

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

Kewiana Pollard
209 Shato Lane
Monona WI 53716

Complainant

vs.

Rohy, LLC
4582 Bishops Court
Madison WI 53562

Respondent

HEARING EXAMINER'S RECOMMENDED
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

CASE NO. 20151168

On September 12, 2017, the Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell, III, held a public hearing in Room 108 of the Madison City County Building, 210 Martin Luther King, Jr. Boulevard. The Complainant, Kewiana Pollard, appeared in person and by her attorney David DeHorse. The Respondent, Rohy, LLC, appeared by its representative and owner Rohy Seltz, and by Jeffrey Seltz. Based upon the record of the proceedings, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Kewiana Pollard, is a black, African American female, her date of birth being in March 1991.
2. The Respondent, Rohy, LLC, leases a home located at 2405 Regent Street in the City of Madison, Wisconsin.
3. Rohy Seltz is the owner of Rohy, LLC and the property located at 2405 Regent Street.
4. The property located at 2405 Regent Street was a three bedroom, one bathroom single-family residence with an unfinished basement.
5. The Complainant first signed a lease with the Respondent on December 12, 2014, with a lease term beginning January 1, 2015 and a rental amount of \$1,500.00 per month.
6. The Complainant signed a second lease with the Respondent on January 5, 2015, with a lease term beginning December 12, 2014 and a rental amount of \$1,135.00 per month.
7. The original lease dated December 12, 2014 listed a \$25.00 per month fee for furniture rental in addition to the monthly rental amount.

8. The second lease dated January 5, 2015 listed a \$365.00 per month fee, in addition to the monthly rental amount, for use of the provided furniture, appliances, and tools in the house and garage.
9. The Complainant paid a security deposit of one month's rent.
10. The Complainant received a Section 8 housing subsidy that paid a portion of her monthly rent by direct deposit to Rohy, LLC every month.
11. The Complainant made a lump sum payment in the amount of \$3,200.00 as an advanced sum toward the monthly rental amount not covered by her Section 8 voucher.
12. On January 5, 2015, Rohy Seltz first met the Complainant and stated, "No, no, no. This isn't going to work. This is a very classy neighborhood. This will not work for people like you."
13. In the months from January, 2015 until the end of the Complainant's tenancy, Ms. Seltz frequently appeared at the rental unit and made disparaging remarks to and about the Complainant to the effect that the Complainant, a black, African American female was a prostitute, a drug dealer and had children to defraud the welfare system.
14. These contacts with Ms. Seltz created an intolerable living environment and resulted in the Complainant's filing a complaint about Ms. Seltz's behavior with the Madison Police Department.
15. In August 2015, the Complainant was notified by the Respondent that her lease would not be renewed.
16. The Respondent's determination not to renew the lease of the Complainant came shortly after the Complainant reported the Respondent's harassing conduct to the Madison Police and continued after the Complainant filed her complaint with the Department of Civil Rights.
17. Ms. Seltz gave the Complainant untrue and disparaging housing references subsequent to the decision not to renew the Complainant's lease, including one given to Jennifer Carter, a former landlord of the Complainant.
18. The Complainant applied for housing at several other properties and was denied housing due to a lack of or unsatisfactory rental reference.
19. The Complainant did ultimately vacate the residence at 2405 Regent Street in November 2015.
20. During the Complainant's tenancy, work was being done by persons contracted by Rohy, LLC to finish the unfinished basement at 2405 Regent Street. This work was disruptive and intrusive.

21. The Complainant was employed at the UW Hospital and worked third shift. The Complainant was also taking classes at Madison Area Technical College. Because of this, Complainant relied heavily on her large extended family for assistance with childcare.

