. In reaching this conclusion the Commission relies particularly on the fact that there. was a room available for the night, that the Complainant was denied the room and that the room, shortly after being denied to the Complainant, was given to a person not of his race, the Complainant's girlfriend, Kelly Nugent.

The Commission disagrees with the Respondent's contention that because he rents to other persons of the Complainant's race, it must conclude that the Respondent did not discriminate against the Complainant on the basis of his race. The Commission finds that the circumstances involved in the different transactions are distinguishable. With respect to the persons referred through several social service programs, the Respondent is receiving persons who have to some extent been screened, whose rent is guaranteed and who generally come in family units. It is not at all a similar circumstance to be faced with a single, unknown male, late at night. While the Commission does not believe that single males of any race should be treated automatically with suspicion if they appear late at night, it is factually different from the circumstances under which the Respondent testified that he accepted other

members of the Complainant's race as tenants. Treatment of one group does not automatically transfer to the other. The Respondent presented no evidence that was convincing to the Commission that the Respondent's treatment of the Complainant was in accord with his treatment of others of the Complainant's race.

Similarly, the Commission is not convinced by the Respondent's argument that the Complainant misunderstood the Respondent's limited English and believed that he was being discriminated against when, in fact, he wasn't. On this record, there is no indication that the Respondent attempted to clarify any apparent misunderstanding by following the Complainant out of the office. Also, there was no problem with the Respondent's English a short time later when Ms. Nugent sought and successfully obtained a room for the night.

The Respondent's contention that he would not discriminate against someone because he has himself been the victim of discrimination finds no support in this record. First, the Respondent does not demonstrate that he has been the victim of discrimination or under what circumstances' such discrimination may have occurred. Even if the Commission were to accept that the Respondent had been discriminated against at some time in his past, it does not logically follow that he would not inflict similar treatment upon someone else. History is replete with examples of how groups who have suffered at the hands of one culture or group have turned around and inflicted others with the same treatment. Current news reports from the former Yugoslavia and Africa are contemporary examples of this phenomenon.

The Commission accepts the Hearing Examiner's determinations of credibility. The version of events related by the Complainant is credible and is corroborated by the testimony of Nugent. Nugent's testimony is credible and is consistent with the findings of the Hearing Examiner. The Respondent's testimony does not explain the circumstances of April 18, 1993 except to state that he has no memory of the events but believes that they could not have occurred as claimed by the Complainant. This is insufficient to rebut the case presented by the testimony of the Complainant and corroborated by Nugent.

The Commission's adoption of the Hearing Examiner's findings is limited to those relating to the issue of liability. The Commission does not believe that the record in this matter supports the Hearing Examiner's award of compensatory damages. The Commission concedes that an award of compensatory damages is necessary to "make whole" the Complainant for his injuries caused by discrimination. It is not the fact of the award but the amount of the award with which the Commission disagrees.

The Hearing Examiner awarded the Complainant $2,000 as compensatory damages for emotional injuries. In setting this amount the Hearing Examiner analyzed recent Commission and Hearing Examiner awards for emotional damages. 1n reviewing these cases, the Hearing Examiner indicated that the degree of damage was most like that in the cases of Perez v. Affiliated Carriage Systems Inc., MEOC Case No. 20938 (Comm'n. Dec. 06/03/92, Ex. Dec. 12/30/91) and Sprague v. Rowe and Hacklander-Ready, MEOC Case No. 1462 (Comm'n. Dec. 02/10/94) and therefore awarded a comparable amount.

The Commission also reviewed the cases analyzed by the Hearing Examiner but felt that the record did not support the Hearing Examiner's conclusion. In reaching this conclusion, the Commission was most struck by three things.

First, there is a conflict in the record of statements made by the Complainant in answers to interrogatories and then at the time of hearing. In answering interrogatories propounded by the Respondent, the Complainant stated that he was not seeking any damages for emotional injuries: At the first day of hearing, the Complainant changed this position somewhat in response to questioning by his counsel. It was this apparent change in position that led the Hearing Examiner to recess the hearing and to permit the Respondent to conduct additional discovery. The Commission believes that this demonstrates a lack of clear emotional damage.

