

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

State of Minnesota by Dolores Fridge,
Commissioner, Department of Human
Rights,

Complainant,

v.

Schult Homes Corporation,
Respondent.

**ORDER ON MOTION FOR
RECONSIDERATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 8-9, 1998, in Redwood Falls, Minnesota. Richard L. Varco, Jr., Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Complainant, the State of Minnesota by Dolores Fridge, Commissioner, Department of Human Rights. Frederick E. Finch, Attorney at Law, Bassford, Lockhart, Truesdell & Briggs, P.A., 3550 Multifoods Tower, 33 South Sixth Street, Minneapolis, Minnesota 55402-3787, appeared on behalf of the Respondent, Schult Homes Corporation.

On October 9, 1998, the Administrative Law Judge issued Findings of Fact, Conclusions, and an Initial Order in the above case. The Judge found that the Respondent had discriminated against the Charging Party, Susan Anderson, in her employment and awarded damages for violation of the Minnesota Human Rights Act. On January 15, 1999, the Administrative Law Judge issued an Award of Litigation Costs and Attorney's Fees.

On January 28, 1999, Respondent filed a motion for reconsideration. On February 11, 1999, the Complainant filed a response. The record remained open until February 18, 1999, for the filing of a reply brief by the Respondent.

STATEMENT OF ISSUES:

The following issues are presented:

1. whether the scope of relief ordered by the Administrative Law Judge exceeded her authority under the Minnesota Human Rights Act (Minn. Stat. Ch. 363); and
2. whether the record supported an award of punitive damages.

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

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ORDER

IT IS HEREBY ORDERED as follows:

1. The Respondent's motion for reconsideration is DENIED.
2. The Respondent's request that Paragraphs 3, 8 and 9 of the Judge's October 9, 1998 Order be stricken is DENIED.
3. This Order is effective immediately.

Dated this 18th day of March, 1999.

BARBARA L. NEILSON
Administrative Law Judge

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NOTICE

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

MEMORANDUM

Scope of Relief

The Respondent argues that the Administrative Law Judge exceeded her authority by ordering class-wide relief in a non-class action proceeding. Specifically, Respondent objects to paragraphs 8 and 9 of the Judge's October 9, 1998 order, which direct the Respondent to provide relief and training to employees beyond the aggrieved party in this matter. These paragraphs provide, in relevant part, that:

Respondent shall prepare and distribute an appropriate equal employment policy for inclusion in its employee handbook which includes a discussion of the prohibition in the Minnesota Human Rights Act against disability discrimination and the requirement that reasonable accommodation will be made for the known disabilities of a qualified employee or applicant, unless the accommodation would impose an undue hardship on Respondent. Respondent shall also develop and distribute to its employees understandable written policies and procedures which effectuate that policy.

Respondent shall arrange for its supervisors and department managers to undergo training by March 1, 1999, to enable them to respond properly to employees with disabilities and requests for accommodations made by

employees with disabilities. At a minimum, such training shall include an eight-hour block of instruction taught by a person who is knowledgeable about the requirements of the Minnesota Human Rights Act.

Paragraphs 8 and 9 of Order.

Respondent maintains that the Administrative Law Judge has no authority to order affirmative remedies or relief that benefit employees other than Ms. Anderson – the aggrieved party in this matter. Respondent points to the Minnesota Court of Appeals' unpublished decision in State, ex rel. Bealieu v. City of Minneapolis,^[1] for the proposition that in non-class action matters the ALJ is required to limit remedies to the specific aggrieved party who suffered discrimination. In City of Minneapolis, the Court reversed an ALJ's order requiring the Minneapolis Police Department to develop policies and procedures affecting department employees other than the aggrieved party. The court stated that, because the matter was not sued as a class action, the Judge in that case should have tailored the affirmative remedies to alleviate only the specific effects of discrimination against the aggrieved party. Based on the City of Minneapolis case, Respondent contends that the Judge in the case at bar exceeded her authority by ordering the development of new policies and the training of managers for the benefit of Respondent's employees. Accordingly, Respondent argues that paragraphs 8 and 9 of the ALJ's order should be stricken.

The legislature has indicated that the provisions of the Minnesota Human Rights Act are to be liberally construed for the accomplishment of its purposes.^[2] The overriding purpose of the MHRA is to free society from the evil of discrimination that "threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy."^[3] Pursuant to Minn. Stat. § 363.071, subd. 2, if the Administrative Law Judge finds that the Respondent has engaged in an unfair discriminatory practice, the ALJ is required to "take such affirmative action as in the judgment of the administrative law judge will effectuate the purpose of this chapter." The remedial scope of § 363.071, subd. 2 is broad in that it grants an Administrative Law Judge the authority to fashion monetary and non-monetary relief to effectuate the purposes of the Minnesota Human Rights Act. In City of Minneapolis v. Richardson^[4], the Minnesota Supreme Court examined the scope and nature of affirmative relief authorized by the Human Rights Act and stated:

Subdivision 2 [of Section 363.071] directs that the examiner 'shall issue' a cease and desist order and an order 'to take affirmative action' as in the examiner's judgment will further the purposes of the act. The subdivision later provides for compensatory and punitive damages to aggrieved parties. While the issue is not free from doubt, we are of the opinion that a mandatory order to take affirmative action is designed to correct existing or possible future discrimination. . . . We believe the legislature intended affirmative action orders to be used to eliminate existing and continuing discrimination, to remedy the lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination.^[5]

Based on the underlying purpose of the Minnesota Human Rights Act and the holding in Richardson, the Administrative Law Judge concludes that it was within her

authority to order relief tailored to reduce or eliminate future discriminatory conduct.^[6] The Judge finds Respondent's reading of Minn. Stat. § 363.071, subd. 2, and its view of an ALJ's authority to award remedial relief to be too narrow. Moreover, it has been a long-standing practice for Administrative Law Judges considering cases of individual disparate treatment arising under the Minnesota Human Rights Act to order such affirmative relief as supervisor training and policy revisions and, in several instances, these decisions have been affirmed by the Court of Appeals.^[7]

In addition, the City of Minneapolis decision, as an unpublished opinion, is not authoritative. Rule 4 of the Special Rules of Practice for the Minnesota Court of Appeals provides in pertinent part that "[u]npublished opinions are not precedential" And, while the Court of Appeals held that the ALJ exceeded his authority by ordering the Minneapolis Police Department to develop policies and procedures affecting MPD employees other than the aggrieved party, the Court gave no reason for its conclusion other than to cite to Minn. Stat. § 363.071, subd. 2. Thus, not only is City of Minneapolis of no precedential effect, it provides no guidance for construing the scope of relief under section 363.071, subd. 2. In the view of the Administrative Law Judge, it would defeat the purposes of anti-discrimination laws if judges were unable to fashion relief guarding against future employment discrimination by an employer simply because an individual employee brought the lawsuit and is no longer a member of the workforce. The Judge concludes that there was proper authority to issue paragraphs 8 and 9 of her October 9, 1998 order. Respondent's request to strike these paragraphs is denied.

Punitive Damages

The October 9, 1998, order also requires the Respondent to pay Ms. Anderson \$5,000 as punitive damages. Punitive damages may be awarded under the Human Rights Act "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others."^[8] In addition, punitive damages are to be measured by several factors including duration of the misconduct, any concealment of it, and attitude and conduct of defendant upon discovery of the misconduct.^[9] Damage awards are within the sound discretion of the Administrative Law Judge.^[10]

Respondent argues that the record does not support the imposition of punitive damages. Respondent contends that, far from establishing a deliberate disregard for Ms. Anderson's rights, the record shows that Respondent reacted appropriately in response to the recommendation for light duty. According to Respondent, the work Ms. Anderson did in the wall department did not violate her lifting restriction and she was free to ask for help. Respondent maintains that the record established that it attempted to reasonably accommodate Ms. Anderson but, even with lifting and other assistance, Ms. Anderson was unable to perform her job in a satisfactory fashion.

As fully set out in the Memorandum accompanying the Order, the Judge found that the record demonstrated that Respondent deliberately disregarded Ms. Anderson's rights to be free from disability discrimination when it concluded without medical or other evidence that she suffered from crippling arthritis and had to be terminated. The Judge specifically found that, when Production Manager John Weiers terminated Ms.

Anderson, he told her that Respondent had too many people on workers compensation and did not need another one, and the company did not want to be responsible for crippling her.^[1] The Judge concluded that the Complainant had established “by clear and convincing evidence that [Respondent] showed a deliberate disregard for the rights and safety of Ms. Anderson by the discriminatory manner in which it reacted to her physicians’ recommendation for light duty and terminated her employment.”^[2] In so finding, the Judge took into consideration the factors set forth in Minn. Stat. § 549.20 including the seriousness of the misconduct and the financial condition of the Respondent.

The Judge concludes that the award of punitive damages was appropriate in that it was based on clear and convincing evidence that Respondent deliberately disregarded Ms. Anderson’s right to be free from disability discrimination. Respondent’s request to strike paragraph 3 of the October 9, 1998 order is denied.

B.L.N.

^[1] No. C8-98-363 (Minn. App. Aug. 18, 1998) (1998 Minn. App. LEXIS 939) (unpublished opinion), *pet. for rev. denied* (Minn. Oct. 20, 1998).

^[2] Minn. Stat. § 363.11 (1998); *Cummings v. Koehnen*, 568 N.W.2d 418, 422 (Minn. 1997).

^[3] Act of April 19, 1955, ch. 516, § 1, 1955 Minn. Laws 803; *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 378 (Minn. 1990).

^[4] 239 N.W.2d 197 (Minn. 1976).

^[5] *Id.* at 205-06.

^[6] See, e.g., *Morris v. National Can Corp.*, 730 F.Supp. 1489, 1498 (E.D. Mo. 1989), *aff’d in relevant part*, 952 F.2d 200 (8th Cir. 1991) (in sexual harassment case brought under Title VII, court ordered corporation to “(a) develop a staff training program; and (b) establish a grievance procedure for sexual harassment occurring in the workplace.”); *Anderson v. Hunter, Keith, Marshall & Co., Inc.*, 417 N.W.2d 619, 629 n. 3 (Minn. 1988) (injunction issued against employer prohibiting future discrimination on the basis of pregnancy.)

^[7] See, e.g., *Kolstad v. Fairway Foods, Inc.*, 56-1700-2713-2 (1989) (ordering all persons employed in management or supervisory capacities to receive appropriate training concerning sex discrimination, including information about discrimination with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities and privileges of employment, and ways that such discrimination may be prevented), *aff’d as modified (arithmetic error corrected)*, 457 N.W.2d 728 (Minn. App. 1990); *State by Cooper v. Leighton*, 52-1700-3332-3333-4 (1989) (ordering the Respondents to establish and post a written policy reflecting the provisions of the MHRA with respect to the rental or leasing of real property), *aff’d in part and rev’d in part (punitive damages reversed)*, No. C3-89-1378, 1990 WL 5240 (Minn. App. Jan. 30, 1990) (unpublished opinion); *Vovk v. Tom Thumb Food Markets, Inc.*, 11-1700-4595-2 (1991) (ordering the Respondent to provide sex discrimination training to management and supervisory employees), *aff’d as modified (compensatory damages award reduced)*, C6-91-2377, 1992 WL 174729 (Minn. App. July 28, 1992) (unpublished opinion); *Hutchinson v. Minnesota Sphagnum, Inc.*, 8-1700-7294-2 (1993) (ordering Respondent to cease and desist from any further sexual harassment and to distributed its sexual harassment policies and procedures to all employees within sixty days); *State by Beaulieu v. Sheffey*, 11-1700-8902-2 (1995) (ordering the Respondent to post notices regarding sex discrimination and sexual

harassment, obtain training, ensure each business he controls has an appropriate sexual harassment policy, and report compliance and employee names to the Department of Human Rights); and *State by Beaulieu v. Wallin*, 8-1700-9122-2 (1996) (ordering the Respondent to receive training approved by the Commissioner of Human Rights with respect to sexual harassment and employment discrimination based on sex), *aff'd*, No. C8-96-1542, WL 53016 (Minn. App. Feb. 11, 1997) (unpublished opinion).

^[8] Minn. Stat. §§ 363.071, subd. 2; 549.20 (1996).

^[9] *Evans v. Ford Motor Co.*, 768 F.Supp. 1318 (D.Minn. 1991).

^[10] *Continental Can Co. Inc. v. State*, 297 N.W.2d 241, 251 (Minn. 1980); *State v. Porter Farms*, 382 N.W.2d 543, 550 (Minn. App. 1986).

^[11] Finding of Fact No. 38, October 9, 1998 Order.

^[12] October 9, 1998 Order, p. 43.