CONCLUSIONS OF LAW

1. The Complainant is a member of the protected classes Race (black), Color (other), Age (under 40), Familial Status (parent), Marital Status (single) and Lawful Source of Income (receipt of rental assistance) and is entitled to the protections of the City of Madison Equal Opportunities Ordinance 39.03.
2. The Respondent is a housing provider within the meaning of the City of Madison Equal Opportunities Ordinance 39.03 and is subject to its terms and conditions.
3. The Respondent did discriminate (harassment) against the Complainant on the basis of her race in violation of the Equal Opportunities Ordinance.
4. The Respondent did discriminate (harassment) against the Complainant on the basis of her color in violation of the Equal Opportunities Ordinance.
5. The Respondent did not discriminate (harassment) against the Complainant on the basis of her age in violation of the Equal Opportunities Ordinance.
6. The Respondent did not discriminate (harassment) against the Complainant on the basis of her familial status in violation of the Equal Opportunities Ordinance.
7. The Respondent did not discriminate (harassment) against the Complainant on the basis of her marital status in violation of the Equal Opportunities Ordinance.
8. The Respondent did discriminate (harassment) against the Complainant on the basis of her lawful source of income in violation of the Equal Opportunities Ordinance.
9. The Respondent did retaliate against the Complainant for her exercise of a right protected by the Ordinance when it refused to renew her lease in violation of the Equal Opportunities Ordinance.
10. The Respondent did retaliate against the Complainant for her exercise of a right protected by the Ordinance when it gave unfair or unsatisfactory rental references in violation of the Equal Opportunities Ordinance.
11. The Complainant suffered an economic loss when she was forced to find alternate housing due to the Respondent's discriminatory refusal to renew her lease.
12. The Complainant did suffer a compensable loss for humiliation, embarrassment and emotional distress due to the Respondent's discriminatory providing of negative rental references.

ORDER

1. No later than 30 days from the date upon which this Order becomes final, the Respondent shall pay Complainant \$3,000.00 in economic and compensatory damages for the Respondent's refusal to renew Complainant's lease and providing of negative rental references in violation of MGO 39.03.
2. No later than 45 days from the date upon which this Order becomes final, the Complainant shall submit a petition along with supporting documentation of her costs and fees associated with this action, including a reasonable attorney's fee. The Respondent may object to the Complainant's petition within 15 days of receipt of the Complainant's petition.

MEMORANDUM DECISION

In her complaint filed on August 28, 2015, and amended on March 23, 2016 and July 6, 2016, the Complainant alleges that the Respondent harassed her on the bases of her race (black), color (other), age (under 40), familial status (parent), marital status (single), and lawful source of income (receipt of rental assistance) in violation of MGO 39.03. The Complainant also alleges that she was retaliated against in the terms and conditions of rental (refusal to renew lease and in the giving of negative references). The Initial Determination by the City of Madison Department of Civil Rights found that there was probable cause to believe that harassment occurred on the bases of her race (black), color (other), age (under 40), familial status (parent), marital status (single), and lawful source of income (receipt of rental assistance), and that retaliation had occurred in the terms and conditions of rental (failure to renew lease and in the giving of negative references).

Cases of discrimination can be proven by either the direct or indirect method. In the direct method, the parties present their cases and the Hearing Examiner examines the facts and, without reliance on inference, reaches a determination of liability or not. Cases utilizing the direct method usually have convincing testimony of discriminatory language or conduct. In a case presented by the indirect method, the parties present their facts and apply those facts, be they inferential or direct, to the respective burdens of proof and production that the law places on the parties. The indirect method of demonstrating discrimination is also known as the burden shifting approach and derives from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) and the cases that follow those decisions.

The Hearing Examiner finds that the proof in this matter is best analyzed using the indirect method. When analyzing a case using the indirect method, the Hearing Examiner first must determine, for each allegation of harassment, if the Complainant has established a *prima facie* claim of discrimination. A complaint of harassment on the bases of race, color, age, familial status, marital status, and source of income, must meet the *prima facie* standard; that is, the Complainant must establish that 1) she is a member of the protected classes as defined by the Madison General Ordinance Sec. 39.03, 2) the Respondent is a housing provider as defined by the Ordinance, 3) she was harassed by the Respondent, and 4) there is a causal connection between the Complainant's protected classes and the harassment suffered. Harassment is defined as a pattern of verbal, visual or physical behavior or conduct based upon an individual's membership in a protected class severe or pervasive enough to create a living environment a reasonable person would consider intimidating, hostile or abusive.

The Complainant must prove each element of the *prima facie* claim by a preponderance of the evidence, which can also be stated as, by the greater weight of the credible evidence. Presuming the Complainant meets this burden of proof, the burden shifts to the Respondent to present a legitimate, nondiscriminatory explanation for its actions. This is a burden of production and not one of proof.

If the Respondent carries its burden of production, the Complainant might still prevail if she can point to evidence in the record demonstrating that the Respondent's proffered explanation is either not credible, or represents a pretext for an otherwise discriminatory motive.

There is nothing in the record indicating that the Complainant is not a member of the protected classes outlined in her complaint. There is no dispute that the Respondent is a provider of housing. Finding these elements of the *prima facie* claim have been met, the Hearing Examiner turns to the element of adverse action, which in this matter is summarized as harassment.