The second factor is Nugent's testimony that when the Complainant came back from the office after his confrontation with the Respondent's agent, Wang, he did not appear particularly upset. The Commission puts significant weight on Nugent's testimony as it corroborates the Complainant's own testimony, and it similarly views her testimony in this regard to be important. If she could not discern any great emotional distress in her "boyfriend", who could? It seems that any distress suffered by the Complainant must have been relatively slight for Nugent to have failed to see it.

The final element in the Commission's decision is the Complainant's own conduct on the night in question and subsequent to that night. The Complainant was not so greatly offended by his treatment that he was unwilling or unable to stay there that night. The Commission believes that if the Complainant had really been suffering emotional damages to a degree that supported the Hearing Examiner's award, the Complainant would not have willingly stayed at the motel the same night. Similarly, the record reflects that the Complainant has returned to the same motel subsequent to the night on which he was discriminated against. The Commission takes this as evidence that the Complainant was not greatly offended or damaged by his treatment. If the Complainant had suffered so greatly at the hands of the Respondent, the Commission believes that the Complainant would not be willing to return to a place that had caused him such injury.

The Commission's position on emotional damages was established in two pivotal cases, Nelson v. Weight Loss Clinic of America. Inc. et al., MEOC Case No. 20684 (Ex. Dec. 09/29/89) and Ossia v. Rush, MEOC Case No. 1377 (Ex. Dec. 06/07/88). This position has been further refined in Perez, Sprague and other cases. The Commission strongly supports the position that emotional damage may be inferred from the circumstances of discrimination as set forth in Nelson and Ossia. Inferring damage does not however establish the degree of damage necessarily. It is setting the amount of a compensating award that is the tricky part.

The Commission finds that under the circumstances of this case some level of emotional damage is implicit in the facts. One cannot help but to feel some pain or discomfort at being turned away from a motel with your girlfriend when there is a room available and you're ready willing and able to pay for that room. The likelihood of this injury is heightened by the fact that the incident occurred late at night. Though the Commission finds that the Complainant suffered an emotional injury and that in order to be made whole the Complainant is entitled to an award of damages, it believes that $600 is sufficient to make the Complainant whole. As noted above, the record indicates that the Commission finds that the Complainant did not suffer greatly because of the act of discrimination. A reduction in the amount awarded by the Hearing Examiner to $600 should adequately compensate the Complainant for his slight emotional injuries.

The Commission concurs in the remainder of the Hearing Examiner's Order.

ORDER

The Commission adopts as its own and incorporates by reference as if fully set forth herein, the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated March 24, 1995, except for paragraphs 18 and 27. Those paragraphs are amended to reflect an award of compensatory damages for emotional injuries in the amount of $600.

Joining in this decision are Commissioners Bruskewitz, Greenberg, Houlihan, Johnson and Verriden. Opposing this decision are Commissioners Munoz and Washington. Commissioner Gardner abstained from this decision.

Signed and dated this 31st day of August, 1995.

EQUAL OPPORTUNITIES COMMISSION

Bruce Greenberg
Secretary

EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Vince Steele 4547 Thurston Lane, #6 Madison, WI 53711 Complainant vs. Highlander Motor Inn/Yichang Wang-Owner 4353 W. Beltline Hwy. Madison, WI 53711 Respondent	HEARING EXAMINER'S DECISION AND ORDER ON COSTS AND ATTORNEY'S FEES Case No. 3326

BACKGROUND

On March 24, 1995, the Hearing Examiner, Clifford E. Blackwell, III, issued Recommended Findings of Fact, Conclusions of Law and Order in the above captioned matter, In his recommended decision, the Hearing Examiner found that the Respondent had discriminated against the Complainant on the basis of his race in denying him a room for the night at a motel owned and operated by the Respondent. Having found that the Respondent had discriminated against the Complainant, the Hearing Examiner recommended that the Respondent pay to the Complainant $2,000 to compensate him for emotional injuries stemming from the Respondent's discrimination. The Hearing Examiner also required the Respondent to pay the Complainant's reasonable costs including actual attorney's fees incurred in the pursuit of this complaint. The Recommended Findings of Fact, Conclusions of Law and Order provided a schedule for proving and challenging the amount of costs and attorney's fees.

