City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Maureen Sketch
Complainant,
v.

Scott, Halsted & Babetch, P.C., and Robert Kelly Scott
Respondents.

Case No.: 13-E-69

Date of Ruling: October 13, 2016

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On November 12, 2013, Complainant Maureen Sketch filed a Complaint with the City of Chicago Commission on Human Relations alleging that she was discriminated against based on her sex in violation of Chapter 2-160-030 of the Chicago Municipal Code. Specifically, Complainant alleged that Respondents Scott Halsted & Babetch, P.C. ("SBH"), and Robert Kelly Scott ("Scott") failed to hire her permanently after she disclosed her pregnancy; that Steven Ropka ("Ropka") and his company, Redline Resources, Inc., ("Redline") failed to negotiate a competitive and appropriate hourly rate for her temporary position after she disclosed her pregnancy; and that her contract for temporary employment was terminated by SBH and Scott because of her pregnancy.

On December 16, 2013, Redline and Ropka filed a Response to the Complaint denying Complainant's allegations. Respondents SBH and Scott filed a Response to the Complaint on December 17, 2013, denying all allegations. The Commission entered an Order Finding Substantial Evidence on August 7, 2014.

On April 15, 2015, Complainant filed a Motion to Dismiss Redline and Ropka as respondents because the parties had entered a settlement agreement.[1] On May 15, 2015, the hearing officer entered an order granting Complainant's motion.

The Commission held an administrative hearing in this matter over three days on September 22, 2015, September 29, 2015, and October 28, 2015. All parties were represented by counsel. The parties filed and served their post-hearing, written closing arguments on January 19, 2016.

On May 16, 2016, the hearing officer issued a Recommended Ruling on Liability. Both Complainant and Respondents filed objections to the Recommended Ruling, which have been considered in reaching this Final Ruling.

[1] Complainant settled her claims against Redline and Ropka for $18,000. (Tr. 401).

II. FINDINGS OF FACT

The Law Firm of Scott, Halsted &Babetch

1. SHB is a small litigation boutique started by Respondent Scott and several other attorneys in the mid to late 1990s (Tr. 469-470). The office currently has six lawyers and a small administrative staff. (Tr. 367). Since its inception, only two female attorneys have worked at the firm. (Tr. 650). One female attorney left SHB in the late 1990s. The other became Respondent Scott's wife and left the firm in 2010. There have been no other female attorneys at SHB since that time. (Tr. 650-651).

2. The small administrative staff has primarily been female, including Staci Vasquez, Fumi Harrington, Heather Underwood, Angela Young, Noemi Dinco – and for a brief time, Complainant Maureen Sketch. (Tr. 19, 497, 545).

3. While the firm is called "Scott, Halsted &Babetch," Respondent Scott is the sole shareholder. (Tr. 653).

4. Partners Matthew Bloom and Dan Babetch testified at the hearing. Both of them have been employed at SHB since the beginning of their legal careers. (Tr. 685, 367). Bloom still refers to Scott as his "boss" even though Bloom has been a partner since 2013. (Tr. 676).

5. During the time at issue in the Complaint, SHB did not have any written employment policies. (Tr. 381, 382).

6. On occasion, SHB relied on the recruitment firm Redline Resources Inc., to recruit and place temporary employees to work at the firm. Ropka, who owns Redline, and Scott have been friends for approximately 15 years. (Tr. 432).

Sketch Becomes a Temporary Employee at SHB

7. On February 8, 2013, Sketch received a call from Christine Farag ("Farag") at Redline. Farag had seen Sketch's resume on-line and asked her to come in for an interview that afternoon. (Tr. 69). Redline sought to fill a temporary office manager position at SHB. (*Id.*).

8. Farag interviewed Sketch, and she met Ropka on the same day. Sketch learned more about the position, including that SHB had a backlog of billing and that she would take on additional officer manager duties after handling the backlog. (Tr. 70-71).

9. Later that day, Farag offered Sketch the position. After some negotiation, Sketch accepted the offer of $21 per hour. Sketch was hired as a contract, temporary employee. (Tr. 73, 399).

10. Farag confirmed Sketch's hire as a temporary office manager for SHB by an e-mail dated February 8, 2015, at 5:35 p.m. Sketch was to start at SHB on February 11, 2013, at 9:30 a.m. (Tr. 74, Compl. Ex. 2).

11. On the evening of February 8, 2013, Ropka sent an e-mail to Scott confirming that Sketch would start in the Temporary Office Manager/Paralegal position at SHB. Redline billed

SHB $35.70 per hour for Sketch's work. The more hours Sketch worked, the more money Redline would make. (Tr. 400, Compl. Ex. 4).

12. Sketch arrived at SHB on February 11, 2013, and met Respondent Scott and Fumie Harrington, an administrative staff person. Sketch started to handle the billing backlog during her first few weeks at SHB. She liked the firm and the flexible work environment. (Tr. 75-77, 79, 81).

13. To be paid, Sketch completed weekly time sheets and had them signed by a partner at SHB. The timesheets contained language, including "by execution of this form, client certifies that hours shown are correct [and the] work was satisfactory..." (Tr. 78-79, Compl. Ex. 2).

14. During Sketch's time at SHB, none of the partners ever refused to sign these time sheets based on unsatisfactory work performance. (Tr. 79).

The February 22, 2013 Job Offer

15. Sketch testified that on February 22, 2013, Respondent Scott called her into his office, told her she was doing a fantastic job, and said he wanted to offer her a permanent position. (Tr. 82).

16. A few days earlier, Sketch had received an e-mail from Farag stating that she had received "fantastic feedback" from SHB about Sketch. (Compl. Ex. 7).

17. Sketch testified that the position offered by Scott was for the Office Manager position and that she asked Scott for a salary of $60,000. (*Id.*). According to Sketch, Scott said he would contact Ropka and work out the details of transitioning her from a temporary to permanent employee. (*Id.*).

18. Scott testified that while he recalled talking to Sketch sometime around February 22, 2013, she was the one who brought up becoming a permanent employee. Scott's response was that he would consider it if she kept doing a good job. (Tr. 479). Scott insisted that there was no job offer made at that time. (*Id.*).

19. Scott also testified that he never discussed paying Sketch $60,000 and, in fact, he had never paid any of his billing coordinators more than $45,000 per year. (Tr. 482-483).

20. Further, employees in similar administrative roles at SHB testified that the salary for a full-time billing coordinator or even office manager was in the low to middle $40,000 salary range. (Tr. 22, 24).

21. Sketch testified that she was surprised and excited about the job offer. She contacted Redline employee Erin Dolan ("Dolan"), told her Scott had offered a permanent position, and that he said he would reach out to Ropka over the weekend. (Tr. 83).

22. That same day, Dolan sent an e-mail to Ropka and Farag. In it, Dolan stated that Scott discussed hiring Sketch as a full-time employee; that Sketch sought a base salary of $55, 000 and was excited. Dolan ended the e-mail with the statement "Great placement." (Compl. Ex. 8).

23. Farag confirmed Dolan and Sketch's conversation in an e-mail to Sketch, dated February 25, 2013. In it, Farag wrote "I spoke with Erin on Friday and she let me know that [Scott] is

considering you for a full time employee – great news! I will keep you posted as we follow up with him this week." (Compl. Ex. 9).

24. By March 5, 2013, Sketch had not heard back from Redline. She e-mailed Farag, noting that Scott had told her that he planned to talk with Ropka about the permanent position. (Resp. Ex. 11). Farag responded that she had just spoken with Ropka; that Scott told her Sketch was doing a great job, but he wanted to keep her on as a long term independent contractor. (*Id.*).

25. Sketch was confused by this development and told Farag so. In a response e-mail, she reiterated "[Scott]...mentioned permanent." Sketch also asked questions about eligibility for paid time off, and holiday pay. She asked if she would get an increase in her hourly pay as a temporary employee if she took on more responsibility at SHB. (*Id.*).

26. Sketch believed that having a permanent job meant she would convert from being a temporary employee contractor to a permanent employee of SHB (Tr. 211). She believed she would receive benefits, including holiday pay, vacation, and sick time. (Tr. 219). Sketch also testified that she would have felt more like a member of the SHB team. (*Id.*).

27. Farag responded that she discussed Sketch's questions and concerns with Ropka. She reiterated that Sketch would continue on as an hourly contractor and Ropka would work on getting her paid time off, including vacations, and an increased hourly rate, if she took on more work. (Resp. Ex. 11).

28. At the hearing, Sketch testified that Farag's response did not make sense because she and Scott had discussed a permanent position, not an indefinite contractor position. (Tr. 86). But Sketch decided to let things play out because she liked the job. (Tr. 89).

Steven Ropka's Intervention

29. Sketch also spoke directly to Ropka on March 8, 2013, about the permanent position and he "smoothed things over." Sketch testified that Ropka told her there would be a three month waiting period before she could be converted to a permanent position. Sketch accepted that explanation because she believed there would be a higher fee for SHB if she converted to a permanent role from a temporary contractor role so quickly. (Tr. 89.)

30. Sketch sent Ropka an e-mail the next day confirming their conversation and stated, "Thanks for clarifying the time line for me." (Compl. Ex. 17).

31. Ropka testified that, in fact, there was no minimum time that Redline requires a temporary employee to work before they can be converted to a permanent position. However, if such a conversion happens, Redline could receive a fee to offset its losses from the hourly rate for the temporary contractor. (Tr. 401-402).

32. Ropka testified that if a temporary contractor had worked for a month and the client wanted an immediate conversion to permanent employment, the conversion fee paid to Redline would be higher to cover the loss of billable hours. (Tr. 402).

33. Initially, Ropka testified that he never told Sketch about a three month waiting period before she could convert to a permanent position. (Tr. 408-409). However, he testified later that he may have told Sketch that they would wait a few months to see how she performed and then revisit the possibility of her becoming a permanent employee. (Tr. 425).

34. That issue aside, Ropka did speak to Scott about vacation pay and an increased hourly rate for Sketch. (Tr. 414). He did not, however, speak to Scott about Sketch becoming a permanent employee. (*Id.*).

35. On the evening of March 8, 2013, Sketch discovered that she was pregnant. Her doctor confirmed her pregnancy on March 14, 2014. (Tr. 92).

Sketch Follows Up Regarding the Permanent Position

36. On April 26, 2013, Sketch e-mailed Dolan at Redline and told her she was taking on more responsibilities at SHB, including processing accounts receivable, paying bills, ordering supplies, and handling several tech projects. Sketch inquired about getting an increase in pay. She also noted that she was getting close to the end of the three month waiting period and wanted to check in about becoming a permanent employee. (Tr. 95, Compl. Ex. 25). Sketch followed up with Redline and Scott regarding the permanent position issue through early May 2013. (Tr. 98).

The May 13, 2013 Job Offer

37. Sketch testified that on May 13, 2013, Scott called her into his office and told her he wanted to bring her on board as a permanent employee. (Tr. 98). Sketch was excited. She again asked for a $60,000 salary, and Scott told her he would talk to Ropka. (*Id.*)

38. Sketch testified that during that meeting, she also told Scott that she was pregnant and due to deliver her baby in November 2013. She told Scott she would need to take time off for maternity leave. In response, Scott told Sketch "that changes everything" because the end of the year was very busy for the firm and Sketch being off due to her maternity leave would be "a big inconvenience." (Tr. 98-99). Sketch proposed solutions, and Scott stated he would have to think about it. (*Id.*). She also asked Scott if she could continue to work at SHB until her due date. Scott agreed. (Tr. 210).

39. Scott's version of the events on May 13, 2013, differs dramatically. Scott testified that he did not summon Sketch to his office; rather, Sketch came to his office and said she needed to speak with him. Sketch told Scott that she was pregnant, to which he responded, "Congratulations, that is nice news." (Tr. 489).

40. Sketch then asked if she could continue to work at the firm until her November 2013 due date. Scott responded that Sketch could stay as long as she continued to do good work. According to Scott, Sketch then asked if she could become a permanent employee of the firm so that she would have a place to return if she decided to return to work after having her child. (Tr. 489).

41. Scott testified that he told Sketch he could not commit to that because the last quarter of the year, when Sketch was due to take leave, was the busiest billing season and he would have to hire someone to do that job. Scott stated that he told Sketch "let's just go forward and see what happens." He told Sketch that she could continue working until her maternity leave, as long as she continued to do a good job. (*Id.*).

42. Scott testified definitively that an offer was never made to Sketch at any time, and specifically not during this May conversation. Scott stated that he never initiated a conversation with Sketch on the subject of becoming a permanent employee. (Tr. 613). He also denied telling Sketch that her pregnancy and leave was an inconvenience to the firm. (Tr. 490). Scott testified

that "inconvenient" was a word that Sketch used....such that she understood that being absent during the firm's busiest time would be inconvenient. (*Id.*).

43. Scott testified further that he is "skittish" about the firm's billing, and Sketch had only done one billing cycle for the firm as of May 2013. She had yet to handle their busiest billing cycle at the end of the year. (Tr. 588). Scott also testified that it was his practice to speak with the other partners before converting a temporary employee into a permanent employee. Scott had not had such a conversation with his partners before he met with Sketch on May 13, 2013. (*Id.*).

44. However, Scott had several negative experiences with pregnant employees that had taken maternity leave. One employee, Angela Young, who was a legal secretary, agreed to work from home while on maternity leave, but took advantage of the flexibility and overbilled SHB for her work. (Tr. 28-30). Ms. Young was fired. (Tr. 32).

45. Another employee, Fumie Harrington, assured Scott that she would return to the firm a few months after taking maternity leave for her first child. She failed to do so until many years later. (Tr. 601-603).

46. Sketch testified that after leaving Scott's office on May 13, 2013, she cried and was angry. She spoke to her husband, who suggested that she talk to the other partners at SHB to see if they would help her. (Tr. 100).

47. Sketch spoke to Dan Babetch, a partner at SHB, and told him what happened. Dan responded that Scott was "probably just having a bad day" and that he would speak to Scott. (*Id.*). Sketch also spoke to Matt Bloom, who was sympathetic, but told Sketch, "You just have to know [Scott]." Sketch felt Bloom was excusing Scott's behavior. (Tr. 102).

48. On May 31, 2013, Sketch spoke to Ropka about her meeting with Scott and that she felt discriminated against. Ropka told Sketch that in his experience, a "fair percentage" of women do not return to work after having their first child. Ropka also said that converting her to a permanent position would be a financial burden on SHB because they would have to hire a temporary employee during Sketch's leave. This latter comment did not make sense to Sketch because she was not expecting paid maternity leave. Sketch asked Ropka to speak to Scott again about making her a permanent employee (Tr. 105-106).

49. On June 3, 2013, Sketch sent a confirming e-mail to Ropka, following up on their conversation from May 31, 2013. She restated that Scott had initially wanted to bring her on as a permanent employee but when Sketch told him she was pregnant, Scott said he would have to think about it. She restated that she had taken on more responsibility at the firm. As a result, Sketch asked Ropka: (1) to talk to Scott again about a permanent position; (2) to see if she could get $30 per hour, for a salary of $60,000 annually; and (3) to see if there was anything she could do to assist in her goal of becoming a permanent employee at SHB. (Resp. Ex. 13).

50. On June 4, 2013, at 11:05 a.m., Ropka sent Scott an e-mail which stated:

> "I talked with [Sketch] last week regarding her employment status, pay rate, hours etc., I used my HR skills on this one! I told her that going Perm just wouldn't be in the cards at this time due to her not really working full time now and with the end of year absence that we would have to get another person in to get the invoicing out at this critical time. She is good with that

and assures us she will be returning after her leave and will provide support and training for the Temp (Nov. – Jan). She does want a bump in pay, however, as she feels her responsibilities have grown. Could we pay her over the lunch break?.... It would show her a little love." (Compl. Ex. 41).

51. During his testimony, Ropka acknowledged that the language, "used my HR skills on this one," sounded "slimy." He was trying to "keep [Sketch] in the chair," so that she would not "abandon" the job. Ropka testified that his job was to make sure Sketch continued to bill out 40 hours per week and he was "going to do whatever it takes to keep her in that chair billing for me." (Tr. 418, 446). Ultimately, Ropka got Sketch a paid lunch and an increased hourly rate of $22.50.

52. Scott testified that he agreed to the hourly increase, but that it ultimately did not affect him because his billing rate to Redline would remain the same. (Tr. 618).

53. Sketch testified that she was not "good with" the solution posed by Ropka. She was angry and felt she had no option but to "play nice" and continue on as a contractor. (Tr. 111).

54. Sketch testified that Scott spoke to her later on June 4, 2013, about his call with Ropka. Sketch testified further that Scott told her Ropka counseled him not to hire her because she was pregnant. (Tr. 112). Ropka denied Sketch's assertion during his testimony. (Tr. 430.)

55. Scott and Sketch also discussed having other employee, Fumie Harrington and Heather Underwood, trained in handling the billing to cover for Sketch's absence during a planned vacation in September, and potentially during her leave. (Tr. 113). In fact, Sketch did train them over the summer of 2013 to handle billing responsibilities in anticipation of her vacation and leave. (Tr. 232).

56. Scott promoted Heather Underwood from a temporary position to a full-time, permanent position in July 2013, four months after her initial placement at SHB. (Tr. 142, 561). Underwood was also a contractor from Redline. She had started with SHB in March 2013 in a general administrative role. (Tr. 143-144). Underwood was not pregnant during her time at SHB. (Tr. 581).

57. Between June 2013 and August 2013, Scott and Sketch also discussed the possibility of Sketch working from home during her maternity leave. (Tr. 122).

58. Scott testified that after his conversation with Sketch May 13, 2013, she "harangued" him about becoming a permanent employee "on at least a weekly basis, to the point where it was bothersome." (Tr. 596-597).

59. Bloom testified that Sketch was "irritating" Scott about becoming a permanent employee – almost as if "she was telling him how to run his firm." (Tr. 713).

Sketch's Work Performance Declines

60. On August 8, 2013, Scott told Sketch that working from home during her leave and having Harrington and Underwood cover for her was not going to work; that he would hire a temporary employee during her leave of absence and if he liked her better than Sketch, he would hire the other temp. (Tr. 123, 127). Scott's comment hurt Sketch's feelings. (*Id.*).

61. Sketch reported her disappointment to her therapist, Marilynn McManus ("McManus").[2] Sketch described the August 8 conversation as a "traumatic event."[3] (McManus Ex. 1 p. 37).

62. During an appointment with McManus on September 3, 2013, Sketch shared that she was "having a more difficult emotional time over the last few weeks." (*Id.*)

63. Sketch's performance began to suffer after that. She also had a difficult pregnancy, which required many doctors' visits and sick days. (Tr. 166).

64. Sketch testified that in late August through September, when she was about to go on vacation, she began to suspect that Scott was not going to make her a permanent employee, especially after their conversation on August 8, 2013. (Tr. 239).

65. She was eight months pregnant, the work environment was stressful and she was unhappy with her work situation at SHB. (*Id.*).

66. Bloom testified that over time, Sketch "checked out" and "became less engaged." She socialized more and did not have a "head's down mentality" like she did when she first started. (Tr. 704-705).

67. Scott testified that Sketch's work performance declined and her attendance was poor. According to Scott, Sketch was purportedly "late every single day." He also stated that the firm's bills were not getting out. (Tr. 591).

68. Underwood testified that in September 2013, Sketch delegated billing responsibilities to her–so much so that Underwood began to experience anxiety incidents that required medication. (Tr. 551-554). Scott testified that Sketch began to "dump" all of her work on Underwood and Harrington instead of doing it herself. (Tr. 599, 614).

69. Sketch was on vacation for two weeks in September 2013. (Compl. Ex. 69, Tr. 125) .On September 30, 2013, Sketch notified the firm by e-mail that she was not feeling well and would be out of the office. Sketch did, however, go to see her therapist. (Tr. 237).

70. On October 1, 2013, Sketch had a doctor's appointment and was out of the office. (Tr. 237).

71. Scott testified that on September 30 and October 1, he looked for Sketch at the office and learned that she was not there. He did not see the e-mails that Sketch sent to everyone in the firm regarding her absences and, instead, believed that Sketch had quit. (Tr. 595).

72. On October 1, 2013, Scott asked Underwood and Harrington "have you girls talked to [Sketch] or know if she is quitting?" (Tr. 595).

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[2] The parties deposed Marilynn McManus on October 14, 2015. She is a licensed clinical social worker and was Sketch's therapist, starting in August, 2012 and continuing through her tenure at SHB. Cites to the deposition will be referenced as "McManus Tr." and "McManus Ex."

[3] Sketch had experienced several traumatic events in her past, including being raped at age 15 and suffering psychotic episodes in 2009 and 2012 that required hospitalization. (McManus Tr. p. 9, 13-15).

73. Dolan, from Redline, called Sketch on October 1, 2013, and told her that her contract with SHB had been terminated because of absenteeism and tardiness. (Tr. 195).

74. At the hearing, Scott claimed that he did not make the decision to fire Sketch until October 1, 2013 because he was hesitant to turn over the billing to a new person without a smooth transition. (Tr. 592). While he had purportedly complained to Ropka about the bills not getting out in September of 2013, Scott testified that he wanted Sketch to train a new person for a week or two. (Tr. 594, 621).

75. Later during the hearing, Scott testified that by the beginning of September, "when the work started getting bad, and when she started taking so much time off, I knew that I never would bring her back." (Tr. 624).

76. Sketch testified that at the time of her discharge, there were only three bills left to get out. (Tr. 154, 167). Scott testified that Sketch was more than one billing cycle behind. (Tr. 614).

Noemi Dineo Replaces Sketch

77. On October 3, 2013, Noemi Dineo took on the role of billing manager after Sketch's discharge. (Tr.498, 500). Dineo was a temporary employee hired through Redline. She testified that the billing and invoicing was "in complete disarray" when she started at SHB, and that there were more than 10 bills left to be completed. (Tr. 506-507, 530-531). Dineo also testified that she subsequently found billing and other errors made by Sketch. (Tr. 532-533).

78. Ultimately, Dineo was converted from a temporary employee to a full-time employee at SHB in January or February of 2014–three or four months after her initial placement at SHB. (Tr. 504). She was not pregnant at the time of her hire, or during her tenure with SHB. (Tr. 530).

79. Scott testified that Sketch was not promoted to a full-time position like Dineo and Underwood because "[Sketch] told me she didn't know what she wanted to do after the baby came...and I know I have to hire somebody else as soon as she leaves." (Tr. 647-648).

80. Ultimately, Sketch did not need time off for maternity leave. Her daughter Olivia was stillborn. (Tr. 179).

Sketch's Emotional State and Subsequent Job Search

81. Sketch testified that the job situation at SHB caused her emotional distress (Tr. 179). The loss of her job and the loss of her child were devastating. It was also difficult to look for jobs when she would have to explain what happened at SHB. (Tr. 184).

82. Despite that, after her discharge from SHB, Sketch looked for other jobs and reached out to two recruiters, Watson Dwyer and Robert Half. (Tr. 180, Compl. Ex. 127). As a result of her job search efforts, Sketch had several interviews, but ultimately did not land a new position. (Tr. 182-183).

83. Subsequently, Sketch became pregnant with another child and became a stay-at-home mother as of January 2015. (Tr. 184-185). She has not had a full-time job since her discharge from SHB in September 2013.

III. CONCLUSIONS OF LAW AND ANALYSIS

A. Sketch's Failure to Hire Claim

Section 2-160-030 of the Chicago Human Rights Ordinance ("CHRO") makes it unlawful to discriminate against individuals in hiring due to the employee's sex. CCHR Reg. 335.100 provides that an "unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy ....is a *prima facie* violation of the [CHRO]." The Commission has not hesitated to hold an employer responsible for pregnancy discrimination when the evidence shows that employment was denied based on the employee's (or potential employee's) sex. *Poole v. Perry* & Associates, CCHR No. 02-E-161 (Feb. 15, 2006) citing *Griffiths v. DePaul University*, CCHR No. 95-E-225 (Apr. 25, 2000).

Complainants may prove discrimination by producing direct or circumstantial evidence of intent to discriminate. *Griffiths* at 16. To show intent to discriminate by direct evidence in a disparate treatment case, such as the one presented here, a complainant may rely on statements by managers which show that the adverse employment decision was made because of the employee's protected status. *Id.*; *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997).

Complainants may also present indirect evidence of discrimination. Under this method, a complainant would have to show that: (1) her employer had reason to believe that she was pregnant; (2) she was performing her work satisfactorily; (3) the job offer was rescinded, or she was terminated and (4) she was replaced by a non-pregnant person. *Poole*, at 8-9. Regarding the failure to hire claim, Sketch meets her burden under both methods.

As a preliminary matter, this was a highly contested case rife with contradictory testimony between the parties. In weighing such evidence, the hearing officer must determine the credibility of witnesses and is free to disregard, in whole or in part, the testimony of witnesses found to lack credibility. *Poole* at 9; *Claudio v. Chicago Baking Company*, CCHR No. 99-E-76 (July 17, 2002); *Sanders v. Onnezi*, CCHR No. 93-H-32, (Mar. 16, 1994).

The hearing officer found that Sketch was the more credible witness. The evidence shows that Scott initially offered Sketch a permanent position on February 22, 2013, within weeks of her placement at the firm. Farag and Dolan were excited about this turn of events, as noted in their subsequent e-mail exchanges. The hearing officer noted that there are no e-mails from them, Ropka, Scott, or anyone else at Redline or SHB that contradict or deny that Scott first made this offer of permanent employment in February 2013.

However, at some point, Ropka had a conversation with Scott and the offer of permanent employment evaporated, and was replaced by a "90-day waiting period." The waiting period benefitted Ropka and Respondents. Ropka could continue collecting the hourly fee for Sketch's work and Respondents could avoid a conversion fee, which would be triggered if they hired Sketch right away instead of keeping her on as a temporary contractor. The hearing officer determined that this was the start of both Ropka and the Respondents giving Sketch the runaround.

The evidence shows that on May 13, 2013, after the "waiting period," Scott offered Sketch the permanent position again. But after learning of her pregnancy, Scott responded "that changes everything," and said that Sketch's pregnancy and maternity leave would be an

"inconvenience" for the firm because the leave coincided with the busiest billing time for the firm. After this conversation, Sketch began to get the runaround again from the Respondents regarding the permanent **position,** which ultimately never materialized.

Although Sketch and Scott provided vastly different versions of what occurred during the conversation with Scott about permanent employment, the hearing officer found that Sketch testified more credibly concerning this conversation. The hearing officer further determined that Scott's statements are direct evidence of *prima facie* pregnancy discrimination.

In *Griffiths*, the respondent offered the complainant a position as a residence advisor. The complainant revealed her pregnancy to her soon-to-be supervisor, who then informed her boss, Mr. Ludwig. Ludwig rescinded the offer and stated his concerns that the complainant would be unable to do her job, attend an upcoming retreat, or be available for students in the months ahead because of her pregnancy. *Griffiths*, at 8. The supervisor relayed this decision and told the complainant that it was made because the respondent wanted to have someone available to respond to student crises, attend meetings and other functions. It was presumed that the complainant would be unable to meet these job functions due to her pregnancy. The complainant's efforts to address and alleviate respondents concerns were unfruitful.

The Commission held that the complainant's job offer was rescinded based on assumptions about her pregnancy and without gathering any information on whether she would be able to do the job. *Id.* Further, Ludwig's statements and those of the complainant's supervisor were direct evidence of discriminatory intent and *prima facie evidence* of discrimination. *Id.* at 16.

Here, Respondent Scott told Sketch that her pregnancy was an "inconvenience" and that it "changed everything" regarding the permanent position. Like *Griffiths*, Scott assumed that Sketch would not be able to do the job. From that point on, and despite her efforts to allay his concerns and put measures in place to handle her job responsibilities while on leave–including training other employees and offering to work from home–Scott rescinded the offer.

In their objections to the hearing officer's recommendations, Respondents argue that Sketch failed to provide any evidence of direct discrimination. Yet, Respondent Scott's own words provided this evidence; informing Sketch that her pregnancy "changed everything" and was "inconvenient," more than satisfied the first element of legal analysis here.

During the hearing, Scott asserted that he was concerned about Sketch being on leave during the firm's busiest billing season. In their objections, Respondents again assert that they did not hire Sketch because of an anticipated three month leave, not because of her pregnancy. This is an argument of fact, not law, which the hearing officer previously rejected based on her review of the facts and the credibility of the witnesses. Respondents' contrary view of the facts is not proper grounds to overturn the hearing officer's ruling. Moreover, an employer may avoid liability by showing that its adverse decision was not based on pregnancy but the inability of the pregnant woman to perform her job duties; however, that is not the case here. *Griffiths*, at 20, citing *Marafino v. St. Louis Cty, Cir. Ct.*, 537 F. Supp. 206 (E.D. Mo. 1982), aff'd 707 F.2d 1005 (8th Cir. 1983). Like *Griffiths*, Scott made an automatic assumption that Sketch would be unavailable and unable to do the work. This kind of snap decision making violates the CHRO. CCHR Reg. 335.100; *see also, Klimek v. Haymarket/Maryville Academy, et al.*, CCHR No. 91-E-117 (June 16, 1993) ("Making a wrong assumption based upon a misguided stereotype and then acting upon that assumption can constitute a violation of the CHRO."); *Tarpein v. Polk Street Company d/b/a Polk Street Pub.*, CCHR No. 09-E-23 (Oct. 19, 2011) (same). Scott also

disregarded Sketch's efforts to find solutions to address his concerns about a potential leave, including training other staff, or possibly working from home. Sketch was not asking for special treatment or disregarding the needs of the firm. She was trying to find a way to make things work.

Tellingly, in their objections, Respondents do not refute the holdings in *Griffiths, Klimek* or *Tarpein*. Instead, they rely on *Torribio v. Budget Rental Car*, CCHR No. 93-E-176, (Nov. 21, 1994), a case that is distinguishable on its facts. In *Torribio*, the complainant was fired for violating her employer's written policy on tardiness and absences. The respondent was able to show that it applied this neutral policy to all of its employees, regardless of pregnancy. No similar showing has been made here. Moreover, there were no statements of direct discrimination in *Torribio*. Here, Scott's own comments about Sketch's pregnancy established the violation of the CHRO.

Also, Respondents' reliance on *Troupe v. May Department Stores Co.*, 20 F.3d 734 (7th Cir. 1994) and *Geier v. Medtronic Inc.* 99 F.3d 238 (7th Cir. 1996) in their objections is similarly misplaced. Like *Torribio, Troupe* involved a neutral absentee policy that applied to all employees, regardless of pregnancy, and there was no discriminatory statement by the employer. Further, unlike the facts here, *Troupe* did not involve similarly situated employees who received better treatment.

Respondents cite *Geier* in an attempt to negate Scott's discriminatory comments about Sketch's pregnancy, but this argument also fails. In *Geier*, the court held "to be probative of discrimination, isolated comments must be contemporaneous with the discharge or causally related to the discharge decision making process." The plaintiff failed to meet this standard because the employer's comments were "made in a casual conversation, a full year prior to Geier's discharge and thus not temporally related to Geier's dismissal." By contrast, Scott told Sketch that her pregnancy "changed everything," and was an "inconvenience" as soon as she shared the news about her pregnancy. He then refused to hire her as a permanent employee and ultimately fired her four months later. Even under the legal standard in *Geier*, Sketch prevails.

Sketch can also prove her claim through the indirect method. The evidence shows, and Respondents do not dispute, that Sketch told Scott she was pregnant on May 13, 2013. Scott, Bloom, and Babetch testified that initially Sketch's job performance was satisfactory, and even good through late August or early September 2013. Importantly, Respondents signed weekly time sheets that approved Sketch's work and acknowledged it was satisfactory.

While Scott testified that at some point, he complained to Ropka about Sketch's work performance, the hearing officer found that his testimony lacked credibility and the timing was vague. Between February and early September 2013, Sketch tried to prove her value and worth to Respondents by taking on additional duties. She diligently sought that permanent position. Finally – and most telling – Respondents replaced Sketch with Dineo, who was not pregnant at the time of her hire, or during her tenure with SHB. In their objections, Respondents reassert that Scott was also concerned that Sketch would not return to the firm at all. Again, *Griffiths* is instructive. Rather than bring this concern to Sketch, Scott made assumptions as his basis for refusing to hire her. He also disregarded Sketch's repeated efforts to find solutions those concerns.

Also significant is the fact that two non-pregnant, similarly-situated, temporary employees recruited by Redline for SHB, Heather Underwood and Noemi Dineo, were converted

to full time employment within three to four months of their temporary hire at SHB. Sketch was treated far differently and was not afforded that opportunity because of her pregnancy.

B. Sketch's Contract Termination Claim

Sketch also argues that Respondents terminated her temporary employment contract due to her pregnancy. The hearing officer determined that Complainant also prevails on this claim.

As stated above, Complainant may prove her case through direct or indirect evidence. Regarding direct evidence, the hearing officer found that Respondents made discriminatory statements about Complainant's pregnancy, which were the basis of the decision not to hire Sketch as a permanent employee. These statements and Scott's perceptions regarding Sketch's pregnancy, and its purported effect on the firm, played a role in her ultimate discharge.

Under the indirect analysis, again, Complainant must establish a *prima facie* case: (1) her employer had reason to believe that she was pregnant; (2) she was performing her work satisfactorily; (3) she was discharged and (4) she was replaced by a non-pregnant individual. As set forth above, Complainant has established elements 1, 3 and 4. However, Respondents argue that she cannot establish the second element for this claim because her work declined significantly and she had problems with tardiness and absenteeism.

Indeed, the evidence shows that Sketch: (1) repeatedly asked Scott about the permanent position, to the point where he felt "harangued;" (2) missed a significant amount of work due to absences or being late, most notably in September 2013; and (3) had a significant decline in her work performance, including trying to pass off work to other employees, failing to get billing done, socializing or talking on the phone instead of doing work and holing up in her office.

Notably, Underwood testified that Sketch transferred so much of her job responsibilities that Underwood began to suffer from anxiety. Dineo testified that when she took over Sketch's job responsibilities, the files and billing were in disarray and she found errors in vendor contracts.

Sketch herself testified that after her conversation with Scott on August 8, 2013, during which Scott said he wanted her to train another temporary employee and would hire that other person instead of Sketch if he liked her better, Sketch finally realized she would not be made a permanent employee at SHB. Her job performance declined after that point.

Respondents argue in their objections that Sketch cannot establish that her work was satisfactory, as required to prove her discrimination claim using the indirect method and to establish her contract claim. Yet, as set forth above, Respondents signed time sheets stating that her work was satisfactory. Additionally, Respondents never advised Sketch that her job performance was subpar.

Respondents further argue that Sketch failed to show that other similarly-situated employees were treated more favorably. Respondents object to the definition of "similarly situated employees," and argue that Sketch had to show that non-pregnant employees seeking to take a leave of absence were treated more favorably. The Commission declines to view the definition so narrowly. The facts show that like Sketch, Underwood and Dineo were both temporary employees retained through Redline. Underwood and Dineo were converted to full-time employment after only three or four months with the firm. The only difference between them and Sketch was that neither of them were pregnant during their tenure at SHB. These facts

are sufficient to establish that Respondents treated Dineo and Underwood more favorably because of their non-pregnant status.

Also, Respondents attempt to differentiate Dineo and Underwood based on their job duties. However, this argument is similarly unpersuasive because it is grounded in a factual argument, rather than legal analysis or errors.

The Commission has noted, "In response to a *prima facie* case, a respondent may proffer as a legitimate nondiscriminatory reason for its action that the complainant could not satisfactorily perform the requirements of the job, to which the complainant must then respond with proof that the proffered reason was a pretext masking actual discriminatory intent." *Tarpein, supra*, at 9. See also, *Texas Dept. of Community Affairs v. Burdine*, 450 U. S. 248, 253 (1981). Complainant must then prove by a preponderance of evidence that the Respondent's reasons are more likely not its true reason but pretext for discrimination. *St. Mary's Honor Center v. Hicks*, 509 U. S. 502, 510-11 (1993).

Respondents articulated legitimate reasons for terminating Complainant's employment contract, a significant decline in Complainant's work performance and issues with attendance and tardiness. The hearing officer noted that there was evidence that Complainant had problems with her attendance and there was a decline in Complainant's work performance. However, the hearing officer noted that the problems with Complainant's work performance did not begin until after it was clear that she would not become a permanent employee of the firm once she revealed her pregnancy to Scott. Further, the only basis for Sketch not getting the permanent role was her pregnancy, as evidenced by the fact that other similarly-situated, temporary employees were converted to permanent positions within months of their initial placements.

Any time a discriminatory motive has played a part in an employment decision, the CHRO is violated. *Pearson v. NJW Personnel,* CCHR No. 91-E-126 (Sep. 16, 1992); *Lawrence v. Atkins*, CCHR No. 91 FHO-17-5602 (July 29, 1992) (to hold respondent liable, discrimination need not be the only reason for the challenged action, so long as it played a part.); *Gilbert & Gray v. 7335 South Shore Condo. Assoc.*, CCHR No. 01-H-18/27 (July 20, 2011) (where respondent proved it would have taken adverse action regardless of complainant's protected class, respondent not absolved of liability but damages reduced appropriately). In their objections, Respondents do not address the holdings of these cases. Sketch's pregnancy was the reason for SHB's failure to hire her and played a significant role in the termination of her employment. While damages may be reduced due to Sketch's absenteeism, tardiness and poor work performance, that does not completely absolve Respondents of liability. For these reasons, the hearing officer found that Complainant prevailed on her contract termination claim.

Finally, Respondents argue that certain evidence and testimony favorable to them was disregarded by the hearing officer and otherwise attempt to re-argue those facts.[4] The Commission finds that the hearing officer addressed and disregarded the "non-discriminatory reasons" for terminating Complainant's employment contract asserted by Respondents in her recommended ruling. Further, the hearing officer is free to assess and disregard the testimony of witnesses found to lack credibility. She is also free to weigh the evidence presented. *See Poole, Claudio and Sanders* cited above. Moreover, whether a statement indicates a discriminatory

[4] Respondents argue that Sketch did not experience an adverse employment action. This argument is curious. Respondents failed to hire her as a permanent employee and then terminated her employment. It is hard to understand how or why this would not constitute an adverse employment action.

motive is left with the trier of fact. *McGavock v. Burchett*, CCHR No. 95-H-22 (July 17, 1996). Nothing cited in Respondents' objections constitutes grounds to overturn the hearing officer's findings in this matter. [5] Accordingly, the Commission finds that Complainant has proved that the termination of her temporary employment contract was pregnancy-related sex discrimination in violation of the Chicago Human Rights Ordinance.

V. REMEDIES

Upon determining that a violation of the Chicago Human Rights Ordinance has occurred, the Commission may order remedies as set forth in Section 2-120-510(1) of the Chicago Municipal Code:

> [T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied; ... to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the Commission or at any stage of the judicial review; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages and backpay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violation of provisions of Chapter 2-160....

It is a complainant's burden to prove by a preponderance of the evidence that he or she is entitled to the damages claimed. See, e.g., *Carter v. CV Snack Shop*, CCHR No. 98-PA-3, at 5 (Nov. 18, 1998).

A. Damages

A victim of employment discrimination is "presumptively entitled to full relief." *Martin v. Glen Scott Multi-Media*, CCHR No. 03-E-34, (Apr. 21, 2004); citing *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998). The purpose of economic damages is to make the victim "whole," meaning that a complainant should be in as good a position as she would have been in terms of salary and any fringe benefits if she had not been discriminated against. *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004) Once a complainant has established the amount of damages she claims resulted from the respondent's discriminatory act, the burden shifts to the respondent to show that the complainant failed to mitigate damages or that the damages the complainant asserts are not justified. *Carroll, supra at 9.*

While damages that are too remote or speculative will not be awarded, a complainant is not required to prove damages with exactitude. Certain ambiguities are to be resolved in favor of the complainant against and employer found to have violated the CHRO. *Griffiths* at 24. Here, Complainant is entitled to damages based on Respondents' failure to hire her as a full-time,

[5] Respondents' reliance on *Marafino v. St. Louis County Cir. Court*, 537 F.Supp. 206 (E.D. Mo. 1982) is equally unpersuasive. This 34 year old ruling made by a federal court outside of this jurisdiction lacks precedential value here and we decline to follow it. See CCHR Reg. 270.510.

permanent employee in May, 2013 and based on the discriminatory termination of her employment contract.

Back Pay

The hearing officer found that the parties offered contradictory testimony at the hearing regarding the annual salary for the full-time office manager or billing coordinator position.[6] Sketch testified initially that she was offered $60,000 for the position, which Respondent Scott denied. Sketch later clarified this testimony, noting that she sought a salary of $55,000 to $60,000. However, credible testimony from other employees established that the position paid far less. SHB employees that held roles similar to Sketch before and after her tenure at the firm earned no more than $46,000 annually.

In her objections, Sketch again argues that back pay damages should be based on the $60,000 figure. But, as stated by the hearing officer, that figure is not supported by *any* evidence. Sketch's desire for that salary amount does not make it a fact. She even testified that no one at SHB offered her a $60,000 salary. There are no documents supporting this figure and Sketch did not receive that amount of pay at the time her employment contract was terminated. Reliance on what SHB paid to Redline for the contract position is misplaced and has no bearing on what Sketch was actually paid. Most importantly, the evidence shows that the employee who replaced Sketch did not receive a salary near the $60,000 figure.

Sketch also argues that the hearing officer should have considered the salary of former Office Manager Staci Vazquez, whom Sketch replaced. Vazquez's salary was in the range of $26.50 and $27.50 per hour, which results in an annual salary of $52,000. The hearing officer determined that Sketch's reliance on Vazquez's salary is unpersuasive. Ms. Vazquez testified that when she began her employment as Office Manager, her salary was $20 per hour. Although her salary increased to $26.50 or $27.50 per hour, that was after 12 years of working for SHB. (Tr. 22- 25). She did not make that amount at the outset. Further, Vazquez often worked more than 40 hours per week. Sketch worked for SHB for less than a year and often worked less than 40 hours per week. As such, Vazquez's salary is not the proper example or guide for Sketch's damages.

Initially, Sketch earned $21 per hour as a temporary employee, which increased to $22.50 per hour starting on June 10, 2013, or $46,000 annually. Assuming damages most favorable to Complainant, in this case a $46,000 salary for the permanent role, the hearing officer determined that Sketch lost wages from September 30, 2013, through January 30, 2015, when she became a stay-at-home mother.[7] Her 2013 lost wages total $11,499 ($3,833 per month multiplied by the remaining three months in the year after the termination of her contract). She would have earned an additional $49,833 through January 30, 2015 ($46,000 plus $3,833 for the month of January 2015). Accordingly, Sketch's back pay damages total $61,332.

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[6] The parties raised arguments at the hearing and in their objections regarding whether the Complainant's title was officer manager or billing coordinator. The hearing officer found that this distinction is irrelevant because the record shows that Complainant performed both job duties. She handled billing for the firm and she took on administrative tasks, such as coordinating IT projects, ordering office supplies, and scheduling interviews. Further, there was not a significant difference in salary regarding these roles.

[7] Complainant cites this time period for damages in her post-hearing brief. During the hearing, Sketch testified that she ended her job search after having another child.

Reduction of Back Pay Damages

Regarding mitigation, the evidence shows that after her discharge, Sketch looked for work by reaching out to recruiters, applying for positions, and engaging in interviews; however, she was unsuccessful in her job search. Thus, the hearing officer found that there are no grounds on which to reduce the back pay award for failure to mitigate.

Respondents argue that any damage award should be reduced based on "after-acquired evidence." They also raise this argument again in their objections. Respondents assert that Sketch's failure to disclose the true circumstances behind her departure from the firm where she worked before coming to SHB would have been grounds for discharge. The hearing officer found that Respondents' argument lacks merit. The evidence in the record regarding the nature of Sketch's departure from the prior firm is murky at best. Ropka testified that he spoke to some unnamed woman at the prior firm who told him Sketch was discharged. No details were given, nor was there any evidence regarding the identity of this individual, how she came to have this information, or the truth of it. Moreover, Ropka's credibility overall was lacking. The hearing officer determined that his prior actions in "handling" Sketch demonstrate that he will say whatever is necessary to achieve his goals.

While Respondents' "after-acquired evidence" argument fails, the decision in *Gilbert and Gray* cited above suggests that the $61,322 figure should be reduced to account for the non-discriminatory reasons (absenteeism, tardiness and performance) for Sketch's discharge from SHB; however, little guidance is given regarding the scope of such a reduction. Given the facts and evidence presented in this case, namely that the failure to get the position led to Sketch's absenteeism, tardiness and declining job performance, the hearing officer recommended reducing back pay damages by ten percent (10%) or $6,132.

Complainant, in her objections, argues that no reduction in damages is warranted. Yet, she disregards her performance issues and fails to persuasively distinguish the holding in *Gilbert and Gray,* which allows for such a reduction.

Respondents argue that the compensatory damages award is contrary to the manifest weight of the evidence because, at most, Sketch's damages would cover only the period from October 1, 2013, through November 2013. This time period disregards the facts of this case. Sketch lost her child in November 2013, and testified that she continued to look for work until she gave up her search to become a stay-at-home mother in January 2015. Respondents have no basis upon which to limit Sketch's damages to a one month time period.

Accordingly, the Commission finds reasonable and adopts the hearing officer's calculation of back pay damages—$61,332 reduced by ten percent (10%) or $6,132, for a total of $55,200.

Emotional Distress

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.,* CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky,*

CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway,* CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell,* CCHR No 01-H-101 (Apr. 6, 2003); *Marable v. Walker,* 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner,* 563 F. 2d 159, 164 (5th Cir. 1977). Generally, the size of the award is measured by the egregiousness of the respondent's behavior and the complainant's reaction to the discriminatory conduct. *Alexander v. 1212 Restaurant Group, LLC*, CCHR No. 00-E-100 (Oct. 16, 2008) *aff'd* Cir. Ct. Cook Co., No. 09-CH16337 (Feb. 19, 2010) *aff'd* Ill. App. Ct. No 1-20-0797 (1st Dist., Aug. 25, 2011), PLA denied Ill. S. Ct. No 113274 (Jan. 25, 2012); citing *Steward v. Campbell's Cleaning*, CCHR No. 96-E-170 (June 18,1997).

Complainant seeks $100,000 in damages for emotional distress. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation,* CCHR N. 97-E-93 (Oct. 21, 1998) at 13; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.,* CCHR No. 96-E-170 (June 18, 1997). Respondents must take the complainants as they find them–whether they are particularly resilient or particularly vulnerable. *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).

Sketch testified that she experienced emotional distress based on the Respondents' conduct. She expressly voiced her concerns with her therapist after the August 2013 conversation in which it became clear that Scott planned to rescind the job offer. She described the conversation with Scott as a "traumatic event." In September 2013, Sketch also told her therapist that she was having "a more difficult emotional time over the last few weeks."

Sketch had also spent six months getting the runaround from Respondents about a permanent position that never materialized. Further, Scott told Sketch that her pregnancy "changes everything" and was an "inconvenience," a particularly insensitive remark. Sketch testified that she was hurt and angry by Scott's response to her pregnancy.

Also, Sketch was particularly vulnerable. She had a difficult pregnancy with multiple doctor's visits, tests and illness. She also had a history of trauma and two psychotic episodes in 2009 and 2012, respectively, which led to her hospitalization.

In *Griffiths*, the Commission awarded $8,000 in emotional distress damages where the respondent offered and then rescinded a job offer; the effects of the discrimination lasted a few months and "the complainant was in an unusually fragile condition due to her pre-existing pregnancy." Griffiths testified that she was initially very excited about her pregnancy, but the respondent's behavior made her feel like her pregnancy "was a sickness," that she would be unable to do her job and "that would be a great burden to them."

In *Martin*, the Commission awarded the complainant, who was discharged due to her pregnancy, $6,000 for emotional distress where she felt fearful and distressed over being out of work nearly 10 months, worried that she would not be able to find work while pregnant, and felt depressed.

While these cases are instructive, these awards are not enough to address the emotional distress experienced by Sketch. Although Sketch endured significant emotional distress, the hearing officer found that her request for $100,000 is unreasonable. Based on the evidence

presented at the hearing, the hearing officer recommended $15,000 in damages for emotional distress.

In her objections, Complainant restates her argument that the facts in this case warrant an award of $100,000 in emotional distress damages, citing several Commission decisions where higher emotional distress damages were awarded. The cases cited by Complainant are distinguishable from this case because they each involved egregious conduct. For example, in *Roe v. CTA,* CCHR No. 05-E-115 (Oct. 20, 2010), the complainant endured ongoing harassment from his direct supervisor based on his sexual orientation, was "outed" as a gay man by his supervisor; the CTA repeatedly failed to investigate his claims and it allowed a culture of sexual harassment to persist within the office for a significant period of time. This type of ongoing, egregious behavior does not exist in this case.

The Board of Commissioners adopts the recommendation of the hearing officer as consistent with the emotional distress damages awarded in similar employment discrimination cases before the Commission. In *Flores v. A Taste of Heaven and Dan McCauley*, CCHR No. 06-E-32 (Aug. 18, 2010), complainant was awarded $20,000 in emotional distress damages. Complainant endured repeated slurs about her age, sex, and national origin over a year of employment, including one incident that occurred in front of her husband and son. She testified that she became depressed, gained weight, had trouble sleeping, and sought professional help. Also, in *Johnson v. Fair Muffler Shop*, CCHR No. 07-E-23 (Mar. 19, 2008), the complainant was awarded $20,000 in emotional distress damages where the manager directed racially derogatory epithets toward the complainant for six months, then discharged him after the complainant complained to the business owner. Johnson testified that the discrimination made him feel "less than a human being," created problems with eating and sleeping for a month, caused anger management problems requiring therapy, and separated him from his wife for two months while he sought employment in another state.

Similarly, in *Manning v. AQ Pizza LLC et al.,* CCHR No. 06-E-17 (Sept. 19, 2007), the Commission awarded $15,000 for emotional distress where a restaurant manager sexually harassed the complainant and addressed her in racially derogatory terms, terminated her employment when she continued to refuse sexual activity, then retaliated against her through racially and sexually derogatory messages after she filed her discrimination complaint. Manning testified that as a result she lost her housing because she could not afford the rent and had to stay with a friend; and in addition she had frequent frightening nightmares and flashbacks.

Consistent with these standards and precedents, the recommended award of $15,000 for emotional distress is supported by the evidence.

Punitive Damages

At the hearing and in post-hearing briefs, Complainant argues that punitive damages are also warranted here and seeks $563,617.50–a figure that is three times her request for compensatory damages, based on the purported $60,000 in back pay between September 30, 2013, and January 2015.

In general, punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent, or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21. 1998), quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. The Commission has awarded punitive damages where a respondent's actions are willful and

wanton, malicious, or recklessly disregarded the rights of the complainant. See, e.g., *Horn v. A-Aero 24 Hour Locksmith et al.,* CCHR No. 99-PA-32 (July 19, 2000), and *Houck, supra.* Punitive damages are also warranted to deter respondents from discriminating against others in the future. See, e.g., *Alexander, supra.*

Here, the hearing officer recommended that punitive damages of $15,000 are warranted as a deterrent so that Respondents will not discriminate against others.[8] The evidence has established that Respondents' actions were in clear violation of the Chicago Human Rights Ordinance and Commission regulations. Scott rescinded the offer of permanent employment at the firm immediately upon being informed of Complainant's pregnancy. Also, there was evidence brought out during the hearing that Scott referred to his administrative staff as "the girls," and fired a former employee after she had a child. Further, Scott apparently believed it was too difficult for a woman to care for her child while also working from home for SHB. This conduct is precisely what the Chicago Human Rights Ordinance and punitive damages are designed to punish and deter.

In her objections, Complainant argues that the recommended punitive damages award is too low and does not appropriately address Respondents' "unprofessional, cavalier and threatening behavior." The Commission is not persuaded by Complainant's arguments because Complainant has not shown that a punitive damages award in excess of the recommended amount is warranted here.

By contrast, Respondents argue in their objections that the Commission lacks authority to impose such damages. Respondents also argue that an award of punitive damages is against the manifest weight of the evidence. Both of Respondents' arguments lack merit.

On June 20, 2013, the Supreme Court of Illinois ruled in *Crittenden et al. v. Cook County Commission on Human Rights et al.*(CCC), 2013 IL114876, 990 N.E.2d 1161 (June 20, 2013), that the CCC lacked authority to impose punitive damages because neither state law, nor the Cook County Ordinance expressly authorized it to do so. The Court further ruled that the Commission's lacked authority to issue punitive damages because the CHRO did not explicitly state that punitive damages are authorized. In light of this ruling, on December 6, 2013, the City of Chicago amended the CHRO to expressly include a provision that authorized the Commission to award such damages.

Respondents' argue that punitive damages are not applicable in this case because at the time of Sketch's termination – the date of the last alleged act of discrimination – the Commission lacked authority to impose them. Respondents' argument on this point fails. The discriminatory acts in this case occurred as early as May 2013, when Respondents refused to hire Sketch, which was before the ruling in *Crittenden.*

Further, Respondents argue that the amendment to the CHRO cannot be retroactively applied. While in general, an amended statute is deemed prospective in nature, there are exceptions – such as when: legislative intent demonstrates the desire to apply the amendment retroactively; the amendment is procedural; the amendment changes remedies; retroactive

[8] Respondents argued in prior briefing and again in their post hearing brief, that the Commission lacks authority to impose punitive damages in this case because of the holding in *Crittenden v. Cook County Commission on Human Rights*, 2013 IL 114876 (June 20, 2013) and the date that Complainant filed her case. This argument was rejected as waived in the Order Denying Respondents' Motion to Reconsider entered by the hearing officer on July 20, 2015. Respondents cannot revive this belated argument here. The Commission has authority to impose punitive damages and for the reasons stated above, they are warranted here.

application presents no issues of unfairness; or it does not impede on a vested right. See *First of America Trust Co. v. Armstead et al.*, 171 Ill.2d 282, 664 N.E.2d 36 (1996); and *Kelsay v. Motorola, Inc.*, 74 Ill.2d 172, 384 N.E.2d 353 (1979).

In *First of America Trust*, the plaintiff sought and was denied registration for several underground tanks. The plaintiff sought administrative review in circuit court. While that matter was on appeal, the General Assembly amended the statute that governed registration. The circuit court applied the amended statute and confirmed the denial of registration. The appellate court held that the amended statute could not be retroactively applied. Siding with the circuit court, the Supreme Court of Illinois held that "the court should simply apply the law as it exists at the time of the appeal, unless doing so would interfere with a vested right." *Id.* at 290. The Court defined a 'vested right' as "an expectation that is so far perfected that it cannot be taken away by legislation... a complete an unconditional demand or exemption that may be equated with a property interest." *Id.* at 291. Finding no such right, the Court applied the amendment retroactively.

Relying on the ruling in *First of America Trust*, the amendment to the CHRO can be retroactively applied here. The amendment affirms the Commission's authority to impose punitive damages. Respondents cannot establish that a vested right – as defined in *First of America Trust* – has been impinged based on that authority.

Nor can Respondents establish that applying the amendment retroactively in this case would be unfair or unjust. The Commission has awarded punitive damages for violations of the CHRO for decades. Indeed, that authority was affirmed in *Page v. City of Chicago*, 299 Ill.App.3d 450, 701 N.E.2d 218 (1st Dist. 1998), nearly 30 years ago. While the decision in *Crittenden* overturned *Page* for several months in 2013, Respondents should not be able to profit from that brief lapse of time. Sketch put Respondents on notice of her intent to seek punitive damages early on in this case. That such a remedy could potentially be awarded here should have been of no surprise to the Respondents, given the Commission's long history of awarding punitive damages and Sketch's notice of intent to pursue them. These factors similarly undercut Respondents attempt to argue a violation of their due process rights.

Further, it is not uncommon to retroactively apply a legislative amendment enacted to correct a court decision. For example, Title VII of the Civil Rights Act was amended after the decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). In *Ledbetter*, the Supreme Court held that employees could not challenge ongoing pay discrimination if the employer's original discriminatory pay decision occurred outside of the statute of limitations period, even when the employee continues to receive paychecks that have been discriminatorily reduced. This decision severely limited employees' rights to bring cases based on discriminatory pay. Following this decision, Congress passed the Lily Ledbetter Fair Pay Act, which amended Title VII to restore the pre-*Ledbetter* position that each paycheck that constitutes discriminatory compensation is a violation of Title VII, regardless of when the discrimination began. The amendment was signed into law on January 29, 2009, and took effect *nunc pro tunc* to May 28, 2007-the day *before* the Supreme Court issued its decision.

The amendment in *Ledbetter* is analogous to the amendment of the CHRO which specifically provides for punitive damages. Given the proximity in time between the *Crittenden* decision and the amendment to the CHRO, it is clear that the legislative intent of the City Council was to correct the decision of the appellate court. If the City Council only intended for the amendment to be applied prospectively, it would have noted so in the text of the CHRO.

The Commission agrees with the hearing officer's recommendation and awards $15,000 in punitive damages.

B. Fine

Section 2-160-120 of the Chicago Human Rights Ordinance requires a fine against a party found in violation of the ordinance of not less than $100 and not more than $1,000. The hearing officer recommended the maximum fine against Respondents. Effective December 21, 2013, the maximum fine allowed for violations of the Ordinance is $1,000. In view of the egregiousness of the violation, the Commission agrees with the recommendation to impose the maximum fine against Respondents, and so imposes a fine of $1,000.

C. Interest on Damages

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on the damages awarded to remedy Ordinance violations. Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually. The hearing officer recommended an award of interest on all damages awarded in this case, starting from the date of the discriminatory act, September 30, 2013. The Commission agrees and adopts the recommendation.

D. Attorneys' Fees and Costs

Section 2-120-510(1) of the Chicago Municipal Code allows the Commission to order a respondent to pay all or part of a prevailing complainant's reasonable attorney fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order, and the hearing officer recommends it in this case. *Hall v. Becovic,* CCHR No. 94-H-39 (Jan. 10, 1996), aff'd *Becovic v. City of Chicago et al.*, 296 Ill. App. 3d 236, 694 N.E.2d 1044 (1st Dist. 1998); *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012). Accordingly, attorney fees and costs are awarded with the amount to be determined by further ruling pursuant to the procedures stated in CCHR Reg. 240.630.

VI. SUMMARY AND CONCLUSION

For the reasons stated above, the Board of Commissioners find the Respondents Scott, Halsted, and Babetch, P.C. and Robert Kelly Scott liable for pregnancy-related sex discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Compensatory damages in the amount of $55,200;

2. Emotional distress damages in the amount of $15,000 against Respondents jointly and severally;

3. Punitive damages in the amount of $15,000 against Respondents jointly and severally;

4. Complainant's total damages in the amount of $85,200 must be reduced by $18,000, the amount of the settlement received from Redline and Ropka, leaving

a total of $67,200;

5. Pre- and post-judgment interest to Complainant on the foregoing damages, starting from the date of violation on September 30, 2013;

6. A fine payable to the City of Chicago in the amount of $1,000; and,

7. Reasonable attorney fees and costs in an amount to be determined pursuant to CCHR Reg. 240.630.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: October 13, 2016