The Hearing Examiner now turns to whether or not the Complainant suffered harassment. Harassment under the Ordinance is defined as a pattern of verbal, visual or physical behavior or conduct, based upon an individual's membership in a protected class, severe or pervasive enough to create a living environment a reasonable person would consider intimidating, hostile or abusive. The Complainant describes feeling harassed by Rohy, LLC through its owner, Rohy Seltz.

On December 12, 2014, the Complainant met with Jeffrey Seltz to express interest in a rental property at 2405 Regent Street in Madison, Wisconsin. Mr. Seltz showed the property to the Complainant, and she signed a lease for that property. The property in question was owned by Rohy Seltz, Jeffrey Seltz's wife, and was operated as Rohy, LLC. Ms. Seltz was out of town on December 12, 2014 when the Complainant viewed the home, and did not meet the Complainant that day, but did speak to Mr. Seltz regarding the Complainant's rental inquiry and subsequent lease. Mr. Seltz relayed to Ms. Seltz that the Complainant was homeless; having just moved to Madison from out of state, and had three small children that she wanted to make sure had a home before the upcoming holidays. Ms. Seltz felt compassion for the Complainant, and making a decision, she described as being based on emotion, instructed her husband to let the Complainant and her family move in to the home. The Complainant testified she paid her rent and security deposit and signed a lease with Rohy, LLC through Mr. Seltz that day.

A few weeks later, on January 5, 2015, Ms. Seltz went to 2405 Regent Street and met the Complainant for the first time. The Complainant testified that this meeting was unplanned and that Ms. Seltz had shown up without prior notice. The Complainant was working third shift at the time, and when Ms. Seltz arrived between 9:00 a.m. and 10:00 a.m. that morning, the Complainant had been asleep. The Complainant opened the door to Ms. Seltz who reportedly said, "No, no, no. This isn't going to work. This is a very classy neighborhood. This will not work for people like you." In her testimony, Ms. Seltz denied making these comments. Ms. Seltz did bring with her another lease for the Complainant to sign. Complainant's Section 8 housing voucher would not apply to the original rental amount of \$1,500.00 per month, and the lease was modified to reflect a monthly rental amount of \$1,135.00. The Complainant, as part of her lease, was renting the furniture in the residence from Rohy, LLC. The original lease contained a furniture rental provision in the amount of \$25.00 per month, and the second lease contained a furniture rental provision in the amount of \$365.00 per month.

Following this initial visit by Ms. Seltz, the Complainant testified that these surprise visits continued to occur, and that often these visits would digress into some commentary from Ms. Seltz about the Complainant's source of income, including her receipt of housing assistance through Section 8, comments about the Complainant having babies so that she could receive government help, and the Complainant being involved in prostitution and drug dealing. In fact, the Complainant testified that Ms. Seltz would stop by the home nearly every other day, whether or not the Complainant was home, and on occasion, would sit outside of the home in her car observing the residence. Testimony at hearing from the Complainant described an incident where Ms. Seltz showed up while the Complainant's family member was at the 2405 Regent Street residence watching her children. The Complainant testified that Ms. Seltz questioned her family member during that visit about her relationship to the Complainant, and proceeded to wander through the house in an apparent effort to search the residence. The impromptu visits became so frequent, that the Complainant contacted the Tenant Resource Center, who instructed she contact the police. The Complainant did contact the police to report what she felt was harassing behavior and filed a report with the Madison Police Department on August 12, 2015.

During her frequent visits, Ms. Seltz would also insist that the Complainant owed her money. Ms. Seltz testified at hearing to being "bad with numbers" and that she did not keep any ledger or accounting of payments made by the Complainant. The allegation of monies owed was later proven untrue in a hearing in Circuit Court.

The testimony in this case reflects that the relationship between landlord and tenant began to deteriorate almost immediately but became intolerable around roughly the six-month mark of the Complainant's tenancy. It is around this time that the Complainant testified that Ms. Seltz's drop-ins had become so problematic that the Complainant felt compelled to call the police. Ms. Seltz testified that around that six month mark, the neighbors' complaints about loud music and visitor traffic at the residence on Regent Street had increased. There is conflicting testimony in the record to this point as well. Ms. Seltz testified that it was the neighbors that had reported various concerns to her about the Complainant. The Complainant received phone calls from Ms. Seltz stating the neighbors had presented concerns to her that the Complainant was a prostitute, and that she was selling drugs out of her home. The Complainant testified that she confronted these same neighbors, and that most of them said they did not even know Ms. Seltz. One neighbor, in a shop across the street from the Complainant's residence, reportedly told the Complainant that she had been asked by Ms. Seltz to spy on the Complainant, while Ms. Seltz's testimony reflected that that same neighbor/shop owner contacted Ms. Seltz of her own volition with concerns observed at the Complainant's residence.

