

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

<p>Harold Regan 305 North Francis Street, Apt. 106 Madison, WI 53703</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Lyons Mortgage Co. 6708-B Odana Road Madison, WI 53705</p> <p style="text-align: center;">Respondent</p>	<p style="text-align: center;">RECOMMENDED FINDINGS OF FACT CONCLUSIONS OF LAW, ORDER AND MEMORANDUM DECISION - REMEDY</p> <p style="text-align: center;">Case No. 20846</p>
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This matter came on for a hearing before the Equal Opportunities Commission on January 19, 1989, pursuant to the hearing examiner's order dated November 30, 1988, finding Respondent in default for failing to appear at the Pre-Hearing Conference and scheduling a hearing to determine the remedy to be awarded Complainant. Complainant appeared at the hearing in person. Respondent failed to appear within one-half hour of the scheduled time of the hearing.

On the basis of the order dated November 30, 1988, and the evidence presented at the hearing held January 19, 1989, the hearing examiner now makes the following Recommended Findings of Fact, Conclusions of Law and Order.

**RECOMMENDED FINDINGS OF FACT - REMEDY**

1. On August 1, 1987, Complainant was scheduled to work for Respondent from 9:00 a.m. to 2:00 p.m. His hourly wage rate was to be four dollars and thirty cents (\$4.30).
2. Complainant reported to work with Respondent and worked until 10:00 a.m. at which time he was advised by Respondent that he was not needed to work any longer and was dismissed for the balance of the day.
3. Complainant was paid for the hour he worked for Respondent on August 11, 1987. He was not paid for the additional hours he had been scheduled to work for Respondent.
4. Complainant also held a part-time job on August 11, 1987. He normally worked evenings. His hourly wage for this employment was well in excess of the minimum wage.
5. After leaving Respondent's place of business on August 11, 1987, Complainant went to his part-time job and worked from 10:30 a.m. until 9:00 p.m.
6. Complainant was paid for all hours he worked at his part-time job on August 11, 1987.
7. Complainant lost wages in the amount of seventeen dollars and twenty cents (\$17.20) as a result of the Respondent's termination of his assignment prior to 2:00 p.m.
8. Complainant earned not less than twelve dollars and twenty-five cents (\$12.25) by working for his part-time employer from 10:30 a.m. until 2:00 p.m. on August 11, 1987. These wages were in addition to the wages Complainant earned for working his normally scheduled hours that day.

### **RECOMMENDED CONCLUSIONS OF LAW - REMEDY**

9. The Commission has jurisdiction over the parties and the subject matter of the complaint.
10. The Respondent has defaulted by failing to appear at the Pre-Hearing Conference and the hearing.
11. The unappealed Initial Determination, that there is no probable cause to believe Respondent discriminated against Complainant on the basis of sexual orientation is a final determination with respect to Complainant's claim of sexual orientation discrimination and is binding upon the hearing examiner and the Commission. Accordingly, the order of November 30, 1988 is amended to find Respondent in default only with respect to Complainant's claim of physical appearance discrimination.
12. The Complainant is entitled to such relief as will make him whole for the harm caused by Respondent's discrimination. Such relief includes the wages lost as a result of Respondent's discriminatory acts, reduced by Complainant's interim earnings.
13. The Complainant has failed to prove by a preponderance of the evidence that Respondent's discrimination has harmed him in any other manner warranting the award of any further relief.

### **RECOMMENDED ORDER - REMEDY**

14. The hearing examiner's order of November 30, 1988 is hereby modified in accordance with paragraph 11 herein, and as modified, is incorporated in this order.
15. The Respondent shall cease and desist from discriminating against employees or prospective employees on the basis of physical appearance.
16. Respondent shall pay to Complainant the sum of four dollars and ninety-five cents (\$4.95).

### **MEMORANDUM DECISION**

The reasons for finding Respondent in default are set forth in my order of November 30, 1988 and will not be repeated here. However, because it appears that under the terms of that order, the Respondent was held liable for discrimination on the basis of sexual orientation and the claim of sexual orientation was not properly before the hearing examiner, the November 30, 1988 order has been modified to make it clear that Respondent has defaulted only on those claims certified to hearing and is liable only for discrimination on the basis of physical appearance.

Respondent also failed to appear at the hearing held for the purpose of determining appropriate relief. Therefore, my findings are based on the uncontroverted and credible testimony of the Complainant. That testimony established that the Complainant was to have worked five hours and would have earned an hourly wage of four dollars and thirty cents (\$4.30) for his work for Respondent, but that he was permitted to work and was paid for only one hour. Because the ordinance provides that the award of lost wages is to be reduced by amounts earned or earnable by Complainant, sec. 3.23(9)(c)2.b., Mad. Gen. Ord., and the evidence establishes that Complainant secured alternate employment and was paid for three and a half of the four hours he would have otherwise been paid for working for Respondent, I have reduced the lost wages by the amount Complainant earned in alternate employment. Complainant testified that he was paid well in excess of the minimum wage for this employment but was unable to recall the amount he was paid, or whether it exceeded four dollars and thirty cents (\$4.30) per hour. I have concluded, on the basis of his testimony, and in the absence of evidence to the contrary, that Complainant was paid no less than three dollars and fifty cents (\$3.50) per hour for the alternate employment.

At the hearing, Complainant asserted that he has suffered mental distress as a result of Respondent's discrimination, and that the distraction caused by Respondent's discrimination caused him to fail his preliminary examinations at the University of Wisconsin not once, but three times. Complainant also argued that punitive damages should be assessed in this case. The burden of proof in these proceedings is on the Complainant and he has failed to present evidence, other than his own opinion, to support these claims. I therefore conclude that no further relief is appropriate in this case.

Dated at Madison this 31 day of January, 1989.

EQUAL OPPORTUNITIES COMMISSION

Harold Menendez  
Hearing Examiner