

**STATE OF WISCONSIN
CIRCUIT COURT
DANE COUNTY**

<p>CITY OF MADISON, Plaintiff,</p> <p style="text-align: center;">and</p> <p>DOROTHY LAITSCH, Plaintiff-Intervenor,</p> <p style="text-align: center;">v.</p> <p>LLAMA IMPORTS, LTD. and BYRON FRENZ, Defendants.</p>	<p>JUDGMENT</p> <p>Case No. 82-CV-3782</p>
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This matter having come on for hearing on August 17, 1983 before the Court for Oral Arguments upon Motions of all parties for Summary Judgment and the Plaintiff City of Madison having appeared by Assistant City Attorney Eunice Gibson, the Plaintiff-Intervenor Dorothy Laitsch having appeared by her Counsel Julian & Olson, S.C., by Attorney Randall M. Aronson and the Defendants having appeared by their Counsel Ross & Chatterton by Attorney Lesley Brodhead Griffith, based upon all the pleadings, papers, briefs, affidavits, and oral arguments submitted by the parties and pursuant to the Court's Memorandum Decision of September 23, 1983, the Court hereby adjudicates and Orders as follows:

1. Llama Imports, Ltd. is hereby ordered to pay to the Unemployment Reserve Fund of the State of Wisconsin \$1,356.00.
2. Llama Imports, Ltd. is hereby ordered to pay to the Treasury of the City of Madison \$5,200.00.
3. Llama Imports, Ltd. is hereby ordered to file with the Court proof of its payments ordered above.

Signed and dated this 14th day of October, 1983.

BY THE COURT
Edward S. Marion, Judge
Circuit Court, Branch 8

**STATE OF WISCONSIN
CIRCUIT COURT
DANE COUNTY**

<p>CITY OF MADISON, Plaintiff,</p> <p style="text-align: center;">and</p> <p>DOROTHY LAITSCH, Plaintiff-ntervenor,</p> <p style="text-align: center;">v.</p> <p>LLAMA IMPORTS, LTD. and BYRON FRENZ, Defendants.</p>	<p>JUDGMENT</p> <p>Case No. 82-CV-3782</p>
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1. Defendants' Motions for Summary Judgment are denied.
2. Llama Imports, Ltd. is liable to the Plaintiffs for its discrimination against the Plaintiff-Intervenor Dorothy Laitsch.
3. Dorothy Laitsch is awarded judgment in the amount of \$10,244.00 as compensatory damages against Llama Imports, Ltd. for its discrimination against her which resulted in her discharge from the employment of Llama Imports, Ltd. on June 26, 1980.
4. Llama Imports, Ltd., is hereby enjoined from continuing its discrimination against Dorothy Laitsch on the basis of handicap,
5. Llama Imports, Ltd., is hereby ordered to reinstate Dorothy Laitsch to its next available position as a bookkeeper.
6. Llama Imports, Ltd., is hereby ordered to provide to Dorothy Laitsch all other benefits that she would receive or would have received had she not been discharged by Llama Imports, Ltd., on June 26, 1980.
7. Upon Dorothy Laitsch's reinstatement Llama Imports, Ltd., shall provide her with a working space convenient for her to use her incandescent light.
8. Llama Imports, Ltd., is ordered to submit proof of payment to the Equal Opportunities Commission of the City of Madison of the amount awarded to Dorothy Laitsch in this judgment.

Signed and dated this 14th day of October, 1983.

BY THE COURT
Edward S. Marion, Judge
Circuit Court, Branch 8

**STATE OF WISCONSIN
CIRCUIT COURT
BRANCH 8
DANE COUNTY**

<p>CITY OF MADISON, Plaintiff,</p> <p style="text-align: center;">and</p> <p>DOROTHY LAITSCH, Plaintiff-Intervenor,</p> <p style="text-align: center;">v.</p> <p>LLAMA IMPORTS, LTD. and BYRON FRENZ, Defendants.</p>	<p>Case No. 82CV3782</p> <p>MEMORANDUM DECISION</p>
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This is an action by the City of Madison ("the City") and Dorothy Laitsch for enforcement of an order of the Madison Equal Opportunities Commission ("the Commission"). The City seeks a forfeiture and an injunction against continued violation. Ms. Laitsch seeks compensatory and punitive damages.

Before the court are motions for summary judgment by all parties. For the following reasons, the defendants' motions are denied and the plaintiffs' motions are granted in part and denied in part.

