

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Kelli Anderson,

Complainant,

vs.

Mid America Talent and Jeffrey Taube,

Respondents.

FINDINGS OF FACT, CONCLUSIONS,
AND ORDER REGARDING DAMAGES
AND ATTORNEY'S FEES

This matter initially came on for hearing before Administrative Law Judge Barbara L. Neilson on September 19, 1996, at the Office of Administrative Hearings in Minneapolis, Minnesota. Because there was no appearance by or on behalf of the Respondents, a default Order was issued on September 25, 1996, which found that Respondent Mid America Talent was liable to the Complainant for acts of sexual harassment and reprisal against the Complainant in violation of Minn. Stat. § 363.03, subd. 1(2)(b) and (c), and subd. 7(1), and that Respondent Jeffrey Taube was liable to the Complainant for aiding and abetting Respondent Mid America Talent in sexually harassing the Complainant and discriminating against her on the basis of sex, as well as allowing acts of retaliation and reprisal to occur, in violation of Minn. Stat. § 363.03, subd. 6(1). The September 25, 1996, Order also scheduled a hearing for October 10, 1996, to establish what, if any, penalties, damages, or relief should be ordered with respect to the violations of the Minnesota Human Rights Act .

In accordance with the September 25, 1996, Order, a damages hearing was held on October 10, 1996, at the Office of Administrative Hearings in Minneapolis, Minnesota. Howard L. Bolter, Attorney at Law, Borkon, Ramstead, Mariani & Letourneau, 485 Northstar East, 608 Second Avenue South, Minneapolis, Minnesota 55402-1949, appeared on behalf of the Complainant. The Complainant testified by telephone conference call. There was no appearance on behalf of the Respondents, Mid America Talent and Jeffrey Taube, 1128 Harmon Place (Lower Level), Suite 306, Minneapolis, Minnesota 55403. The record with respect to this matter closed on October 16, 1996, upon receipt of the Complainant's post-hearing submission.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2 and 3, this Order is the final decision in this case. Under Minn. Stat. § 363.072, the Commissioner of the Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

STATEMENT OF ISSUES

The issue to be determined in this proceeding is the extent of the compensatory damages, damages for mental anguish and suffering, punitive damages, civil penalty, attorney's fees, and litigation costs that should be awarded to the Complainant and assessed against the Respondents pursuant to Minn. Stat. § 363.071, subd. 2.

Based upon all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Complainant, Kelli Anderson, is a woman who was employed by Respondents, Mid America Talent and Jeffrey Taube, from April, 1993, to July 24, 1994, as a publicist and A & R coordinator. Mr. Taube is the owner of Mid America Talent. Complainant was paid approximately \$800.00 every two weeks during her employment at Mid America Talent.

2. Beginning in approximately June, 1993, Mr. Taube informed Complainant that he was romantically interested in her. He began buying her gifts and sending her cards and letters. He repeatedly asked her to go out with him and said that her wanted to take her to dinner and be more than a friend to her. Complainant protested the gifts and repeatedly told Mr. Taube that she did not want to go out with him. Despite her protests, Mr. Taube continued his behavior and began to question Complainant about her personal life. He also contacted Complainant's mother in Cleveland and her friends and asked them why Complainant wouldn't go out with him. Mr. Taube sent Complainant's mother cards and gifts, including perfume and a stereo, and called her "mom." When Complainant tried to maintain a professional manner and simply do her work, Mr. Taube would not speak to her for days. Similarly, when Complainant tried to give back Mr. Taube's gifts, he became enraged and wouldn't speak to her.

3. Complainant remained at Mid America because she needed a job to pay her rent and bills, she had signed a lease, and it was difficult to find other jobs at that time. She hoped that Mr. Taube would move on and leave her alone. She dreaded going to work, became tired of Mr. Taube's constant pressure, and had no energy on work days.

4. Complainant was frightened by Mr. Taube's unwanted attention and knew that he could become violent when enraged. On one occasion, Mr. Taube became

incensed with a hotel manager because the bill was \$3.00 over the proper amount. Mr. Taube reached over the counter, grabbed the manager by his collar, and threatened to kill him. The manager called the police. On another occasion, Mr. Taube became angry at a slow driver who made an obscene gesture at him after he honked at her. He drove up next to her, called her a "cunt," and threatened to hurt her.

5. Complainant saw a therapist twice during July, 1994. Mr. Taube had been seeing the therapist (Patricia Starnau) for emotional problems and had told Ms. Starnau that he had feelings for Complainant. Upon Ms. Starnau's request, Complainant met with Ms. Starnau alone during their first session in July. During the second session, Ms. Starnau met with both Complainant and Mr. Taube together. Ms. Starnau told Mr. Taube that he should leave Complainant alone and treat her in a professional manner.

6. Complainant was eventually forced to resign her position due to the continued sexual harassment. She was constructively discharged on July 24, 1994.

7. On July 24, 1994, Complainant's last day of work, Complainant tried to talk to Mr. Taube about work-related issues. He told her that he did not want to discuss professional issues with her and refused to speak to her. Complainant told him that she had newspaper deadlines and he continued to state that he did not want to discuss work-related issues with her. Complainant told Mr. Taube, "If there's no way we're going to be able to deal with this, I'm going to have to offer my resignation." She walked away, went into her office, and closed the door. Mr. Taube came running after her, opened her door, and slammed her door closed. He said, "You're not leaving, you're not going anywhere." Complainant picked up the telephone and dialed "0," intending to call the police because she was frightened and Mr. Taube was "directly in [her] face." Mr. Taube snatched the telephone out of her hand and raised his hand as if he was going to hit her. He said, "You're not calling anyone. You're not leaving here." Complainant told him she was getting together her belongings and the files that she had brought with her to the Company. Mr. Taube told her, "You're not going anywhere. You're not taking your files and you're not leaving here." He chased Complainant around the office. Mr. Taube refused to let Complainant quit with two weeks' notice and said, "Why don't you just quit now?" Complainant left the office that day without her files, and used her office key to come back the next day to retrieve them.

8. Following Complainant's termination from the Company, Mr. Taube contacted her to ask her to do "independent" work outside the office. He said that he knew she couldn't come into the office and it was hard for him to see her. Complainant declined.

9. After leaving Mid America Talent, Complainant began looking for employment in the area of media relations, promotions, and marketing. She sent out several resumes and applied for positions she saw advertised with the Timberwolves, the University of Minnesota, the Minneapolis Institute of Arts, the Greater Minneapolis Girl Scout Council, and other organizations. Complainant was unemployed until approximately October 2, 1994. She then began working for Dolphin Temporary Agency. Complainant worked for Dolphin for about five months and earned approximately \$1,000.00.

10. Mr. Taube continued to send Complainant flowers after she left Mid America Talent through her rental agent. He tried to befriend the rental agent and also tried to maintain contact with Complainant through the members of Ashanti, a female performing group that he knew were close friends of Complainant. If Complainant went out, she was told that Mr. Taube had been asking about her and wondering if anyone had seen her. Complainant reached a point when she no longer went out at night at all.

11. As a result of her constructive discharge and the sexual harassment she experienced during her employment, Complainant went through bouts of crying and depression and also became reclusive. She didn't answer the telephone or door and avoided talking to her mother and her friends. She developed eczema as a result of work-related stress, gained more than 45 pounds, and suffered from migraine headaches. During her employment at Mid America and during the time she lived in Minneapolis, she frequently only slept two hours a night. She still has difficulty sleeping at night, and often wakes up at 3:00 a.m. and has fits of crying. Her relationship with her mother has suffered due to her anxiety, depression, and anger about the situation. She also keeps a distance from her friends in the Ashanti group because of their association with Mr. Taube and the unpleasant memories that surface when she interacts with them. Complainant continues to have difficulty trusting men.

12. Complainant was fearful for her life due to Mr. Taube and felt that she needed to get away from Minneapolis. She moved back to Cleveland, Ohio, in March, 1995. Her expenses related to this move totaled \$1,747.60: \$279.95 for the rental of a truck, \$250.00 for boxes, \$200.00 for the rental of a flatbed for her car, \$349.00 to compensate a friend who helped her (including the cost of a return flight for him), \$18.65 for highway tolls, \$350.00 for gas, and \$300.00 in lost security deposit on her apartment since she broke her lease when she moved out.

13. When Complainant left Mid America Talent, she lost \$1,602.72 in publicity fees that she would have otherwise received under a publishing agreement contract with Ashanti. She incurred \$457.51 in medical bills. Mr. Taube had promised her that he would take care of these medical bills because Complainant had no insurance through Mid America Talent. Although Mr. Taube told Complainant that he would pay the medical bills for all employees, she later found out that he was only paying for her bills. She also had to pay approximately \$800.00 in taxes that Mr. Taube had promised to pay for her, due to his improper characterization of her as an independent contractor.

14. After moving to Cleveland, Complainant signed up with Egar Temporary Agency, where she earned approximately \$1,289.00 between April, 1995, and July, 1995. She signed up with Office Team Agency (Robert Half International) in August, 1995, and worked there until December, 1995, during which time she earned approximately \$2,486.69. She began working for J.M. Products, Inc., on December 4, 1995, and remained there until July 12, 1996. She earned approximately \$11,323.20 during this time period. Complainant was unemployed from July 12, 1996, to July 22, 1996.

15. Complainant became employed with the American Red Cross on July 22, 1996. She earns \$788.25 in gross pay every two weeks in that position.

16. Between the time of her constructive discharge from Mid America on July 24, 1996, and her employment with the American Red Cross on July 22, 1996, Complainant had total earnings of \$16,098.00. If she had continued to work at Mid America Talent during those two years, Complainant would have earned \$41,600.00 (\$800.00 times 52 pay periods). Therefore, Complainant's wage loss for the period of July 24, 1994, through July 22, 1996, is \$25,502.00. She earns \$11.75 less per pay period in her current position with the Red Cross than she did while employed by Mid America. Accordingly, Complainant's wage loss for the period of July 23, 1996, to the present is \$99.88 (\$11.75 times 8.5 pay periods). Complainant's total wage loss thus is \$25,601.88.

17. The September 25, 1996, default Order issued by the Administrative Law Judge set the damages hearing in this matter for October 10, 1996. The date of October 10 was selected for the damages hearing in this matter because Mr. Taube indicated in a letter to the Administrative Law Judge dated September 18, 1996, that he would not be "financially able" to return to Minnesota from California until the second week of October. The September 25, 1996, Order also indicated that Respondents could provide the Judge with a telephone number where they could be reached if they wished to participate in the October 10 hearing by telephone conference call.

18. Respondents did not contact the Administrative Law Judge or counsel for Complainant prior to the October 10, 1996, hearing to request a continuance or any other relief. In addition, Respondents did not contact the Administrative Law Judge prior to the October 10, 1996, hearing to provide a telephone number where they could be reached in order to participate by telephone conference call. The Judge called the Respondents' Minneapolis office at the beginning of the hearing and was informed by a recording that that number had been "temporarily disconnected." Respondents did not make any written request of the Administrative Law Judge for a continuance prior to the scheduled date of the hearing. Respondents failed to appear at the October 10, 1996, hearing without the prior consent of the Judge. The Respondents, having made no appearance at the hearing without the prior consent of the Administrative Law Judge, and not requesting any continuance prior to the hearing, thus continue to be in default in this matter. Minn. R. 1400.6000.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 363.071, subd. 1 and 2.

2. Proper notice of the hearing was timely given and the Complainant has fulfilled all relevant substantive and procedural requirements of law and rule.

3. As set forth in the September 25, 1996, Order, as a result of Respondents' default, the Complainant has proven by a preponderance of the evidence that Respondent Mid America Talent discriminated against the Complainant on the basis of sex due to activities constituting sexual harassment within the meaning of Minn. Stat. § 363.01, subd. 41, in violation of Minn. Stat. § 363.03, subd. 1(2)(b) and (c), and engaged in acts of reprisal against the Complainant in violation of Minn. Stat. § 363.03, subd. 7(1), and that Respondent Jeffrey Taube aided and abetted Respondent Mid America Talent in sexually harassing the Complainant and discriminating against her on the basis of sex, as well as allowing acts of retaliation and reprisal to occur, in violation of Minn. Stat. § 363.03, subd. 6(1). Complainant has also proven that her resignation on July 24, 1994, constituted a constructive discharge stemming from intolerable working conditions.

4. Minn. Stat. § 363.071, subd. 2, permits an award of compensatory damages up to three times the amount of actual damages sustained by the victim of discrimination. Complainant is entitled to compensatory damages in the amount of \$30,209.71 (\$25,601.88 in lost wages and \$4,607.83 for moving expenses, lost publicity fees, medical expenses, and taxes). Respondents shall pay Complainant prejudgment interest on lost wages of \$25,601.88 from July 25, 1994, at the rate of six percent, pursuant to Minn. Stat. § 334.01.

5. Under Minn. Stat. § 363.071, subd. 2, victims of discrimination are entitled to compensation for mental anguish and suffering due to discriminatory practices. In this case, Complainant endured mental anguish and suffering as a result of Respondent's discriminatory conduct and is entitled to compensation for mental anguish and suffering she has sustained in the amount of \$25,000.00.

6. Under Minn. Stat. § 363.071, subd. 2, and the standards set forth in Minn. Stat. § 549.20, punitive damages may be awarded for discriminatory acts where there is clear and convincing evidence that the acts of the employer show a deliberate disregard for the rights or safety of others. Complainant has made the required showing. In this case, the Complainant is entitled to punitive damages in the amount of \$8,500.00.

7. Minn. Stat. § 363.071, subd. 2, requires the award of a civil penalty to the State when an employer violates the provisions of the Human Rights Act. Taking into account the seriousness and extent of the violation, the public harm occasioned by it, and whether the violation was intentional, the Respondent should pay a civil penalty to the State in the amount of \$10,000.00.

8. Minn. Stat. § 363.071, subd. 7, requires the award of litigation and hearing costs of the Department of Human Rights unless payment of the costs would impose a financial hardship on Respondent. The Department shall be reimbursed in the total amount of \$2,100.40.

9. Minn. Stat. § 363.071, subd. 1(a), permits the Administrative Law Judge to require Respondents to reimburse Complainant for reasonable attorney's fees and costs. Taking into consideration the factors set forth in Hensley v. Eckerhart, 461 U.S. 424, 434

(1983), it is concluded that it is appropriate in this case to award attorney's fees based upon 22.25 hours of attorney time and to calculate the fees for Mr. Bolter's time based upon an hourly rate of \$125.00 for work performed prior to March 1, 1996, \$150.00 for work performed between March 1, 1996, and August 29, 1996, and \$165.00 for work performed after August 30, 1996. This amount reflects a reasonable number of hours of attorney and legal assistant time billed at a reasonable rate to represent the Complainant in this matter. It is also appropriate to award costs in the amount of \$40.00. Accordingly, the Complainant shall be reimbursed for reasonable attorney's fees and costs in the amount of \$3,227.50.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. Respondents shall cease and desist from any further sexual harassment and retaliation.
2. Respondents shall pay Complainant \$30,209.71 as compensatory damages. Respondents shall also pay Complainant prejudgment interest on lost wages of \$25,601.88 from July 25, 1994, at the rate of six percent, pursuant to Minn. Stat. § 334.01.
3. Respondents shall pay Complainant \$25,000.00 as damages for mental anguish and suffering.
4. Respondents shall pay Complainant \$8,500.00 as punitive damages.
5. Respondents shall pay a civil penalty of \$10,000.00 to the State of Minnesota by mailing a check payable to the General Fund of the State of Minnesota to the Commissioner of Human Rights, 500 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101.
6. Respondents shall pay the Commissioner of Human Rights \$2,100.40 as and for litigation and hearing costs.
7. Respondents shall pay jointly to Complainant and Complainant's counsel the amount of \$3,227.50 for attorney's fees and costs in this matter.
8. All payments ordered shall be made within thirty calendar days of the date of this Order.

Dated this 15th day of November, 1996.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The relief afforded to a victim of discrimination under the Minnesota Human Rights Act contemplates compensating the victim to restore her, as nearly as possible, to the same position she would have attained had there been no discrimination. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 627 (Minn. 1988). The Complainant in this case has suffered substantial anguish and distress as a result of Mr. Taube's unwanted attentions and interference in her private life. She was prevented from working in a professional manner in a job that she needed, was constructively discharged from that job, and felt it necessary to move away from Minneapolis in order to be safe from Mr. Taube. Employers in the State are expected to know of their obligation under the Human Rights Act to treat employees in a non-discriminatory fashion.

It is appropriate under the circumstances of this case to award Complainant actual compensatory damages for her lost wages, moving expenses, lost publicity fees, and medical bills and taxes that Mr. Taube promised to pay. She is also entitled to damages for the mental anguish and emotional turmoil she has experienced as a result of her discriminatory treatment and reimbursement for the reasonable attorney's fees and costs of her counsel. Punitive damages are also appropriate under Minn. Stat. § 363.071, subd. 2, and the standards set forth in Minn. Stat. § 549.20 since there is clear and convincing evidence that the acts of the Respondents showed a deliberate disregard for the rights and safety of Complainant. The State is entitled to reimbursement for the costs of the services rendered by the Administrative Law Judge in this matter. Finally, taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, and whether the violation was intentional, the Respondents should pay a civil penalty to the State in the amount of \$10,000.00. Because the Respondents did not appear in this matter, it was not possible to assess their financial resources in arriving at the amount of civil penalty. The Respondents' actions in leaving the State of Minnesota and not responding to the discrimination claim further support the award of damages made in this case.

B.L.N.