On April 4, 1995, the Respondent appealed the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order to the Madison Equal Opportunities Commission (Commission). After briefing and deliberation, the Commission issued its Decision and Final Order on August 31, 1995. In its Decision and Final Order, the Commission determined that the Hearing Examiner had awarded too large an amount in emotional damages and accordingly reduced the damage award to $600. The Commission affirmed and adopted the remainder of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order.

The Respondent did not appeal the Commission's Decision and Final Order. Pursuant to the Hearing Examiner's Order as adopted by the Commission, the Complainant, on November 13, 1995, filed a petition for the award of costs including attorney's fees. The Respondent objected to the Complainant's petition by way of a letter-brief dated December 13, 1995. The Complainant responded to the Respondent's objections in a brief dated January 19, 1996. Based upon the submissions of the parties, the Hearing Examiner makes the following Supplementary Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. At all times relevant hereto, Jeffrey Spitzner-Resnick and Rachel Spector represented the Complainant in the above captioned matter. Spector was employed as an attorney at law by Spitzner-Resnick.
2. Spitzner-Resnick and Spector are attorneys at law licensed to practice law in the State of Wisconsin.
3. Spitzner-Resnick's usual and customary hourly rate for representation of clients is $135 per hour.
4. Spector's usual and customary hourly rate for the representation of clients was $110 per hour until December 31, 1995 at which time it became $125 per hour.
5. Spitzner-Resnick and Spector together spent 38.45 hours in their representation of the Complainant in connection with this matter including without limitation time prior to the hearing, the hearing, during the appeal before the Commission and with respect to the petition for costs and attorney's fees.
6. With respect to the 38.45 hours accounted for by Spitzner-Resnick and Spector, 31.95 of these hours were attributable to Spitzner-Resnick and 12.5 were attributable to Spector.
7. In connection with their representation of the Complainant in the above captioned matter, Spitzner-Resnick and Spector expended $327.80 in costs. This amount represents $100 for a Fair Housing Council of Dane County investigation fee, $101.70 for two deposition transcripts, $106.50 for a copy of the hearing transcript, $2.80 for charges from the state law library and $16.80 for copying costs for briefs.
8. The hours spent by Spitzner-Resnick and Spector in representation of the Complainant were reasonably necessary and were not duplicative of other hours expended.
9. The costs expended by Spitzner-Resnick and Spector in representation of the Complainant were reasonably necessary and not duplicative of other expenditures.
10. The Complainant prevailed on the issue of liability before the Hearing Examiner and the Commission.
11. The Complainant received an award of $600 for emotional damages before the Commission. This amount was reduced from the amount of $2,000 recommended by the Hearing Examiner.

CONCLUSIONS OF LAW

12. A Complainant in proceedings before the Equal Opportunities Commission is entitled to recover costs and reasonable attorney's fees on any significant issue on which he or she prevails.
13. The fundamental purpose of a fee award is to compensate an attorney for his or her efforts. Accordingly, the fee award should be determined by allowing the attorney to recover a reasonable hourly rate for all time reasonably expended in representing his or her client.
14. It is appropriate to use an attorney's or law firm's customary billing rate in setting a reasonable hourly rate in awarding fees to that attorney or law firm.
15. The fees awarded to a prevailing complainant in a civil rights case ought not be limited by any monetary award because substantial non-monetary benefits are also realized by successful complainants, and because an adequate fee is necessary to attract competent counsel in such eases.
16. Each person appearing before the Commission is obligated by oath or affirmation to testify truthfully. One's conformity with this obligation does not represent a reason for favorable treatment before the Commission.

ORDER

17. The Respondent shall pay to the Complainant and his attorneys the sum of $5,191.05 in costs including a reasonable attorney's fee. Of this amount $4,863.25 is attributable to attorney's fees and $327.80 is attributable to costs.
18. The above amount shall be paid jointly to the Complainant and the Law Offices of Jeffrey Spitzner-Resnick no later than thirty days after the date upon which this order becomes final. Should the Complainant, his attorneys and the Respondent agree in writing, alternative arrangements may be made.

MEMORANDUM DECISION

As noted above, in his Recommended Findings of Fact, Conclusions of Law and Order issued on March 24, 1995, the Hearing Examiner ordered the Respondent to pay the Complainant his reasonable costs including attorney's fees incurred in pursuit of this complaint. The Hearing Examiner set forth a schedule for submission of motions or petitions, objections and replies with respect to this issue. None of the papers submitted with respect to the proof of costs including attorney's fees were submitted in conformity with the Hearing Examiner's order. Neither party has objected to the other's late submissions. While the Hearing Examiner is not happy about these late filings, he will accept them due to the lack of objection.

The Complainant's initial submittal is in proper form and sets forth a claim for costs of $327.80 and attorney's fees of $4163.25. The attorney's fees figure was amended to a total of $4,863.25 in the Complainant's reply to the Respondent's objections to the Complainant's motion and supporting affidavit.

On December 13, 1995, the Respondent filed its objections to the Complainant's proposed itemization of costs including attorney's fees. The Respondent does not object to the hourly rate of either Jeffrey Spitzner-Resnick or Rachel Spector. Neither does the Respondent object to the total number of hours for which the Complainant seeks compensation nor for the costs specified in the Complainant's motion and affidavit. Instead, the Respondent puts forth four policy related arguments for why the amount claimed by the Complainant should be reduced. The Hearing Examiner is not convinced by any of these arguments.

The first contention of the Respondent is that the Complainant's relatively small monetary award should not support attorney's fees substantially in excess of the amount awarded. In his Recommended Findings of Fact, Conclusions of Law and Order dated March 24, 1995, the Hearing Examiner recommended an award of $2,000 as redress for the Complainant's emotional injuries stemming from the Respondent's act of discrimination. The Commission reduced this award to $600 in its Decision and Final Order dated August 31, 1995.

The Commission, through its Hearing Examiners, has directly addressed this issue in the past. Harris v. Paragon Restaurant Group. Inc. et al., MEOC Case No. 20947 (Ex. Dec. 9/27/89); Chung v. Paisans, MEOC Case No. 21192 (Ex. Dec. 7/29/93: 9/23/93). The key test as stated in those decisions and citations contained therein, is whether the objective of the complaint was obtained, not necessarily whether there was a large damage award. Tolentino v. Freidman, 46 F.3d 645 (7th Cir. 1995); Helms v. Hewitt, 780 F.2d 367 (3d Cir. 1986), cert. granted, 106 S. Ct. 2914 (1986). Civil rights litigation often has as its goal redress of one's lost rights and public identification of discrimination While a prevailing complainant may be entitled to an award of damages to make him or her whole that may represent a byproduct of the litigation. This seems to be the case with this complaint.

The area of enforcement of rights to access to public places of accommodation and amusement represented the first areas of work in the civil rights movements at the state and federal levels. Identification of complaints in this area represent a reminder of how little progress we have made in securing rights of our citizens to equal enjoyment of facilities supposedly open to all. A finding of liability in this matter accomplishes the goal of highlighting this important area of public concern. Regardless of the amount of damages awarded the Complainant, the fact of the Respondent's conduct is exposed to public scrutiny and possible additional action by other governmental agencies that have used the Respondent for housing programs. This by itself represents a significant outcome.