The following facts are undisputed: Laitsch filed a complaint with the Commission alleging discrimination on the basis of handicap. She named Llama Imports, Ltd. ("Llama") and Byron Frenz and Associates ("the partnership").

After a hearing, the Commission's hearing examiner issued his Recommended Findings of Fact, Conclusions of Law and Order, a certified copy of which is in the record. The examiner concluded that Llama discriminated and retaliated against Laitsch on the basis of handicap, in violation of section 3.23 of the Madison General Ordinances ("the ordinance") by discharging her from her job as a bookkeeper "because of her good faith opposition to the employer's failure to provide her with a lamp." Among other relief the examiner recommended that the Commission order Llama to reinstate Laitsch and to pay her \$100.00 per week from the date of the discharge until reinstatement less any "ordinance setoffs."

The Commission affirmed the examiner's recommended findings, conclusions and order and adopted them in their entirety as its final order.

Byron Frenz was not a party to the proceedings before the Commission, although he did appear on behalf of Llama and the partnership. The partnership was found not to be "an employer" within the meaning of the ordinance and Laitsch's complaint was dismissed as to it.

Laitsch was discharged July 26, 1980. She was ordered reinstated December 10, 1981. She has not been reinstated nor has she received any compensation from Llama.

Sec. 802.08(2), Stats., provides that summary judgment shall be rendered if the record establishes that there is no genuine issue as to any material fact and that a party is entitled to judgment as a matter of law.

In deciding a plaintiff's motion for summary judgment, the first step is to examine the complaint to see if it states a claim upon which relief can be granted. Prah v. Maretti, 108 Wis. 2d 223, 228, 321 N.W.2d 182 (1982). If the complaint states a claim and the pleadings show the existence of factual issues, the record must be examined to determine if there are genuinely disputed material facts; if there are, there must be a trial. Id. at 228.

THE CLAIM AGAINST LLAMA

The plaintiffs sue Llama and Byron Frenz individually. All the material facts regarding Llama's liability are either admitted in the answer or established by the Commission's order. There is no doubt whatsoever that the Commission ruled that Llama violated the ordinance, ordered back pay, and that the order has not been obeyed. Section 3.23(12) of the Madison General Ordinances makes failure or neglect to obey a lawful order of the Commission a violation of the ordinance, subjecting the violator to a forfeiture of between \$100.00 and \$500.00 per day for each day the order remains uncomplied with.

Llama justifies its failure to obey the Commission on the ground that the ordinance is unconstitutional. Only the sketchiest of arguments was proffered in support of this defense. For the reasons discussed in plaintiffs' briefs and in the circuit court opinions discussed therein, these arguments are rejected.

Defendants' answer alleges that Llama "is incapable of complying with" the Commission's order. Nothing submitted on the pending motions adds anything to this conclusive allegation.

The court concludes that there is no genuine issue as to any material fact with respect to the plaintiffs' claim against Llama. Summary judgment on liability is granted.

THE CLAIM AGAINST FRENZ

The plaintiffs seek judgment against Byron Frenz individually. Both complaints allege that the Commission's hearing examiner found that Frenz had violated the ordinance and that he has failed and refused to comply with the Commission's order. The City relies primarily upon Frenz's individual actions leading up to Laitsch's complaint to justify its request that Frenz be personally held to have violated the ordinance. Laitsch, on the other hand, relies more upon Frenz's alleged conduct after the Commission's order to justify her prayer for damages. More specifically, Laitsch alleges, essentially, that Frenz controlled Llama and prevented it from complying with the Commission's order.

Notwithstanding their differing factual theories, both plaintiffs rely upon basically the same legal theories. The court is asked to hold that Llama and Frenz are a "single-employer" under a doctrine developed under the Federal Labor Management Relations Act. Alternatively, the court is asked to "pierce the corporate veil" and hold that Frenz operated Llama in such a way as to disregard its separate identity, subjecting him to personal liability.

The court believes that both theories may be applicable to the present controversy. The plaintiffs have not, however, made out a case for summary judgment.

The affidavits submitted by all parties demonstrate genuine issues as to the nature and extent of Frenz's relationship both prior and subsequent to the entry of the Commission's order. The liability of an officer, director or shareholder of a corporation for the actions or inactions of a corporation is a complex matter governed, historically, by a variety of legal theories. See McGivern v. Amasa Lumber Co., 77 Wis. 2d 241, 252 N.W.2d 371 (1977). Summary judgment is a drastic remedy "to be applied only when it is perfectly plain that there is no substantial issue to be tried." Poston v. U. S. Fidelity & Guaranty Co., 107 Wis. 2d 215, 222, 320 N.W.2d 9 (1982). The ground or grounds for holding Frenz responsible for Llama's disobedience must be further developed before relief can be granted.

One thing can be concluded at this stage: the question of Frenz's discrimination against Laitsch.

While Frenz may be liable to Laitsch or the City for Llama's disobedience of the Commission's order, he is not liable for the original discrimination. While Frenz hired and fired Laitsch as matters of fact, the Commission's order is a binding adjudication that as a matter of law Llama discriminated against Laitsch. No effort was made to disregard the corporate entity at the Commission level. This is an action to redress Laitsch's rights under the Commission's order. The order is against Llama alone. Llama cannot relitigate its liability nor can the plaintiffs litigate Frenz's liability. The place to have established Frenz's personal responsibility for Laitsch's discharge was in front of the Commission. Laitsch did not proceed against Frenz then; it is too late now.

This is not to say, as previously stated above, that it is too late to attempt to establish Frenz's liability for the fact that the Commission's order remains uncomplied with. This is a matter for trial.

The question of remedying Llama's violation of the Commission's order remains. The order awarded to Laitsch the sum of \$100.00 per week from July 26, 1980 to such time as she is reinstated, less any "ordinance setoffs."

The affidavit of Dorothy Laitsch alleges that since her discharge, she has received \$1,356.00 in unemployment compensation and \$5,200.00 in welfare benefits. The court assumes that these constitute "ordinance setoffs." These amounts are uncontradicted and the court accepts them.

Laitsch shall recover from Llama a sum equal to \$100.00 per week from July 26, 1980, up until the date of entry of judgment less \$6,556.00 as compensatory damages. The judgment shall also provide that Llama shall fully comply with the terms of Commission's order.

The City is entitled to a forfeiture and Laitsch has asked for punitive damages. The court requires additional argument in order to exercise its discretion regarding these matters. A hearing will be scheduled. In the meantime, Laitsch may submit a proposed judgment awarding the compensatory and injunctive relief already awarded.

Dated this 23rd day of September, 1983.

BY THE COURT
Edward S. Marion, Judge
Circuit Court, Branch 8

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MONONA AVENUE
MADISON, WISCONSIN**

<p>Dorothy Laitsch 121 Allied Drive, #4 Madison, Wisconsin</p> <p>Complainant</p> <p>vs.</p> <p>Llama Imports, Ltd. 324 South Hamilton Street Madison, Wisconsin</p> <p>Respondent</p>	<p>FINAL ORDER</p> <p>Case No. 2656</p>
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The Hearing Examiner of the Madison Equal Opportunities Commission (MEOC) issued the Recommended Findings of Fact, Conclusions of Law and order on July 16, 1981. Timely exceptions were filed, written arguments were submitted, and oral arguments were heard by the Commissioners (nine Commissioners participated).

Based upon a review of the record in its entirety, the MEOC issues the following:

ORDER

That the attached Recommended Findings of Fact, Conclusions of Law and Order shall be and hereby is AFFIRMED in its entirety, and that said Recommended Findings of Fact, Conclusions of Law and order shall stand as the FINAL ORDER herein.

Commissioners Abramson, Amato, Conrad, Hall, McShan, Mendez, Swamp and Thome all join in affirming the Examiner's decision. Commissioner Galanter abstained; i.e., she did not join in affirmation but did not formally dissent.

Signed and dated this 10th day of December, 1981.

A. Gridley Hall
President

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
351 WEST WILSON STREET
MADISON, WISCONSIN**

<p>Dorothy Laitsch 121 Allied Drive Apartment 4 Madison, Wisconsin 53711</p>	<p>NOTICE OF RIGHT TO APPEAL</p> <p>Case No. 2656</p>
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<p>Complainant</p> <p>vs.</p> <p>Byron Frenz and Associates 324 South Hamilton Street Madison, Wisconsin 53703</p> <p>Respondent A</p> <p>Llama Imports, Ltd. 324 South Hamilton Street Madison, Wisconsin 53703</p> <p>Respondent B</p>	
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Attached are the Recommended Findings of Fact, Conclusions of Law, and Order of the Equal Opportunities Commission's Hearing Examiner. The Rules of the EOC provide for appeal of this decision in the following terms:

10.1 Either party may appeal the Recommended Findings of Fact, Conclusions of Law and Order of the Commission's designee within ten (10) days after receiving them by filing written exceptions to such Findings, Conclusions, or Order.

10.2 If neither party appeals the Recommended Findings of Fact, Conclusions of Law, or Order within ten (10) days, they become final Findings, Conclusions and Order of the Commission.

This Notice, Findings, Conclusions of Law and Order have been sent to both parties. Any appeal from these Findings, Conclusions and Order must be postmarked or delivered at the offices of the EOC within ten (10) days of the date of receipt.

Dated at Madison, Wisconsin this 16th day of July, 1981.

Allen T. Lawent
Hearing Examiner

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
351 WEST WILSON STREET
MADISON, WISCONSIN**

<p>Dorothy Laitsch 121 Allied Drive Apartment 4 Madison, Wisconsin 53711</p> <p>Complainant</p> <p>vs.</p> <p>Byron Frenz and Associates 324 South Hamilton Street Madison, Wisconsin 53703</p> <p>Respondent A</p>	<p>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 2656</p>
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Llama Imports, Ltd. 324 South Hamilton Street Madison, Wisconsin 53703	
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Respondent B

On July 21, 1980, a complaint of discrimination in this matter was received by the Madison Equal Opportunities Commission (MEOC) alleging discrimination on the basis of handicap in regard to discharge. On September 24, 1980, said complaint was amended to include Respondent B as a co-Respondent.

The complaint was investigated by MEOC Human Relations Investigator Mary Pierce, and an Initial Determination was issued on December 11, 1980 finding Probable Cause to believe that discrimination had occurred as alleged in the complaint.

Conciliation was waived and/or unsuccessful, and the matter was certified to public hearing. A hearing was held on May 26, 1981 before MEOC Hearing Examiner Allen T. Lawent. Attorney Jeff Scott Olson and law clerk Randall Aronson of Julian and Olson, S.C. appeared on behalf of the Complainant who also appeared in person. Byron Frenz represented both Respondent A and Respondent B as a lay advocate and Robert Dunham was the designated employee-representative for both Respondent A and Respondent B. Based upon a review of the record and upon consideration of any post-hearing arguments submitted by either party, the Examiner proposes the following Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. Dorothy Laitsch is an adult female who resides in the State of Wisconsin.
2. Respondent A, Byron Frenz and Associates, is a partnership which holds real estate and does business in the City of Madison.
3. Respondent B, Llama Imports, Ltd., is a service firm that does accounting and maintenance in the City of Madison.
4. Laitsch was employed by Llama Imports, Ltd. as a bookkeeper on May 19, 1980. She worked full time for Respondent B at the 3313 University Avenue office and at 324 South Hamilton. Both addresses are located in the City of Madison.
5. Laitsch has been blind in one eye since the age of five, and she has been sensitive to fluorescent lights since just after high school to the extent that exposure to fluorescent lights causes her to have a flicker and creates neurological symptoms. She can work without problems around fluorescent lights if she has an incandescent or direct light available.
6. Laitsch was hired by Byron Frenz within the ambit of his authority as president of Respondent B.
7. Laitsch told Frenz about her sensitivity to fluorescent lights at her second interview and he told her that he would ask Sue Kopp, his secretary, to order an incandescent light for her (the Complainant).
8. Despite Laitsch's frequent inquiries to Kopp and Frenz, and Kopp's promises that the light would be coming soon, the incandescent light was never provided to Laitsch. Consequently, Laitsch took frequent breaks to avoid any problems during the course of her employment with Respondent B. Respondent B had only fluorescent lighting in the areas of the offices that Laitsch worked in.
9. On June 18, 1980, Laitsch was instructed by Frenz not to report to work for a week. She was also told that she would be working part-time in the future. The purpose of asking her to take a week off was to permit Respondent B to evaluate her work.
10. Laitsch returned to work for Respondent B on June 26, 1980. She had left a letter from her doctor (Complainant's Exhibit I) with Sue Kopp and requested that Kopp give the letter to Frenz. The doctor's letter explained the problems she had with fluorescent lights.

11. When Frenz returned to the office the afternoon of June 26, 1980, he allocated work to Laitsch, Sue Kopp, and "Liz". Frenz then fired Laitsch shortly afterward, subsequent to his having read the doctor's letter.
12. At least two of Laitsch's previous employers had provided her with an incandescent lamp to accommodate her visual handicap.
13. Laitsch had been earning \$4.50 per hour prior to her discharge by Respondent B.
14. Laitsch had applied for work with at least fifteen employers since being discharged by Respondent B, but had not been hired by any other employer up to the time of the hearing.

RECOMMENDED CONCLUSIONS OF LAW

1. The Complainant is a member of a protected class, handicap, within the meaning of Section 3.23, Madison General Ordinances.
2. Respondent A was not an employer of the Complainant.
3. Respondent B is an employer within the meaning of Section 3.23, Madison General Ordinances.
4. The Respondent B discriminated and retaliated against the Complainant on the basis of handicap in violation of Section 3.23, Madison General Ordinances by discharging her on June 26, 1980 because of her goodfaith opposition to the employer's failure to provide her with a lamp.

RECOMMENDED ORDER

1. That the complaint against Respondent A be and hereby is dismissed.
2. That Respondent B shall cease and desist discriminating against the Complainant on the basis of handicap.
3. That the Respondent B shall reinstate the Complainant to the next available position as a bookkeeper.
4. That Respondent B shall pay to the Complainant \$100.00 per week from July 26, 1980 to such time as she is reinstated, less any ordinance setoffs. The \$100.00 per week figure is based on \$4.50/hour for 20 hours per week ("part-time").
5. That the Complainant shall receive all other benefits that she would receive or would have received had she not been discharged by Respondent B on June 26, 1980.
6. That upon reinstatement, the Complainant shall, provide her own incandescent light, and the Respondent shall provide her with a working space convenient for her to use her incandescent light.
7. That proof of payment be made to the Commission within thirty (30) days of the date this Order becomes final and every thirty (30) days thereafter until such time as the Complainant is reinstated. Proof of payment shall include proof of all accrued backpay and benefits then due.

OPINION

This is not a case of reasonable accommodation. This case does not hold that the employer must provide an incandescent lamp to an employee sensitive to fluorescent lights; it would not have been unreasonable in this case for the employer to require the employee to provide her own.

However, this case does hold that it is discriminatory for an employer to promise to buy a visually handicapped individual a fluorescent light, fail to do so, and then terminate the individual because she provides the employer a letter from her doctor substantiating her handicap. Essentially, this is a retaliation case where an employee was discharged for her opposition to what she in good-faith believed was a discriminatory practice of the employer (the employer's failure to provide her with an incandescent lamp that she needed for her visual handicap and which the employer promised to provide).¹ At least two previous employers had provided her with

a lamp, supporting the conclusion that the Complainant had a good-faith belief that Respondent B was discriminating against her.

Respondent B attempted to characterize the Complainant's work as incompetent and offered that as a reason for discharging her. The Respondent cited an allegedly "forced" bank reconciliation (which was not produced at the hearing) which the Complainant refuted by testifying that her reconciliation was correct but that a previous reconciliation, prior to her hire by Respondent B, had been forced. Also, Respondent B referred to one other document which had allegedly been mis-repared by the Complainant (Respondent's Exhibit I) and allegedly indicated that she could not distinguish between debits and credits; it was a worksheet prepared by Laitsch with the Respondent's knowledge and approval. Respondent B also contends that the decision to discharge Laitsch was made prior to the time Laitsch reported to work on June 26, 1980. The Complainant, in contrast, claims that the Respondent assigned her work duties, then fired her after reading her doctor's letter. The credibility issue is resolved in favor of the Complainant.

In the absence of any legitimate, non-discriminatory reason to fire Laitsch, it must be presumed that Laitsch was fired because of her doctor's letter, i.e., in retaliation and in violation of Section 3.23, Madison General Ordinances.

¹An employee's good-faith opposition to practices viewed as discriminatory is protected under the Act (Wisconsin Fair Employment Act) from retaliation even though the practices themselves may not be discriminatory... and informal opposition is entitled to the same protection as opposition which is expressed through a formal complaint filed with a Federal or State agency. See Herslof Optical v. DILHR (Leonard), No. 153121 (Dane County Circuit Court, Hon. Michael B. Torphy, March 28, 1978). The local ordinance, Section 3.23(7)(e) of the Madison General Ordinances has likewise been interpreted by the Commission to encompass protection of good-faith informal opposition to what an individual in good-faith believes is a discriminatory practice. (See the decision in Lazar v. Madison Metropolitan School District issued by the MEOC on June 1981.)

Signed and dated this 16th day of July, 1981.

Allen T. Lawent
Hearing Examiner