For the duration of her tenancy, Complainant described contractors working on finishing the basement at her residence. The Complainant testified that the contractors had been given keys, and allowed access to her home at any time, by the Respondent. The Complainant described an instance where she walked in to her home to find a worker in her living room, and another instance where she had just gotten out of the shower and walked out to find a worker in her kitchen. Ms. Seltz testified that the basement renovations were the Complainant's idea, and that the Complainant knew the contractors would be in and out of the house at various times. Though the testimony on whose idea it was to renovate the basement is conflicted, it is unlikely that the Complainant intended to allow unfettered access to her home to total strangers.

Around this six-month mark, the Respondent testified that the condition of the home had deteriorated. The Complainant had called the City of Madison Building Inspection Division regarding the unfinished work in the basement, and Ms. Seltz was present for that inspection. Ms. Seltz testified that the condition of the livable space in the house was in poor condition. As a result of the City of Madison inspection, Rohy, LLC was provided a list of violations to be remedied, likely further straining the landlord/tenant relationship.

Ms. Seltz did testify that she was at the 2405 Regent Street property frequently due to the work being done on the basement and the involvement of the City of Madison Building Inspection Division. She also testified that she had no issues with the Complainant's tenancy until the neighbors started to complain. It appears, though, that Ms. Seltz's concerns began when she was first face to face with the Complainant back in January of 2015. Ms. Seltz was not present when the Complainant signed the original lease, and described renting to her out of compassion and emotion for her situation. Mr. Seltz described the Complainant only as a homeless mother of three young children. It would seem that Ms. Seltz's feelings of emotion and compassion only lasted until she met the Complainant in person on January 5, 2015. While Ms. Seltz testified that the complaints of drug dealing and prostitution had come from the neighbors, these descriptions are arguably invidious stereotypes of a young, black woman. The Hearing Examiner finds that these complaints were as likely figments of Ms. Seltz's personal views, and not actual complaints from neighbors of the Complainant. It is the behavior of Ms. Seltz following these alleged complaints that the Hearing Examiner finds harassing and discriminatory. Ms. Seltz's frequent presence in the Complainant's residence and the content of her conversations with the Complainant go beyond what would be appropriate for a landlord/tenant relationship. The accusations of stereotypical wrongdoing clearly relate to the Complainant's race, color and lawful source of income.

The record demonstrates a causal connection between the Complainant's membership in the protected classes of race, color and lawful source of income. The Hearing Examiner finds that the Complainant's testimony and that of her supporting witness were more compelling and more credible than that of the Respondent. Ms. Seltz's testimony was frequently, rambling, vague and contradictory. Her explanation of her personal experience often relied on stereotypes and lacked authenticity. The allegations of misconduct by the Complainant made by Ms. Seltz point to discriminatory attitudes concerning the Complainant's race, color, and her lawful source of income. The record convincingly demonstrates that these complaints of misconduct were meritless and likely the result of discrimination. Given the discrepancies in the parties' testimony, the Hearing Examiner finds that the Complainant has made out a *prima facie* claim of discrimination in housing on the bases of race, color, and lawful source of income.

The Respondent's burden at this point in the matter is to present a legitimate, nondiscriminatory explanation for its actions. This is a burden of production and not one of proof. The Respondent in this case was not represented by counsel, provided very little testimony to support her case, and provided almost no testimony to speak to the harassing behaviors reported by the Complainant. Ms. Seltz did attribute her actions to complaints of the Complainant's neighbors, but as noted above, the Hearing Examiner does not credit this testimony with much credibility. The Respondent did bring two witnesses to testify, but their testimony was offered after the Respondent completed its case in chief. The Hearing Examiner declined to allow those witnesses to testify.

The Hearing Examiner finds that the Respondent has not met its burden to produce a legitimate, nondiscriminatory reason for its behavior. Even to the extent that the Respondent

produced testimony in this matter through the testimony of Ms. Seltz that testimony was often contradictory or vague and generally lacked credibility. This failure to meet its burden of proof is sufficient to find in favor of the Complainant as noted above.