With respect to the issue of damages specifically, this case is similar to another recent Commission complaint. Meyer v. Purlie's Cafe South, MEOC Case No. 3282 (Comm'n Dec. 10/5/94, Ex. Dec. 4/06/94, Ex. Dec. on fees 3/20/95). In the Meyer case, the Hearing Examiner recommended a damages award of $1,000 in a case where a white patron was excluded from a public place of accommodation or amusement by the bar's African American owner. The Commission reduced the award to $750. The Hearing Examiner awarded the full amount of attorney's fees and costs requested by Meyer.

The relatively small amount of damages was not considered a reason for reducing the costs and attorney's fees awarded. To reduce or limit the amount of attorney's fees would send the wrong message to attorneys willing to represent clients with small monetary but otherwise important claims. Chung, supra. Because the ordinance contemplates an enforcement process driven by complaints from individuals, any rule that tends to limit the rights or ability of persons to pursue rights granted by the ordinance would be contrary to the intent and spirit of the ordinance. If complainants cannot obtain experienced and capable attorneys to represent them because of concerns about compensation, the enforcement scheme considered and adopted by the City Council would likely grind to a halt. This would be most true for complaints that do not appear to represent a large damage award that could be a source of payment of costs and fees. The Respondent's position would be contrary to the ordinance's intention that attorneys be encouraged to represent complainants before the Commission. The Respondent's second argument is that the fact that the Commission reduced the recommended damage award of the Hearing Examiner indicates that the Complainant did not prevail before the Commission and therefore the Complainant should not be entitled to costs and attorney's fees for the appeal to the

Commission. The Respondent estimates this amount to be $451.60 comprised of $432 in attorney's fees and $19.60 in costs.

While this position has some initial appeal, it must be rejected upon further consideration. This contention ignores the fact that except for the reduction in the damages award the Commission adopted the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order in its entirety. This includes the finding of liability. As indicated above, the finding of liability by itself represents a significant outcome particularly in this case where the Respondent could suffer additional impacts as a result of other governmental agencies refusal to deal with a person who has been found to discriminate on the basis of race. The outcome would parallel that in the Meyer case cited above.

The Hearing Examiner is unwilling to indicate that a respondent should only appeal a Recommended Findings of Fact, Conclusions of Law and Order where there is likely to be complete success. Equally the Hearing Examiner is not willing to adopt a rule that encourages appeals in the hope that any change in the result would require a loss of attorney's fees either in whole or in part. It seems that there must be a significant change in the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order before the Complainant's right to costs and attorney's fees be considered. Under the circumstances of this complaint and appeal, the Hearing Examiner is not convinced that the Respondent obtained such a significant change. This is particularly true since the Respondent argued on appeal for a finding of no liability or no damages instead of a reduction in damages.

The third point raised by the Respondent in support of a reduction in costs and attorney's fees relates to the lack of difficulty or unusual issues presented by the complaint. The standard rule as recognized in Harris and Chung derived from Watkins v. LIRC, 117 Wis. 2d 753, 345 N.W.2d 482 (1984) is that an attorney is entitled to his or her full fee based upon the hours actually expended. In the past, there has been some recognition of a multiplier for unusual or exceptionally difficult cases: This approach has lost favor however. Chung, supra. The rule proposed by the Respondent has never received support.

The final argument offered by the Respondent for a reduction in costs and fees is shocking to the Hearing Examiner. The Respondent proposes that because the Respondent testified truthfully and did not commit perjury, he should be rewarded by a reduction in the costs and fees to be awarded to the prevailing Complainant. Any person testifying before the Hearing Examiner or any other municipal body owes a duty of truthfulness based upon his or her oath or affirmation. Breech of this duty subjects a witness to sanctions prescribed by law. The reward for truthful testimony is not being subject to penalty for perjury. To suggest that a party be rewarded in some other manner for his or her truthful testimony is contrary to the system of citizen responsibility recognized throughout the United States.

For the reasons set forth above, the Hearing Examiner declines to accept the arguments of the Respondent. The Respondent shall pay the full amount of costs and attorney's fees as set forth in the Complainant's motion and supporting affidavits as amended by Rachel Spector's affidavit of January 18, 1996.

Signed and dated this 25th day of January of 1996.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner