City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Courtney Tarpein
Complainant,
v.

Polk Street Company d/b/a Polk Street Pub and Jim Dziubla
Respondents.

Case No.: 09-E-23

Date of Ruling: October 19, 2011
Date Mailed: November 7, 2011

TO:

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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on October 19, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant compensatory damages of $1,600 and punitive damages of $4,800, for total damages in the amount of $6,400, plus interest on that amount from February 18, 2009, in accordance with Commission Regulation 240.700.

2. To pay a fine to the City of Chicago in the amount of $500.[1]

3. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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[1]**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant, through Complainant's counsel of record if applicable. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law. However, because attorney fee proceedings are now pending, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **December 5, 2011**. Any response to such petition must be filed and served on or before **December 19, 2011**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630(b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: October 19, 2011

City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF: Courtney Tarpein **Complainant,** **v.** Polk Street Company, d/b/a Polk Street Pub and Jim Dziubla **Respondents.**	**Case No.:** 09-E-23 **Date of Ruling:** October 19, 2011

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION AND PROCEDURAL HISTORY

Complainant Courtney Tarpein filed a discrimination Complaint on March 7, 2009, alleging discrimination based on sex in violation of the Chicago Human Rights Ordinance when she was fired from her job as manager and bartender at the Polk Street Pub when she was eight and one-half months pregnant. It is undisputed that Polk Street Pub was at all relevant times a tavern located at 548 W. Polk Street in Chicago and operated by the Polk Street Company. Respondent Jim Dziubla was President of Polk Street Company and also named as an individual Respondent in the Complaint. Dziubla acknowledges that he told Tarpein to start her maternity leave before she gave birth although she did not wish to do so; however, he contends that he did not fire her and that her job was waiting for her after the maternity leave.

Dziubla filed a Response to the Complaint on behalf of himself and the company on April 7, 2009. Complainant filed a Reply to the Response on May 8, 2009. After an investigation, the Commission issued an Order Finding Substantial Evidence on May 6, 2010, followed by an Order Appointing Hearing Officer and Commencing Hearing Process on August 13, 2010.

The administrative hearing was held on February 24 and 28, 2011. On June 14, 2011, the hearing officer issued her Recommended Ruling on Liability and Relief. Both Complainant and Respondents filed objections to the Recommended Ruling, which have been considered in reaching this Final Ruling.

II. FINDINGS OF FACT

1. Courtney Tarpein was hired as a bartender for Polk Street Pub in April 2008 by Nathan Crocco, who was a manager at the time.

2. Jim Dziubla was President and half owner of Polk Street Company with Betty Smith, his aunt. (Tr. 241) The company operated under the assumed name of Polk Street Pub. (Tr. 242.243)

3. In September 2008, Crocco promoted Tarpein to manager to replace him, as he was leaving for military duty with the Army. (Tr. 36, 87, 219) He recommended Tarpein for

the job because she worked hard, she was knowledgeable, and the customers liked her. (Crocco Deposition, Ex. 7, 25, 41)

4. In her new position, Tarpein had both bartender and manager duties. (Tr. 88) As manager she had to order liquor and pick it up, pick up food, do scheduling, hand out paychecks, meet with vendors, prepare the menus, count cash drawers, and make deposits. (Tr. 37, 89) As bartender she served food and drinks and worked the cash register. She washed bar glasses and cleaned the sinks. (Tr. 79-81) She generally worked a 4:00 p.m. to midnight shift, four days a week.

5. According to Nathan Crocco, the cleaning of the bar—including stacking the chairs, mopping the floor, and cleaning the brass on the bar—generally took place in the mornings and was the responsibility of Lauro Luna, who was also the cook. Neither Crocco as manager nor Tarpein as bartender had cleaning duties, except for washing the bar glasses and wiping down the bar. (Ex. 7, 11, 47) Crocco stated that Dziubla left him lots of notes, usually just for general information. (Ex. 7, 15)

6. Tarpein first met Jim Dziubla five months or so after beginning work at the bar, in September or October 2008. (Tr. 35, 39, 85)

7. Dziubla testified that Polk Street Pub was not his only employment or business. He owned Governor's Pub House, a restaurant and brewery in Lake in the Hills; Performance Telecom, a computer consultant company; and Horizon Realty Group. He left the day-to-day running of Polk Street Pub to his managers, and he would just come in to check up on things. (Tr. 256-257)

8. Beginning in December 2008, Tarpein told Dziubla several times that she was pregnant, that she would need to take maternity leave after the baby was born, and that he needed to find a replacement for that time. Her due date was March 20, 2009. (Tr. 40, 42)

9. Tarpein testified that she had hired a new bartender in December to fill in, in anticipation of taking two to three weeks of maternity leave when her baby was born. She said she had made arrangements with Dziubla to work the daytime shift, Monday through Friday, when she returned to work from maternity leave. (Tr. 69)

10. Tarpein had a high risk pregnancy, requiring regular ultrasound appointments. Her doctor recommended that she wear a maternity belt, which she obtained and wore at work. (Tr. 100)

11. At the end of January 2009, one of the Polk Street Pub bartenders, Vicki Flores, texted Tarpein to tell her she was ill and could not work her shift. She had not been able to find someone to work for her. Tarpein had an ultrasound appointment and could not take the shift. She tried to call Dziubla, but his cell phone did not have service. (Tr. 44)

12. Tarpein then called Dziubla's girlfriend, Laura Ruben, and he called her back. Tarpein explained that there was no one to cover Flores' shift and that she herself had an ultrasound appointment. Dziubla asked her if she could cancel her appointment, but he told him no, it is mandatory. She agreed to come in as soon as her appointment was over, which she did. Dziubla was at the bar. They did not speak about the pregnancy, and Dziubla left. (Tr. 44-45)

13. On Thursday, February 12, 2009, although Tarpein's shift started at 4:00 p.m., she want to the bar about 10:00 a.m. to cover for Flores, who was again unable to work. Around 5:00 p.m., Tarpein began feeling very ill, vomiting and having severe diarrhea, and began feeling contractions. She called her doctor, who told her to sit down and wait 15 minutes. When she was no better after waiting, her doctor told her she needed to go to the hospital. (Tr. 47, 48)

14. Tarpein called several other bartenders to see if they could come in to cover, but no one was available. (Tr. 48, 49) Tarpein then called and reached Dziubla to inform him that she had to go to the hospital and that she could not find anyone to come in to work. She suggested closing the bar, but Dziubla said she couldn't do that, that he would come in, but it would take an hour and a half for him to get there. (Tr. 50)

15. One of the other bartenders subsequently called Tarpein back and said she could come in but she would have to leave early, by 11:00 or 12:00. Tarpein called Dziubla to inform him. He had not left yet and he agreed. (Tr. 51)

16. Tarpein went to the hospital, where she was treated for dehydration, nausea, and contractions and kept overnight. (Tr. 51)

17. Dziubla testified that following the emergency room visit, he was very concerned about Tarpein's condition. He was getting calls from customers complaining that they couldn't get served because Tarpein was sitting down behind the bar, having a hard time walking. He was worried that she might fall down the narrow stairs to the basement where the cash drawers and office were located. (Tr. 266-267)

18. Tarpein testified that she had to go down to the office every day, but that she did not have any problems going up and down the stairs. (Tr. 46-47)

19. After the emergency room visit, Tarpein was next scheduled to work the 4:00 p.m. to midnight shift the following Tuesday, February 17, 2009. (Tr. 52) When Tarpein arrived at work, Laura Ruben was behind the bar and Tarpein testified that Ruben told her that Dziubla had left her a list of things to be done and also some cleaning products. (Tr. 53) Tarpein testified that Dziubla had never left her a note before, but she recognized his handwriting from checks and other documents in the office. (Tr. 103, 105)

20. Dziubla testified that he did leave a note that day and that he left notes for the managers all the time. He would just leave general notes of what needed to be done and tape them to the computer screen. (Tr. 262-263) He recalled that the note in question said the tappers needed to be cleaned and the chairs needed to be wiped down. The note was not directed to Tarpein. (Tr. 264)

21. Tarpein testified that the note was on a piece of paper that was fed from the printer used for receipts. It was taped to the mirror and had a list of three items to be completed: clean the mirrors, clean the brass tappers, and polish the bottoms of all chairs. (Tr. 101-102) He name was not on the note, and it was not dated or signed. (Tr. 103) Complainant stated that Respondent had never left her a note before. (Tr. 105)

22. Tarpein alleged that the cleaning products that had been left were industrial strength products including a brass cleaner that were different than she had ever used at Polk Street Pub. She was concerned that they might be harmful to her baby, so she did not use

them. She completed the items on the list as best she could, using other products such as club soda, hot water, and fresh lemons. (Tr. 56, 58, 59)

23. Later in her shift, Tarpein testified that she took the note down and read it to patrons—Jay Cline at around 7:00 p.m. and Bob Skahill around 11:00 p.m. (Tr. 106-107) After showing it to them, Tarpein put it back on the mirror where it had been taped, and when she left that night she threw it out. (Tr. 107)

24. The next day, February 18, 2009, Tarpein called Polk Street Pub because traffic was heavy and she was going to be five or ten minutes late for her 4:00 p.m. shift. (Tr. 60) She spoke with Laura Ruben who, according to Tarpein, told her that Dziubla was angry that she had not completed all of the items on the list that had been left. Tarpein stated that Dziubla called her back before she arrived at work and told her she could start her maternity leave. She told him she couldn't do that—they had agreed that she would work up until delivery and as a single mother she needed to work. (Tr. 63)

25. Tarpein testified that Dziubla then told her to start her maternity leave. After protesting again that she needed to come in and work her shift, he told her again not to come again. She said that she responded that means you are firing me. She told him she was on her way in and asked if he was going to let her work her shift. She alleges that he told her, "You're done here." (Tr. 64-66) She started crying, turned around, and went home. (Tr. 66) She understood that she had been discharged. (Tr. 77)

26. Dziubla testified that he did not fire Tarpein, but he was concerned that something would happen; it was a safety concern; and he told her not to come in that day, and to come back to work after her maternity leave. (Tr. 268-269)

27. Tarpein and Dziubla did not communicate again after that day, February 18, 2009, until March 1, 2009, when Dziubla sent Tarpein an e-mail that said: "Hi Court. Hope all is well with the baby. When you come to pick up your check I need you to leave your keys, please. Cheers, Jim." (Tr. 68, 270; C. Ex. 1)

28. Tarpein dropped off her keys but did not have any communication with Dziubla between March 1, 2009, and March 24, 2009, when her baby was born. She testified that at no point did Dziubla ask her to come back to work. (Tr. 69, 70)

29. Dziubla testified that he had planned to allow Tarpein to have maternity leave, an unpaid leave. He did not know how long the leave would be. (Tr. 265)

30. Vicki Flores worked at Polk Street Pub as a bartender from 2000 until September 2009. (Tr. 202, 203) She utilized Brasso twice a month to clean the beer tappers. (Tr. 205) She also cleaned mirrors and wiped down the chairs as part of her duties. (Tr. 205, 208)

31. Flores had been off work ill for quite a while and was diagnosed with brain cancer. After Tarpein was put on maternity leave, Dziubla called Flores to see if she could come back to work, which she did. (Tr. 206-218)

32. On March 7, 2009, Tarpein filed a Complaint with the Chicago Commission on Human Relations alleging that she was terminated by Dziubla from Polk Street Pub because she was pregnant and naming both Polk Street Pub and Jim Dziubla as Respondents.

33. Tarpein testified that her baby had surgery at three months of age followed by an eight-week recovery period, during which time she searched for employment. Her sister and friends watched her baby girl when she had an interview because she didn't have anybody to care for her on a regular basis. (Tr. 71-72)

34. Dziubla responded to the Complaint on April 6, 2009. His Position Statement was that Tarpein "is out on maternity leave and her job is waiting for her to return to work." (Respondent's Response to Complaint) Dziubla never heard from Tarpein after filing this Response.[1] (Tr. 270)

35. On May 4, 2009, all shares of Polk Street Company, including Dziubla's shares, were sold to 548 Polk St., LLC, for $20,000. (Tr. 249, R Ex. 11)

36. Dziubla testified that he filed for personal bankruptcy in June or July of 2009. His debts were discharged by the U.S. Bankruptcy Court on October 20, 2009. (Tr. 251)

III. APPLICABLE LEGAL STANDARDS

This case arises under Section 2-16-030 of the Chicago Municipal Code (Human Rights Ordinance), which provides: "No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition or employment because of the individual's...sex."

Commission Regulations interpreting the Human Rights Ordinance include specific provisions relating to pregnancy and childbirth. CCHR Reg. 335.100 states:

> A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is a *prima facie* violation of the [Human Rights Ordinance]. It shall also be a *prima facie* violation of the [Human Rights Ordinance] for an employer to discharge an employee because she becomes pregnant.

CCHR Reg. 335.110 explains the treatment of temporary disabilities caused by pregnancy or childbirth under the Human Rights Ordinance:

> Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities.

CCHR Reg. 335.120 further explains the need for equal treatment of leave for pregnancy-related temporary disabilities:

> Temporary disability resulting from pregnancy, miscarriage, abortion, childbirth and recovery therefrom must be considered by an employer offering leaves for other temporary disabilities to be a justification for a leave of absence for a female employee.

[1] Complainant had received a copy of the Response, because she filed a reply.

The terms and conditions of pregnancy-related disability leaves of absence may not be more restrictive, and need not be more generous, than those applied to disability leaves for other purposes.

For example, in *Martin v. Glenn Scott Multi-Media*, CCHR No. 03-E-34 (Apr. 21, 2004), the Commission held that an employee established a *prima facie* case of pregnancy-related sex discrimination where she was discharged for being absent two days due to illness after she told her employer she was pregnant. However, the Commission noted in *Torribio v. Budget Rent-A-Car*, CCHR No. 93-E-176 (Nov. 21, 1994), that an employer is not required to allow pregnant employees to be absent more than it allows other employees to be if it penalizes all employees for absences due to illness.

IV. ANALYSIS

A. Bankruptcy Issue

As a preliminary matter, on February 22, 2011, shortly before the administrative hearing, Respondents moved to dismiss Jim Dziubla as an individual Respondent based on the discharge of his debts on October 20, 2009, in a personal bankruptcy proceeding. Dziubla had filed for "Chapter 7" bankruptcy on July 9, 2009, shortly after he filed his Response in this case on April 7, 2009. It is undisputed that Dziubla omitted Complainant and this Commission from the list of creditors to receive notice of his bankruptcy filing. This lack of notice deprived Tarpein of the opportunity to file a claim with the bankruptcy court prior to the bankruptcy discharge.

The hearing officer deferred ruling on the motion until her Recommended Ruling and ordered the parties to brief the issue with briefs due on May 10, 2011.

Respondent's brief relied on *In re Mendiola*, 99 B.R. 864 (N.D.Ill. 1984) for the principle that a "dischargeable debt that is inadvertently omitted from the bankruptcy is discharged without the bankruptcy case being reopened to add the creditor." Dziubla claimed that his failure to name Tarpein as a creditor in his bankruptcy petition was "inadvertent" and that the claim is a "garden variety debt," as it did does not arise from "potentially non-dischargeable misconduct, such as fraud or malicious injury." As such, even though not listed, Dziubla argues that Tarpein's claim was discharged along with his other debts.

Tarpein argued in her brief that, with regard to a debt that is not on the schedule of creditors in bankruptcy court and where a creditor has not been put on notice, even where debts arise before the date of the order for relief, the Bankruptcy Code allows for exceptions to discharge, citing 28 U.S.C. §727(b). Further citing *In re Scarlata*, 127 B.R. 1004, 1012 (N.D.Ill. 1991), Tarpein contends that the situation here is just such an exception, in that Respondent's conduct in depriving her of a creditor's notice was "intentional" and "without just cause." Tarpein's brief added that "a debtor acts with 'malice' when it is foreseeable that injury to another will occur as a result of the debtor's action.'" *In re Knapp*, 179 B.R. 106, 108 (S.D.Ill. 1995).

The hearing officer determined that Dziubla had not provided convincing evidence that his failure to list this pending employment discrimination action with the bankruptcy court and the lack of notice to Tarpein were inadvertent. Accordingly, the hearing officer denied Dziublia's motion to dismiss. Respondent did not request review of this interlocutory decision.

B. Discrimination

As to whether Respondents violated the Human Rights Ordinance, the hearing officer recommended a finding of liability against both named Respondents for requiring Tarpein to begin her maternity leave without her consent and before she had scheduled it. However, the hearing officer recommended that the Commission not find that Respondents had discharged Tarpein.

The hearing officer found the testimony of Tarpein, Dziubla, and their witnesses to be generally credible. She characterized the evidence as demonstrating that very little routine communication took place between Complainant and Dziubla. Rather, Dziubla entrusted the running of Polk Street Pub to his managers while he tended to other businesses, and the communication regarding the alleged termination of Complainant by Dziubla was especially minimal and imprecise.

As the hearing officer noted, Tarpein has made much of the handwritten note from Dziubla that was left at the bar before her arrival for work on February 17, 2009. Complainant said it was unusual for him to leave a note and to request that cleaning tasks be performed. She characterized the cleaning products he left as harsh, abrasive chemicals that she was afraid to use due to her pregnancy and that she had never used at Polk Street Pub (although it was never made clear just what these products were). (Tr. 55, 58) Tarpein called two patrons of the pub as witnesses, Jay Cline and Bob Skahill, to verify that she had shown them the note in question. Each testified that Tarpein was upset when she showed them the note, and they either read it or Tarpein read it to them. But the specific details of the note were not precisely recalled by either witness, including the itemized tasks and what size paper it was on. (Tr. 158-160, 165-167) Tarpein herself threw the note away after showing it to Cline and Skahill. (Tr. 107)

Tarpein testified that Dziubla had never left her a note with instructions like this before, and although she acknowledged that the note did not have her name on it, she testified that Dziubla's girlfriend told her that Dziubla had left it for her. (Tr. 53) This is one area where the hearing officer questioned Tarpein's credibility or memory, because the former manager, Nathan Crocco, testified that Dziubla had left him "lots of notes." (Crocco Dep. 15) It is undisputed, however, that Dziubla told Tarpein to begin her maternity leave on the day after she found the note. But it is not clear that the note directed Tarpein personally to do the cleaning tasks listed, or to use the cleaning products Dziubla left.

The hearing officer concluded that Complainant had proved by a preponderance of the evidence that Dziubla forced her to begin maternity leave before she planned to do so and against her wishes, but did not prove that Dziubla fired her. The hearing officer found the crucial conversation between them on February 18, 2009, to be minimal and imprecise. She found that Dziubla's intent was clear with regard to requiring Tarpein to immediately begin her maternity leave, but unclear as to whether he was also telling her not to return to work after her maternity leave. For that reason, the hearing officer found that Tarpein had not met her burden of proof to establish that she was fired.

Tarpein in her objections to the hearing officer's recommendations urges the Commission to find that Respondents discharged her from her employment solely due to her pregnancy, and therefore she should receive back pay through December 2010, when she became re-employed.

The Commission cannot accept Complainant's argument that the evidence supports a finding that Dziubla fired Tarpein. Although Tarpein quotes Dziubla as saying "you're done here," the context of that statement must be examined. By Tarpein's own testimony, Dziubla opened the telephone conversation by saying, "[Y]ou know, Courtney, you can go ahead and start your maternity leave as of today." (Tr. 63) Tarpein testified that she objected and reminded Dziubla they had agreed she would work up to her due date of March 20. *Id.* Tarpein testified that Dziubla then repeated, "[Y]ou know what? Just take your maternity leave." (Tr. 64) Tarpein testified that she again protested that she could not take maternity leave and needed to come in and work her shift, to which Dziubla stated more strongly, "[Y]ou're not going to come in and work your shift." Tarpein testified that it was *she* who then responded, "[W]ell, Jimmy, that means you're firing me." *Id.*

When asked what Dziubla said next, Tarpein testified as follows:

> He said, basically call it, you know, what you will. I think you should just start your maternity leave today. And then I said, I can't afford that. By you not letting me come to work I'm going to have to claim unemployment. He said, you can go ahead and claim unemployment all you want. I'm going to deny it. I asked, why? *Id.*

After discussion of an objection, Tarpein continued her testimony as follows:

> So I asked, well, why? He said, because you can't do what I asked of you. I said, Jimmy, I have done everything you've asked of me, but I explained I would get you a doctor's note for this. I'm pregnant. I can't be performing these duties. And he said, it's not my fault you got pregnant. And then I was kind of taken aback and didn't even know what to say. The whole entire time trying to reason with him to come and let me in to work my shift. I was like, Jimmy, I'm on my way into the pub right now. When I show up are you going to let me work my shift? And he said no, you're done here. (Tr. 65-66)

This testimony does not demonstrate that Dziubla's intent was to fire Tarpein. It shows that it was Tarpein who tried to characterize what he said as firing her, although his quoted language shows only that he was insisting she begin her maternity leave. The ensuing conversation was only about whether she would be allowed to work her shift. Even when Tarpein mentioned that she would like to be able to claim unemployment compensation to support herself, according to Tarpein he maintained his stance and responded that he would oppose the claim.

This testimony *does* support the conclusion that Dziubla was acting on the basis of Tarpein's pregnancy and that he told her she could not do what he asked of her. Thus it supports the hearing officer's recommended liability finding based on forcing Tarpein to take an earlier maternity leave than she had arranged. It even supports an inference that Dziubla's cleaning request on the previous day was a pretext to try to establish that she could not do her job because of her pregnancy.

But this evidence does not require the Commission to reject the hearing officer's recommended finding that Dziubla did not intend to fire Tarpein nor did he actually fire her. From Tarpein's own testimony, it appears more likely that it was Tarpein who tried to put such words into his mouth. But forcing maternity leave is not tantamount to discharge. The Commission agrees with the hearing officer that Tarpein has proved only that she was forced to

take maternity leave and has not proved by a preponderance of the evidence that she was discharged.

Complainant in her objections asks the Commission to find that Dziublia forced her to take maternity leave as a pretext to discharge her, then secretly sold his company shares knowing he would be filing for bankruptcy and failed to list Complainant as a creditor in furtherance of this scheme to deprive Complainant of her rights. But the evidence, including Tarpein's own testimony described above, does not support such a speculative and convoluted theory of Dziubla's intentions.

Respondents for their part argue in their objections that the Commission should not find any liability because, in requiring Complainant to begin maternity leave, they acted out of concern for her health and safety. Respondents point to CCHR Reg. 365.120, a regulation regarding disability discrimination (which is not the discrimination basis alleged here).

Respondents incorrectly state the law when they assert that pregnancy itself is a disability. *Ilhardt v. Sara Lee Corp.*, CCHR No. 93-E-257 (July 22, 1994). Reg. 365.120 states that rejecting *a person with a disability* is proper "if the employer can show with objective evidence that employment of the person with the disability in the particular position would be demonstrably hazardous to the health or safety of that person or others, or that such employment would result in behavior or production below acceptable standards applied to all other employees." The regulation does not apply to this case.[2] Disabilities related to pregnancy are considered temporary disabilities and are not analyzed under the legal principles applicable to disability discrimination claims.

No similar Commission regulation is in place covering pregnancy, although in general an individual alleging employment discrimination involving loss of work must establish as one element of a *prima facie* case that he or she was meeting the reasonable expectations of the employer. *Walton v. Chicago Dept. of Streets and Sanitation*, CCHR No. 95-E-271 (May 17, 2000). This is not a high a high preliminary threshold for a complainant to meet. In response to a *prima facie* case, a respondent may proffer as a legitimate nondiscriminatory reason for its action is that the complainant could not satisfactorily perform the requirements of the job, to which the complainant then must respond with proof that the proffered reason was a pretext masking actual discriminatory intent. See, e.g., *Minor v. Habilitative Systems et al.*, CCHR No. 92-E-46 (Aug. 31, 1994).

Here, the Commission cannot accept Respondents' position that they were entitled to force Complainant to take maternity leave because either (1) she could not perform her job[3] or (2) there were legitimate concerns for her health and safety.[4]

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[2]Although there is evidence that Tarpein had complained about what she considered a directive to use harsh chemical cleaners, there is no evidence that she requested of Respondents any accommodation of a disability, and she is not alleging disability discrimination in this case. Indeed, an employer is not required to reasonably accommodate a pregnant worker as for a worker with a disability. However, under principles of pregnancy-related sex discrimination, an employer is required to extend the same privileges and benefits to pregnant workers regarding their pregnancy-related *temporary* disabilities that it offers to employees with other temporary disabilities.

[3] Respondents' argument that the Commission should apply the federal Pregnancy Act of 1978 is unavailing. This case is proceeding under the Chicago Human Rights Ordinance. The Commission does not enforce federal anti-discrimination laws and is not bound by their terms. See, e.g., *Evans v. Hamburger Hamlet et al.*, CCHR No. 93-E-177 (May 8, 1996); *Luna v. SLA Uno, Inc., et al.*, CCHR No. 02-PA-70 (Mar. 29, 2005).

Dzublia only speculated, after the fact, in his hearing testimony that Tarpein might have fallen on some stairs to the basement or might have had contractions any minute. She never had fallen, and Tarpein testified that she had no problem negotiating the stairs. Such stereotypes and assumptions about pregnancy are precisely what the Human Rights Ordinance is designed to address. See, e.g. *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000).

Also, Dzublia never cited Tarpein's health and safety (or that of the fetus) as a reason for his actions in his Response to the Complaint. The Response, filed April 7, 2009, consisted only of general denials and the statement, "Courtney is out on maternity leave and her job is waiting for her return to work." As the hearing officer noted, there was no testimony that Dziubla had previously spoken to her about any concern for her health and safety, written her up for poor performance, or requested a medical opinion on her ability to continue working or any restrictions due to her pregnancy. To the contrary, he had once tried to convince her to cancel an ultrasound appointment in order to come in and cover for a sick employee. These circumstances further undermine the credibility of Respondents' proffered health and safety defense.

Nor was there any evidence Complainant had created any previous shift coverage problems due to her pregnancy or for any other reason prior to February 12, 2009. While there was evidence that Complainant could not come in to cover the shift of the bartender who called in sick in late January 2009, Complainant had not been scheduled to work at that time and had an ultrasound appointment that day which she needed to keep. This was a legitimate reason to refuse the request, and there was no evidence that any employees were compelled to cover another employee's shift under such circumstances.

Bartender Vicki Flores testified that she had covered for Complainant during her pregnancy "a couple of times if she wasn't feeling good" in addition to the occasion on February 12, 2009, when Complainant became ill at work. (Tr. 230) This was in the context of Flores' overall testimony explaining that Complainant had covered for Flores "a couple of times" during Flores' own illness due to cancerous brain tumors, and Flores' description, consistent with that of other witnesses, of an informal coverage system such that, when an employee had to call off a scheduled shift, the employee was expected to look for another employee to cover but employees frequently said no in such situations, and sometimes Dziubla himself would then cover. (Tr. 221)

Dziubla's health and safety explanation first appeared in Respondents' Pre-Hearing Memorandum, filed February 10, 2011. At the hearing, Dzublia testified that "I was really concerned, and customers were voicing their concerns about her still being there." (Tr. 267) However, Dziubla did not name the customers and there was no evidence corroborating that any customer had spoken to Dziubla about Complainant's pregnancy. This vague assertion about customer complaints carries little if any weight.

The hearing officer correctly sustained Complainant's objection to admission of the opinion of bartender Raychelle Kroma about whether Complainant should have been working in the condition she was in. (Tr. 142) Nor is it material that Kroma may have suggested to Dziubla that he might need to prepare for Tarpein maternity leave. (Tr. 135) He must have realized that already: Tarpien had told him she planned to work up to the birth of her child, the date of a birth

[4] Moreover, even if principles such as those in Reg. 365.120 were to apply to this case, Respondent's evidence in no way met the high proof standard stated in that regulation.

cannot be precisely predicted, and Tarpein was in the late stages of her pregnancy and could give birth at any time.

Nor is retired policy officer Skahill's testimony that he was concerned about Tarpein relevant to whether Respondents were entitled to force her to take maternity leave. Respondents may not justify discrimination based on stereotypical assumptions or the feelings of customers or co-workers. See CCHR Reg. 305.110, especially subsections (a), (c), and (f).

This situation is similar to that in *Martin v. Glen Scott Multi-Media, supra,* in which the Commission held that a complainant established a *prima facie* case of pregnancy-related sex discrimination where she was discharged for being absent two days after telling her employer she was pregnant, and on one of the two days went to a hospital emergency room because of back pain due to the pregnancy.

It is undisputed that Complainant was experiencing a high risk pregnancy requiring frequent ultrasound examinations, and that on February 12, 2009, a day when she came in early to cover for another employee who was unable to work, Complainant became ill at work due to complications of the pregnancy, had to leave but did so only after making arrangements for coverage, and was kept in the hospital overnight for treatment.

The evidence shows that the next day Complainant was scheduled to work was February 17, 2009. She worked that day and found the note listing cleaning to be done. She was also prepared to work the following day, February 18, 2009, when before arriving to work, Complainant received the telephone call from Dziubla telling her to start her maternity leave.

The evidence does not support a finding that Tarpein was unable to meet the reasonable expectations of her job as a manager and bartender. There was considerable evidence that Tarpein, like other managers, had never been specifically required to perform heavy cleaning tasks as part of her job. Nathan Crocco, for example, testified that when he was a manager under Dziubla, his only cleaning duties were to wash the bar glasses and wipe down the bar, and that although Dziubla left him a lot of notes, they were usually just for general information. (Finding of Fact 5)

Crocco's testimony was corroborated by former manager Carolina Mondragon, who listed her duties as a manager as follows: "Scheduling. The specials. Getting the payroll to Jimmy. Collections. Everyday receipts. And making sure that money went to the bank from the credit cards." (Tr. 187) She testified that her cleaning duties were, "Cleaned everything. The mirrors. The tables. The beer tappers. The beer towers. I would clean the beer coolers. Empty them out. I cleaned everything." (Tr. 188-189) She cleaned the beer towers once a week with Brasso. (Tr. 189) Regarding who brought beer up from the basement to stock the beer coolers, she testified the work was done "[b]etween me or Vicki [Flores, a bartender]. And the only time Lauro [a cook] would help us would be like on a Friday because the kitchen was open a little bit later on a Friday....So Vicki and I, whoever closed the night would have to stock the beer coolers at night." (Tr. 191) Mondragon also testified that she stacked chairs on top of tables but the cooks mopped floors and took out garbage. But although she performed these tasks herself, she confirmed that as a manager she had authority over the cooks and bartenders and could delegate tasks to them. (Tr. 193-195) Finally, Mondragon testified that there was only one time during Tarpein's pregnancy when she saw Tarpein sitting on a bar stool behind the bar: "That was the only time. It was very brief." (Tr. 195)

Vicki Flores testified that she was a bartender but never a manager. (Tr. 204) She described her duties as follows: "Bartender. Stock beer. Clean—your basic cleaning of the glasses, putting them away. Making sure the bar is wiped down. The tables are wiped down. Just your basic everyday, make sure the bottles are clean, the tappers are clean. Whatever needed to be done, that was our duties. Cleaning the brass. Whatever." (Tr. 205) She cleaned the tappers with Brasso twice a month. (Tr. 205) She stocked beer coolers by carrying beer upstairs from the basement. (Tr. 207) She cleaned mirrors and was provided a squeegee by Dziublia because she is short. (Tr. 208-209) The cooks swept and mopped floors, took out garbage, and cleaned the bathrooms. (Tr. 212) Flores had worked shifts with Tarpein but did not recall seeing her clean the brass beer towers, although occasionally she would see her wipe down mirrors, stock beer, and wipe down the bar. (Tr. 209).

Regarding her absence due to her own illness, Flores explained that she was off work for three weeks or more in February 2009. Dziubla asked her when she would be able to come back and she responded she would return as soon as the doctor let her. He apparently accepted that explanation and she returned to work when able to do so. (Tr. 229-230) This evidence shows that, for this non-pregnant employee with a temporary disability, Dziubla was flexible about her attendance and leave, let her return to work when ready, and never discharged her or forced her to take leave despite a significant illness and period of absence.

This and other testimony reflected in the hearing transcript describe a workplace administered informally, with employees working cooperatively to get the job done, usually at their own initiative and under few formal rules. Dziubla largely absented himself from day-to-day operations. This evidence does not show that Tarpein was strictly required to perform particular cleaning or other physically strenuous tasks. She had authority to delegate such tasks to a cook or bartender on duty. Duties specific to her as a manager were administrative in nature, and there is no evidence she was not performing them. Regular bartender duties including their cleaning responsibilities were not physically strenuous.

Thus the evidence brought out in the hearing supports a determination that Tarpein was meeting the reasonable expectations of her employer during her pregnancy. To the extent that Dziubla may have determined that she could not perform her job or that she was jeopardizing her health and safety, the Commission finds these views to be based on stereotypical assumptions and speculation not supported by the evidence in this case.

The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

The Commission finds that the hearing officer's findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions are consistent with applicable law. Complainant has proved that Respondents violated the Chicago Human Rights Ordinance by forcing her to take maternity leave before she was ready to do so, but has not proved that she was discharged.

V. REMEDIES

Under Section 2-120-510(l) of the Chicago Municipal Code, the Commission may award a prevailing complainant in an employment discrimination case the following forms of relief:

> 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 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 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 back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed....

A. Lost Wages (Back Pay)

Complainant has established that she is entitled to damages for lost wages, also known as back pay, for the period of imposed maternity leave, specifically from February 18, 2009, until the birth of her baby on March 24, 2009, as established by Tarpein's and Dziubla's testimony.

In her Pre-Hearing Memorandum, Tarpien listed damages including $21,000 per year of lost wages for two years. There was nothing placed in evidence support that figure, which amounts to $1,750 per month. The hearing officer determined that the testimony established that Tarpein worked four shifts per week and earned $10 per hour, or approximately $320 per week, and that the imposed maternity leave was for approximately five weeks. The hearing officer thus recommended $1,600 as damages for lost wages.

Tarpein argues in her objections that back pay should be calculated at $400-$450 per week rather than $320 per week, and should account for tips. Complainant provides no precise calculation of her own in her objections, however. Nor do her objections provide citations to the transcript or exhibits on this issue to assist the Commission in evaluating the evidence of Complainant's earnings.

The Commission has long held that a complainant may recover damages for out-of-pocket losses even without written documentation of such damages as long as the complainant can testify to the amount of damages with certainty. *Horn v. A-Aero 24 Hour Locksmith Service et al*, CCHR No. 99-PA-032 (July 19, 2000); *Williams v. O'Neal*, CCHR No. 96-H-73 (June 8, 1997); *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996); *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995); *Khoshaba v. Kontalonis*, CCHR No. 92-H-171 (Mar. 16, 1994). The Commission has also held that while complainants may not need to provide precise calculations of damages, speculative or remote damages are not awarded. *Griffiths, supra.*

Tarpein's testimony did not provide much specificity about her actual earnings. She testified at the hearing that she worked on Tuesday, Wednesday, and Thursday night, Friday from 10:00 a.m. until 9:00-10:00 p.m., and some Saturdays from 7:00 or 8:00, presumably in the evening, at pay of $10 per hour, and estimating she worked "about" 45 hours per week. (Tr. 38-39) The Commission was unable to find any evidentiary basis in the transcript to estimate the

amount of tips she received. Dziubla acknowledged under cross-examination that Tarpein was being paid $10 per hour plus tips. (Tr. 328) He did not admit, however, that she worked even 40 hours per week. Complainant's attorney began asking Dziubla to qualify an Employer's Contribution and Wage Report for introduction into evidence. However, the hearing officer disallowed the exhibit because it had not been tendered with Complainant's Pre-Hearing Memorandum, as required by CCHR Reg. 240.130(a)(2) and the Standing Order on Administrative Hearings and Pre-Hearing Procedures. The hearing officer also disallowed Dziubla's oral testimony on the content of the exhibit. (Tr. 329-331)

On this thin evidence, the hearing officer based her findings as to lost wages on a 32-hour work week (four eight-hour shifts) at $10 per hour. In light of the vague and disputed testimony between Tarpein and Dziubla as to the length of her work week, and the lack of documentary evidence to assist in deciding the issue, the hearing officer's determination that Tarpein is more likely than not to have worked four eight-hour shifts per week on average is reasonable. The hearing officer also reasonably calculated the period of Tarpein's entitlement to back pay as February 18, 2009, (the day she was forced into maternity leave) to March 24, 2009 (the actual birth of her child). This adds four days to what Tarpein testified was her agreed maternity leave commencement date, namely her due date of March 20. (Tr. 63). This period encompasses a total of five full work weeks as Tarpein described her work week (Tuesday through Friday or sometimes Saturday) in her testimony.

Complainant's argument that she should be credited with six weeks based on the federal "Family Medical Leave Act" is unavailing. The Commission is not enforcing any federal statute nor is the Commission governed by it. The Commission enforces only the Chicago Human Rights Ordinance (and Fair Housing Ordinance). Even if another law would have entitled Complainant to a six week maternity leave (which was not established in the objections by any citations from Complainant's counsel and which is unlikely based on the small number of employees of this business), that has no bearing on the calculation of economic losses in this case.

Accordingly, the Commission finds reasonable and adopts the hearing officer's calculation of lost wages—a total of $1,600 for the five-week period during which Complainant was forced to take maternity leave, based on a 32-hour work week at $10 per hour.

B. Emotional Distress Damages

In other cases, the Commission has awarded emotional distress damages to prevailing complainants when they have proved that they suffered emotional distress as a result of unlawful discrimination. See, e.g., *Pudelek and Weinmann v. Bridgeview Garden Condouminium Association et al.*, CCHR No. 99-H-39/52 (Apr. 18, 2001): *Collins and Ali v. Magdenowski*, CCHR No. 91-FHO-70-5655 (Sept. 16, 1992).

In this case, no request for an emotional distress damages award was submitted by Complainant in her Pre-Hearing Memorandum. At the hearing, her attorney made an oral motion to add a claim for emotional distress damages in an amount "as the Commission sees fit," acknowledging that such a request was not listed "*per se*" in the Pre-Hearing Memorandum. (Tr. 181) Complainant did not provide any evidence to support a finding of good cause for failure to itemize in her Pre-Hearing Memorandum the amount of emotional distress damages being sought or even to give notice that such damages were being sought in an unspecified amount.

Respondents' attorney objected, noting that the request was not in writing and should have been included in the Pre-Hearing Memorandum. *Id.* The hearing officer initially deferred her ruling but ultimately denied Complainant's motion and recommended no award of emotional distress damages. Complainant did not object to this recommendation or request review of the hearing officer's interlocutory ruling.

CCHR Reg. 240.130 specifies the content of a pre-hearing memorandum and the penalties if information is missing or incomplete. It includes "an itemization of the nature and amount of damages sought." CCHR Reg. 240.130(a)(3). The Commission's Standing Order on Administrative Hearings and Pre-Hearing Procedures includes a detailed section on the pre-hearing memorandum, explaining that each party is required to submit one and that required content includes "from the complainant, an itemized statement of the nature and amount of damages being sought." The Commission's optional pre-hearing memorandum form, provided in the same mailing, includes a specific line for listing the amount of emotional distress damages sought.

The hearing officer was authorized to refuse to allow Complainant to prove emotional distress damages at the hearing in the absence of adequate pre-hearing itemization of the amount sought, especially in light of Respondents' objection to the lack of notice (and resulting lack of opportunity to prepare to meet evidence of emotional distress). Although Complainant requested total damages of $63,000, her itemization listed only lost wages, child care expenses, college tuition, and attorney fees. Emotional distress damages are compensatory, and it is a complainant's responsibility to provide pre-hearing notice and proof of such damages at the hearing stage of a case.

C. Punitive Damages

With regard to punitive damages, the Commission regards itself as having more discretion to decide whether such a damages award is appropriate to the case and to determine the amount. The Commission considers punitive damages to be appropriate when a respondent's action is shown to be a product of evil motive 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. In determining the amount of punitive damages, consideration should be given to the "size and profitability" of a respondent if that is known. *Soria v. Kern*, CCHR No. 95-H-13 (July 18, 1996), quoting *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 22, 1993).

The hearing officer noted that evidence was presented of Dziubla's personal Chapter 7 bankruptcy and of the sale of the Polk Street Pub business. Although the hearing officer found that Respondents did not display evil motive or intent, she determined that Dziubla's actions in forcing Complainant to take maternity leave against her wishes indicated a total disregard for her protected rights. Citing Dziubla's bankruptcy and sale of the business, the hearing officer recommended punitive damages in the amount of $200.

Complainant argues in her objections that additional punitive damages should be imposed based on Dzublia's reckless and callous indifference toward Complainant's rights. On this point, the Commission agrees with Complainant that the recommended amount of punitive damages is

much too low to accomplish the purposes of punitive damages, although for somewhat different reasons than Complainant argued.[5]

As the Commission has long noted, the purposes of punitive damages are deterrence and punishment. *Akangbe v. 1428 W. Fargo Condominium Assn.* 91-FHO-7-5595 (Mar. 25, 1992), and numerous succeeding decisions. Punitive damages in employment discrimination cases "send a message to Respondents and the public that certain conduct will not be tolerated in the workplace." *McCall v. Cook County Sheriff's Office et al.*, CCHR No. 92-E-122 (Dec. 21, 1994). Punitive damages can be especially important where the actual damages are low. *Horn, supra; Rogers and Slomba v. Diaz*, CCHR No. 01-H-33/34 (Apr. 17, 2002).

Although Dziubla sold his shares in the Polk Street Company and personally filed for bankruptcy, he appears to have operated several businesses and there is no information about the actual state of his personal income and assets. In forcing Complainant to take maternity leave without good cause and against her wishes, Respondents violated longstanding provisions prohibiting pregnancy-related discrimination under the Chicago Human Rights Ordinance, which parallel similar longstanding prohibitions under state and federal discrimination laws. As the operator of not one but several businesses, Dziubla should have been aware of, and taken seriously, his responsibilities not to discriminate against a female employee because of her pregnancy. He knew his action would deprive Complainant of her modest earnings and create financial distress. Yet he acted in reckless disregard of Complainant's longstanding protected rights. To punish and deter this and similar future conduct, the Commission finds that it is appropriate to order Respondents to pay punitive damages in an amount three times the relatively low compensatory damages, that is, $4,800.

D. Interest on Damages

Section 2-120-510 (1), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance. Pursuant to CCHR Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of the violation and compounded annually from the date of violation. In this case, the Commission orders payment of such interest from the date of violation on February 18, 2009.

E. Fine

Pursuant to Section 2-160-120 of the Chicago Municipal Code, the Commission must impose a fine between $100 and $500 if a respondent is found to have violated the Chicago Human Rights Ordinance. The hearing officer recommended a fine of $100, noting that there was no evidence of prior discriminatory conduct by Respondents, that the pub had been sold, and that Dziubla had obtained personal bankruptcy relief.

The Commission finds no basis to order only a minimal fine in light of its finding, as recommended by the hearing officer, that Respondents acted in reckless disregard of Complainant's protected rights. Accordingly, the Commission imposes the maximum fine of $500, which is still a modest amount for this violation.

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[5] Specifically, the Commission is not basing punitive damages on any finding concerning Dziubla's motives in selling his shares in the company or failing to list Complainant as a creditor in his bankruptcy filing.

F. Attorney Fees

Section 2-120-510(l) of the Chicago Municipal Code allows the Commission to order a respondent to pay 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. See, e.g., *Godard v. McConnell,* CCHR No. 97-H-64 (Jan. 17, 2001), and *Jenkins v. Artists' Restaurant,* CCHR No. 90-PA-14 (Aug. 14, 1991). The Commission adopts the hearing officer's recommendation and awards Complainant reasonable attorney fees and costs.

Pursuant to Commission Regulation 240.630, Complainant may serve and file a petition for attorney's fees and/or costs, supported by arguments and affidavits, no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work;

2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought;

Documentation of costs for which reimbursement is sought.

VII. CONCLUSION

The Commission finds Respondents Polk Street Company and James Dziubla liable for pregnancy-related sex discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief, all of which shall be the responsibility of Respondents jointly and severally:

1. Payment to the City of Chicago of a fine of $500;

2. Payment to Complainant of back pay in the amount of $1,600 and punitive damages of $4,800, for total damages of $6,400;

3. Payment of interest on the foregoing damages from the date of violation on February 18, 2009;

4. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: October 19, 2011