Even if the Hearing Examiner accepted that the Respondent made an adequate proffer of a legitimate, nondiscriminatory explanation, the Hearing Examiner would conclude that the testimony as a whole demonstrates that the Respondent's explanation lacks credibility and is likely a pretext for an otherwise discriminatory explanation.

Next, the Hearing Examiner turns to the claims of retaliation. To establish a *prima facie* claim for retaliation in the terms and conditions of rental (failure to renew lease and negative rental references), the Complainant must prove that she exercised a right protected by the Ordinance, that she experienced an adverse action related to housing and that the adverse housing action were causally connected to the protected right exercised by the Complainant.

The record states two claims for retaliation, one for the refusal to renew the Complainant's lease and one for the giving of poor, untrue housing references. The Complainant filed a claim of discrimination with the City of Madison Department of Civil Rights on August 28, 2015, which she then amended on March 23, 2016 and July 6, 2016. While all three of these acts constitute the exercise of a right protected by the Ordinance, it is only the August filing that relates to the claim of retaliation by failure to renew the Complainant's lease. In addition, the Complainant exercised a right protected by the Ordinance when she opposed the Respondent's allegedly discriminatory harassment by making a complaint to the police. The Complainant contacted the Madison Police Department on August 12, 2015 to report what she believed to be harassing behavior by her landlord. This harassment was premised on the Complainant's membership in several protected classes including race and lawful source of income. The police spoke with Ms. Seltz regarding this complaint.

Shortly after the Complainant's report to the police, Ms. Seltz informed the Complainant that she would not be renewing her lease. The Complainant testified that she wrote to Ms. Seltz asking that she be allowed to remain in the home. Ms. Seltz provided no reason in her letter of non-renewal to the Complainant to explain why she would not be renewing the lease for the coming year. The Complainant testified that she believed the non-renewal of her lease to be, in part, in response to contacting the police about Ms. Seltz's frequent visits, and owing to the fact that the Respondent erroneously believed the Complainant owed her money. The Respondent testified that she did not renew the Complainant's lease because she was considering selling the home, or absent that, renting the home for what she described as "market value". The Complainant's only option at that point was to vacate the residence at the end of the lease term.

This record presents a compression of the usual burden shifting approach. In general, the Complainant has established that she exercised a right protected by the Ordinance when she opposed the Respondent's discriminatory harassment by calling the Madison Police Department and filing a complaint with the police department. Additionally, the Complainant filed a complaint with the Department of Civil Rights. Following the report to the police and continuing after the filing of the complaint with the Department of Civil Rights, the Respondent refused to renew the Complainant's lease despite the Complainant's request for a lease renewal. The timing of the Respondent's decision not to renew the Complainant's lease presents a temporal nexus that creates a strong inference of retaliation.

The Respondent attempts to rebut that inference by indicating that the reason for the nonrenewal of the Complainant's lease was that the Respondent intended to either sell the property or to seek a higher rent than the Complainant would be able to afford.

The decision to sell the property would represent a legitimate, nondiscriminatory reason to non-renew the Complainant's lease. To seek a higher rent for the property does not strike the Hearing Examiner as a legitimate explanation. The nonrenewal came several months ahead of the lease's termination and the Respondent had no way of knowing at that time whether the Complainant would be able to afford a higher rental payment or not.

At the time of hearing, there was no indication that the property had been sold or that a higher rent was being charged. This casts doubt on the explanation proffered at hearing by the Respondent. This doubt is sufficient to find that the Respondent's decision not to renew the lease of the Complainant was in retaliation for the Complainant's exercise of rights protected by the Ordinance.

The Hearing Examiner next turns to the issue of retaliation by the giving of poor and untrue references. The same conduct that established the Complainant's exercise of a right protected by the Ordinance as above applies equally here. The adverse housing action is described as follows: The Complainant describes applying for housing at several places, and being denied for a lack of rental history. The Complainant testified that she had been leasing residences for a number of years, and had what should have been a sufficient amount of rental history. In an effort to determine what was going wrong, the Complainant had Jennifer Carter, a previous landlord, contact Ms. Seltz for a rental reference. Following that contact, Ms. Carter relayed to the Complainant that Ms. Seltz had given her a very bad reference, stating the Complainant was a prostitute and was selling drugs out of the home. During that conversation, Ms. Seltz asked Ms. Carter not to share that information with the Complainant. Ms. Seltz, in her testimony, stated that the only response she ever gave when contacted for a rental reference was, "good luck." When pressed on what that meant, Ms. Seltz explained that it was up to the person contacting her for the reference to interpret what "good luck" meant. Ms. Seltz testified that all she said to Jennifer Carter when she called for a reference was "good luck."

The giving of a poor and untrue housing reference that acts as a bar on a Complainant's ability to gain housing is an adverse housing action. The testimony in this matter depicts two very different reference encounters. It is unfortunate that the only proof on the side of the Complainant is her testimony of what Ms. Carter related to her. Ms. Carter's testimony would have been invaluable in determining this issue. This reliance on hearsay testimony, while permitted, creates some difficulties for the Hearing Examiner. Generally, hearsay may not be the only manner of proof of an ultimate issue in a proceeding. This testimony comes perilously close to that standard.

Ms. Seltz denies making the statements attributed to her by Ms. Carter via the Complainant. Instead, Ms. Seltz testified that her practice is to only tell a landlord seeking a reference, "good luck." The Hearing Examiner finds that such a reference, given the relationship between the parties in this matter, is intended to convey a negative view of the Complainant and if not borne out by facts, represents an act of retaliation against the Complainant.

The repetition of the same descriptions as those set forth in the allegation of harassment in the context of Ms. Carter's reported statement gives weight to the Complainant's version of events. The Respondent's reliance on what would be, at best, an ambiguous reference casts

doubt on the Respondent's credibility and indicates to the Hearing Examiner that the Complainant's version of Ms. Seltz's statements to Ms. Carter are more likely true than not.

The Hearing Examiner concludes that the Respondent did retaliate against the Complainant by giving false and misleading reference due to the Complainant's filing of one or more complaints with the Department of Civil Rights.

The Complainant testified that as a result of the unfair or unsatisfactory rental references, she suffered economic loss in the form of lost application fees that were surrendered after applying for, and being denied, housing. The Complainant described additional economic losses suffered as a result of having to obtain alternate housing, including rental of a U-Haul, purchase of moving boxes and packing tape, hiring cleaners for the Regent Street residence and carpet, and having to remit a security deposit for a new residence. The Complainant also described feeling humiliated and embarrassed by the assertion of prostitution and drug dealing being disseminated by Ms. Seltz to the Complainant's neighbors and potential landlords.

The issue of damages in this case was somewhat difficult to determine. At hearing, the Complainant testified to having incurred nearly \$3,000.00 in economic losses in an effort to move from one residence to another, and relocate her children from one school to another, however, in summation of their case, Complainant's counsel requested an award of \$3,000.00 in total damages. It would be inappropriate for the Hearing Examiner to try to interpret whether counsel's request was in reiteration of the economic losses suffered by the Complainant, or whether that amount was to be compensatory for the embarrassment or humiliation she suffered. The burden to prove damages in this matter is on the Complainant. As the Hearing Examiner found in Cronk v. Reynolds Transfer and Storage, MEOC Case No. 20022063 (Comm. Dec. 2/28/2005, 3/05/2007, Ex. Dec. 9/13/2004, 8/29/2006), Circuit Court Case No. 2007CV1100 (10/19/2007), "... compensatory damages may be made without expert testimony, and the existence of emotional injuries may be inferred from the circumstances of the particular case."

In a similar case, Nichols v. Buck's Madison Square Garden Tavern, MEOC Case No. 20033011 (Ex. Dec. 10/14/03; Ex. Dec. 11/08/05; Comm. Dec. 05/22/06; aff'd Daily dba Buck's Madison Square Garden Tavern v. EOC, City of Madison, 06CV1931 (Dane County Cir. Ct. 03/30/07), the Hearing Examiner faced a similar dilemma over the issue of damages. In both Cronk and Nichols, the Complainant or Complainant's counsel presented a figure for requested damages that the Hearing Examiner was bound to follow. In both cases, the Hearing Examiner opined that while a higher level of damages might have been demonstrated at hearing, he could not, without engaging in speculation, make an award in excess of what the Complainant had placed on the record. The Hearing Examiner is faced with a similar dilemma in the present matter.

While the testimony of the Complainant in this case was fairly clear on her economic loss, the damages amount proposed by her attorney muddied the waters. Because it would be inappropriate to infer that any damages were requested beyond the testimony given, the Hearing Examiner finds an award of \$3,000.00 for economic loss and compensable emotional injuries to be appropriate.

This was a difficult case given the facts presented, testimony given, and lack of representation on the part of the Respondent. The late entry into representation of counsel for the Complainant was also a complicating factor.

Signed and dated this 28th day of April, 2020.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner