City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, Suite 400, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Victoria Jones
Complainant,
v.

Lagniappe – A Creole Cajun Joynt, LLC, and
Mary Madison
Respondents.

Case No.: 10-E-40

Date of Ruling: December 19, 2012
Date Mailed: December 21, 2012

TO:
Matthew J. Monahan
Legal Assistance Foundation (LAF)
120 S. LaSalle St., Suite 900
Chicago, IL 60603

Mary Madison
Lagniappe – A Creole Cajun Joynt, LLC
1525 W. 79th St.
Chicago, IL 60620

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on December 19, 2012, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondents 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 Respondents as follows: [1]

1. Respondents jointly and severally to pay to Complainant compensatory and punitive damages in the total amount of $19,550, plus interest on that amount from May 1, 2010, in accordance with Commission Regulation 240.700.

2. Each Respondent to pay a fine to the City of Chicago in the amount of $500, for a total of $1,000 in fines.

3. Respondents jointly and severally to comply with the order of injunctive relief detailed in

[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. **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.

the ruling.

4. Respondents jointly and severally to pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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 **January 25, 2013.**[2] Any response to such petition must be filed and served on or before **February 8, 2013**. 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

[2] The Commission is allowing an additional week beyond the Regulation timetable in light of the holiday period.

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FINAL RULING ON LIABILITY AND RELIEF

I. BACKGROUND

On May 18, 2010, Victoria Jones filed a Complaint against Lagniappe - A Creole Cajun Joynt ("Lagniappe") and Mary Madison with the City of Chicago Commission on Human Relations, alleging that she had been subjected to discrimination and constructively discharged on the basis of her race and her sex. After an investigation, on August 25, 2011, the Commission issued an Order Finding Substantial Evidence only with respect to the claim of sex discrimination. The Commission found No Substantial Evidence concerning Complainant's allegations of race discrimination and dismissed that claim.

Pre-hearing conferences were held on October 5, 2011, October 25, 2011, December 20, 2011, March 20, 2012, and May 15, 2012. All parties were present and/or represented by counsel for all meetings, except that Madison did not appear on December 20, 2011, nor did anyone appear for Lagniappe. The administrative hearing was held on July 17, 2012. The parties filed post-hearing briefs on September 9, 2012. Each filed a response to the other's post-hearing brief on September 28, 2012.

The hearing officer issued her Recommended Decision on Liability and Damages on October 31, 2012. On November 23, 2012, Complainant filed Complainant's Motion to Correct Recommended Decision on Liability and Damages, which has been treated as an objection to the Recommended Decision. Respondents did not file any objections.

II. FINDINGS OF FACT

A. The Parties

Victoria Jones

1. Victoria Jones participated in a job training program called Englewood Family Works, administered for the Chicago Housing Authority ("CHA") by Heartland Human Care Services ("Heartland"). (Tr. 12-16; CX - A, B, and C.) [1]

[1] Respondents' Exhibits are referenced as "RX____"; Complainant's Exhibits are referenced as "CX____"; and Findings of Fact are referenced as "FOF____." The transcript of proceedings is referenced as ("Tr____").

2. Prior to completing the Englewood Family Works program, Jones worked as a hairstylist in her home. (Tr. 17-19)

3. Typically, Jones earned $300-$400 per week as a hairstylist. There were some weeks she earned $200-$300 per week. (Tr. 20)

4. Jones was assigned to work at the Lagniappe restaurant located at 1525 W. 79th Street after she completed the Englewood Family Works program. (Tr. 20-23, 107-109)

5. Madison interviewed Jones on April 12, 2010. (Tr. 23-24)

6. During the interview Madison asked Jones to open her mouth so Madison could see Jones' teeth. Madison told Jones that she could not work at the front counter without a pretty set of teeth. (Tr. 23-24)

7. Jones began to work as a full-time server and cashier at Lagniappe, earning ten dollars ($10) per hour, on April 13, 2010. (Tr. 24-25) Jones worked forty (40) hours each week. (Tr. 25)

8. On Jones' first day of work, at approximately 9:30 p.m. after other employees left for the day, Madison asked Jones to stay late to wash dishes. (Tr. 25-26)

9. Madison asked Jones for some chewing gum. (Tr. 27)

10. After Jones gave Madison the gum and turned away to leave, Madison kissed Jones on the cheek. (Tr. 27)

11. Jones walked away and did not say anything to Madison. (Tr. 27)

12. Jones came back to work the next day. Jones testified that she returned to work because she needed the job. (Tr. 28)

13. On April 20, 2010, Jones asked her co-worker for a piece of chewing gum. (Tr. 32)

14. Madison heard this request, looked at Jones and called to her, "Victoria I got some," and then stuck out her tongue at Jones, "rotated" and "wiggled" her mouth and tongue, simulating oral sex. (Tr. 32)

15. Later that day Madison rubbed the front of her body against the side of Jones' thigh for a couple of seconds. (Tr. 33) Madison could have passed Jones without rubbing against her. (Tr. 132-134)

16. In response, Jones commented to Madison, "[B]itch, you almost made me forget where I was." Madison responded, "[Y]ou might be stupid but you ain't crazy." (Tr. 33, 105)

17. Jones felt violated by the incident. (Tr. 34)

18. Jones was embarrassed because the incident occurred in front of other employees. (Tr. 48)

19. Madison then assigned Jones to scrub baseboards and clean the bottom of a cabinet for two hours. These were tasks to which Jones had not been assigned previously. (Tr. 34-36)

20. On April 25, 2010, Jones reported to work at 9:00 a.m. as scheduled. (Tr. 39).

21. When Jones arrived, Madison answered the door with her bra exposed and her shirt unfastened completely. (Tr. 39-40)

22. Jones called Jasmine, a co-worker who was on her way to work, to tell her that Madison was standing at the door with her shirt unfastened. (Tr. 40)

23. When Jasmine arrived, Madison fastened her shirt. (Tr. 40)

24. Jasmine quit the next day. (Tr. 40-41)[2]

25. On May 1, 2010, Madison told Jones that she was going to have a surprise party for Corrine Parker, who was an employee of Lagniappe. (Tr. 42)

26. Madison gave Jones money to go to the store to purchase cake, ice cream, and balloons for the party. (Tr. 42)

27. Madison told Jones to call her when she was on the way back from the store in order for Madison to get Parker out of the room so that she would not see the items Madison had purchased. (Tr. 43)

28. Jones returned to Lagniappe with a cake, balloons, and ice cream. (Tr. 44)

29. Jones took the cake and balloons upstairs and then came downstairs to put the ice cream in the freezer. (Tr. 44)

30. After Jones put the ice cream in the freezer, Madison stood behind her. (Tr. 44)

31. When Jones turned around, Madison grabbed Jones' wrists and kissed her on her lips. (Tr. 44)

32. Jones was disgusted and angry. (Tr. 44)

33. Jones decided that she could not take the sexual advances any more. (Tr. 45)

34. Jones did not work for Lagniappe thereafter. Her last day of work for Respondents was May 1, 2010. (Tr. 44-45)

35. Jones believed Madison was aiming for sex because, among other things, Madison (a) opened the door upon Jones' arrival to work with her shirt unfastened; (b) licked her tongue out; (c) kissed or attempted to kiss Jones more than once; (d) asked her to open her mouth, among other things, to see her teeth; and (e) rubbed against Jones.

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[2] Jones did not contact Jasmine for the hearing because she did not stay in touch with her or have her contact information.

36. Jones' testimony was credible.

Mary Madison and Lagniappe - A Creole Cajun Joynt, LLC

37. Madison is one of the owners of Lagniappe and owns a majority of Lagniappe LLC, which owns and controls Lagniappe. (Tr. 105-106)

38. There are two other managing members in the LLC. (Tr. 105-106)

39. Lagniappe participated in the "Put Illinois To Work" program. (Tr. 107-109)

40. Madison was Jones' boss. (Tr. 23)

41. Lagniappe the Restaurant is a dine-in/take-out facility and, at the times in question, had two locations in the metropolitan Chicagoland area.[3] (CX-L)

42. The original restaurant is located at 1525 W. 79th Street. The second location opened in 2008 at 55 W. Riverwalk. (CX-L)

43. Lagniappe - A Creole Cajun Joynt specializes in, among other things, a combination of convenient hot or cold entrees, sandwiches and salads focusing on French and Creole/Cajun cuisine. (CX-L)

44. Lagniappe - A Creole Cajun Joynt, LLC also operates a full service company that provides consulting services and/or services for any event or venue. (CX-L)

45. Madison typically did not work on Tuesdays. (Tr. 116)

46. Madison worked on Tuesday, April 13, 2010. (Tr. 116)

47. Madison, during her testimony, did not specifically deny that she rubbed up against Jones with the front of her body on April 20, 2010. (Tr. 105-124)

48. Madison's conduct was sexually offensive.

49. Madison alleges that April 20, 2010, was her day off and she was not physically in the Lagniappe building at that time. (Tr. 117)

50. Madison failed to prove that she was not at Lagniappe on April 20, 2010.

51. Madison did not present any evidence of Lagniappe having a policy against sexual harassment.

52. Madison, during her testimony, did not specifically deny that she came to the door with her blouse open and her bra exposed. (Tr. 105-124)

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[3] Some findings of fact have been changed to past tense in this Final Ruling, to clarify that they are based on evidence received through the date of the administrative hearing and may or may not reflect the facts as of the ruling date.

53. In response to the allegation that she greeted Jones at the door with her shirt open, Madison did not deny that the incident occurred but only argued that it could not have happened at the front door as Jones stated because they only use the side door. (Tr. 117)

54. Jones and Madison were referring to the same door.

55. Madison did not, during her testimony, deny that she asked Jones to open her mouth so she could see her teeth. (Tr. 105-124)

56. Madison did not, during her testimony, specifically deny that she kissed Jones on two occasions. (Tr. 105-124)

57. Madison did not, during her testimony, specifically deny that she stuck out, wiggled, and rotated her tongue at Jones. (Tr. 105-124)

58. During her closing statement, Madison stated that she has "at no point, at no time . . . made any sexual advances, innuendoes, to Jones or any other employee." (Tr. 172)

59. Generally, Madison denied the timing and location of the incidents but did not deny the incidents occurred.

60. Madison's testimony was not credible.

B. Respondents' Witnesses

Sandra Washington

61. Washington had worked for Respondents for approximately five years and was Lagniappe's business manager. (Tr. 127)

62. Washington also did whatever was needed at Lagniappe, including being a waitress, cashiering, managing, scrubbing, and cleaning. (Tr. 127)

63. Washington began her employment with Respondents as a temporary worker at Taste of Chicago and then became the business manager. (Tr. 127)

64. Washington confirmed that there was room for Madison to walk past Jones without touching her in the area where Madison brushed by Jones and touched Jones' leg with the front of her body. (Tr. 132-34)

65. Washington did not see Madison engage in any inappropriate sexual conduct. (Tr. 141-143)

66. Washington's testimony was credible.

Edwin Walker

67. In response to the hearing officer's question regarding whether his work for Lagniappe was full time, Walker answered "full-time part-time." (Tr. 161-162)

68. Walker was Lagniappe's Operations Manager, the Lean Six Sigma Improvement Manager, and the Blue Ocean Implementation Strategy Manager. (Tr. 60)

69. Walker began working for Lagniappe as a consultant in 2009. (Tr. 160-161)

70. He consulted in multiple roles, depending on business needs. (Tr. 161)

71. While he was consulting for Lagniappe, Walker worked for Greyhound. (Tr. 161)

72. Walker claims that in 2010 he worked for Lagniappe 60 hours per week and also worked for Greyhound between eight to ten hours each day. (Tr. 162)

73. Walker claims he was hired as a foreman, but was more like a consultant. (Tr. 162)

74. Walker had a romantic relationship with Madison. (Tr. 169)

75. Walker's testimony was not credible.

III. CONCLUSIONS OF LAW

1. The City of Chicago Commission on Human Relations has proper jurisdiction over the parties and the subject matter of the Complaint.

2. This is a discrimination case based on sex in which Jones claims she was constructively discharged because of sexual harassment by Madison.

3. Jones was subjected to sexual harassment while working at Lagniappe in violation of the Chicago Human Rights Ordinance ("Ordinance"), specifically Section 2-160-040 of the Chicago Municipal Code, which provides that "it is unlawful to discriminate against an individual because of the individual's ...sex."

4. Madison's conduct created a sexually offensive hostile work environment.

5. Jones was constructively discharged.

6. Jones is a "person" pursuant to Chapter 2-160-030 of the Ordinance and is subject to its provisions.

7. Madison is a "person" pursuant to Chapter 2-160-030 of the Ordinance and is subject to its provisions.

8. Lagniappe - A Creole Cajun Joynt, LLC, is a "person" pursuant to Chapter 2-160-030 of the Ordinance and is subject to its provisions.

9. Madison is personally liable for her discriminatory conduct.

10. Lagniappe – A Creole Cajun Joynt, LLC, is vicariously liable for the discriminatory conduct of Madison because she was Jones' supervisor and the majority owner of Lagniappe.

IV. ANALYSIS

A. Credibility

The direct contradiction between Jones' claims and Madison's testimony requires a judgment concerning the credibility of witnesses. It is well established that the hearing officer and the Board of Commissioners must determine the credibility of witnesses, choose among conflicting factual inferences, and weigh the evidence. See, *e.g., Johnson v. Anthony Gowder Designs, Inc.*, CCHR No. 05-E-17 (June 16, 2010); *Ramirez v. Mexicana Airlines et al.*, CCHR No. 04-E-159 (March 17, 2010); *Guy v. First Chicago Futures*, CCHR No. 97-E-92 (Nov. 17, 2004); *Bray v. Sandpiper Too, Inc. et al.*, CCHR No. 94-E-43 (Jan. 19, 1996). Moreover, the Commission can disregard the testimony of any witness if it is determined that the witness was not telling the truth. *Johnson, supra* at 12, *Ramirez, supra* at 13, *Guy, supra* at 8, *Bray, supra* at 4.

Based on the above authority and review of all of the evidence presented in this case, the hearing officer found that Jones was a credible witness. (FOF 36) The hearing officer found that Jones' description of the sexual harassment by Madison was credible (FOF 16); and in addition, Jones' description of her reactions to Madison's action was credible. Notwithstanding a thorough cross-examination by Madison, Jones did not waiver regarding the conduct she had been subjected to by Madison. (Tr. 51-105)

The hearing officer found that Madison was not credible. (FOF 60) The decision regarding Madison's credibility was based on several considerations. First, Madison gave inconsistent testimony. For example, Madison initially denied being the owner of Lagniappe. (Tr. 105) Later, she admitted that she was a managing member (with two others) of Lagniappe LLC, which she called "an entity unto itself." (Tr. 106) Madison finally admitted that she was the majority owner of Lagniappe. (Tr. 106)

Madison's conduct throughout the hearing process was another factor in the hearing officer's recommendation regarding her credibility. Specifically, during the discovery process, Madison failed, on multiple occasions, to comply with the hearing officer's orders. Initially Madison stated that she was not receiving the orders. On a few occasions, mail was returned to the hearing officer indicating that Respondents were no longer at the address and had not left a forwarding address. Madison blamed the problem on the United States Postal Service. Even after the hearing officer admonished Madison to correct the situation and told her that if she was having trouble with mail delivery, it was her responsibility to provide a reliable address to the Commission or to regularly contact the hearing officer to ensure that she was meeting deadlines, Madison failed to do so. As a result, Madison failed to comply with several deadlines and failed to appear for at least one pre-hearing conference.

Also, Madison repeatedly asked for time to retain an attorney. During one pre-hearing conference, according to the hearing officer, she gave the name and contact information of the attorney who she said had agreed to represent her. The hearing officer issued an order on June 1, 2012, ordering Madison to have her attorney file an appearance by June 26, 2012. The hearing officer stated that no one ever filed an appearance on Respondents' behalf and that Madison intentionally misled the hearing officer regarding the retention of an attorney. This is not precisely what happened, although . The record reflects that the Commission received a belated appearance from Attorney Jordan T. Hoffman on July 17, 2012, with a certificate of service indicating that it was mailed to the Commission, the hearing officer, and Complainant's attorney

on July 2, 2012. Nevertheless, this attorney did not appear at the administrative hearing held on July 17. The hearing officer reported on the hearing record that she had spoken with Respondents' attorney that morning, at which time he stated he was not aware that at an administrative hearing was scheduled, to which the hearing officer responded that the hearing would proceed as scheduled regardless of whether anyone was present on Respondents' behalf. (Tr. 5-9)

Finally, Madison's conduct on July 17, 2012, at the administrative hearing, further supported the hearing officer's finding that Madison is not credible. Despite the fact that the hearing officer contacted Madison and delayed the start of the hearing, Madison arrived after the hearing began. In addition, Madison did not indicate, during either the discovery process nor during the hearing, that she would be presenting Walker as a witness on her behalf. Instead she engaged in filibuster tactics as she cross-examined Jones and as she presented other witness testimony. Eventually Walker, who had not been present, came into the hearing room. Madison immediately ended her witness examination and called Walker as her next witness. (Tr. 154-155) Rather than inform the hearing officer that a witness was on the way to the hearing, Madison elected to stall and prolong the process.

Also, during the administrative hearing and over the objection of Complainant, Respondent Madison presented documents which she wanted the hearing officer to consider as evidence. (Respondents' Group Exhibit 2) The documents included, among other things, summaries of time which Madison created to submit to the investigator during the investigation of the Complaint. (Tr. 121) Madison was attempting to use the summary to prove that she was not at Lagniappe on April 20, 2010. (Tr. 121) The summary was compiled from e-mails and had not been maintained contemporaneously. (Tr. 121) Therefore, the documents do not have any probative value. Moreover, these documents were not exchanged with Complainant during the discovery process. Although Madison alleges she sent the documents to Complainant's counsel, they were addressed to "Mathew Mahee" and not Mathew Monahan at 120 South LaSalle, without Suite 900. In addition, she did not include the city, state, or full zip code. Instead she wrote "City, 606." (Tr. 122) This is another example of Madison's disregard for the administrative hearing process. Consequently, Respondents' Group Exhibit 2 was disregarded in its entirety by the hearing officer.

Madison's tactics, along with her conduct throughout the hearing process, contributed to the finding that Madison is not credible. Therefore, the majority of Madison's testimony and Respondents' Exhibit 2 were disregarded by the hearing officer.

In weighing evidence and making findings of fact, a hearing officer must determine the credibility of witnesses. *Poole v Perry & Associates,* CCHR No. 02-E-161 (Feb. 15, 2006); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002). 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, supra*; 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).

Applying these standards, the Commission finds that the recommended findings of fact of the hearing officer, including her credibility determinations, are fully supported by the evidence received at the administrative hearing. Therefore, the Commission adopts them without modification.

B. Sexual Harassment and Constructive Discharge

Section 2-160-040 of the Chicago Human Rights Ordinance makes it unlawful for an employer to engage in sexual harassment. Sexual harassment includes "conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment." Chicago Muni. Code §2-160-020(m). To determine whether alleged conduct constitutes sexual harassment, the Commission takes a "totality of the circumstances" approach and reviews the nature of the alleged sexual advances, conduct, or statements and the context in which the alleged incidents occurred from the perspective of a reasonable woman. CCHR Reg. 340.100; *Williams v. RCJ Inc. et al.*, CCHR No. 10-E-91 (Oct. 19, 2011); *Harper v. Cambridge Systematics, Inc.*, CCHR No. 04-E-86 (Feb. 17, 2010).

To establish a *prima facie* case here, Jones must show that (1) she was subjected to unwelcome conduct of a sexual nature; and (2) the conduct was severe or pervasive enough to render her working environment intimidating, hostile, or offensive. *Shores, supra*, citing *Barnes v. Page*, CCHR No. 92-E-1 (Sept. 23, 1993). Jones' burden is to establish, by a preponderance of the evidence, that sufficient facts exist to support an inference of harassment in the absence of a credible, non-discriminatory explanation for the respondent's actions. *Harper, supra*, citing *Bell v. 7-Eleven Convenience Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999). To prevail on a claim of constructive discharge, Jones must prove that work conditions were sufficiently intolerable due to sexual harassment to have caused a reasonable person to have felt compelled to resign. *Adams v. Chicago Fire Department*, CCHR No. 92-E-72 (Sept. 20, 1995).

Jones has met her burden of proof and established a *prima facie* case of both sexual harassment and constructive discharge. Jones credibly testified that she worked for Respondents Lagniappe and Madison from April 13 to May 1, 2010. (FOFs 17 and 34) During that brief time, Madison, on multiple occasions, engaged in sexually offensive conduct. (FOF 35) During Jones' initial interview, Madison asked her to open her mouth so she could see her teeth. (FOF 6) On Jones' first day of work, Madison kissed Jones on the cheek as she was turning to walk away from Madison. (FOF 10) The next week on April 20, 2012, Madison stuck out her tongue at Jones, rotated and wiggled it, simulating oral sex. (FOF 14) That same day, Madison intentionally touched Jones with the front of her body as she passed her in a space that was large enough for her to pass through and avoid contact. (FOF 15) Then, on April 25, 2010 when Jones reported to work, Madison answered the door with her shirt unfastened and bra exposed. (FOF 21) Finally, on May 1, 2010, as Jones was turning to walk away, Madison grabbed Jones' wrists and kissed her on the lips. (FOF 31)

Based on Jones' credible testimony, Madison's actions: (1) were not welcomed; (2) altered the terms and conditions of employment; and (3) created an abusive working environment. Jones made contemporaneous statements to Madison rejecting the conduct. (FOF 16) She also called a co-worker to express her outrage immediately following one incident. (FOF 22)

Madison's conduct was of a sexual nature; was not welcomed by Jones; was both severe and pervasive; created an intimidating, hostile, and offensive working environment; and altered the conditions of Jones' employment. Moreover, the fact that this conduct occurred in only three weeks of employment further supports the finding that Jones was constructively discharged, because a reasonable woman would have a reasonable basis to believe that continuing to report to work at Lagniappe would result in additional sexually offensive conduct. Hence, a reasonable woman would have felt compelled to resign. *Adams v. Chicago Fire Department*, CCHR No. 92-E-72 (September 20, 1995).

Madison did not present a credible defense to Jones' allegations and *prima facie* case. In fact, she did not specifically deny that she engaged in each of the alleged acts. A reasonable person would have denied ever having kissed Jones or would have denied that she asked Jones to open her mouth so she could see Jones' teeth. Not only did Madison not offer a reasonable explanation for her conduct, she *never* denied at the hearing that the conduct occurred. Madison's only denial was in her closing statement when she concluded that she did not sexually harass Jones. Based on the testimony at hearing, the hearing officer and the Commission must disagree.

In addition, Madison did not present any evidence that she was aware of her legal obligation to have a workplace free of discrimination and harassment. Madison did not present evidence that Lagniappe had an anti-harassment policy to inform employees that harassment would not be tolerated. Madison did not present any evidence that Lagniappe provides any meaningful way for its employees to complain if they have concerns regarding sexual harassment or other types of discrimination. In this case, even if such a policy existed, the fact that the Madison was the harasser and the majority owner of Lagniappe makes it unlikely that Jones had any effective internal remedy. Madison engaged in the alleged conduct and her conduct constitutes sexual harassment in violation of the Ordinance. Madison's conduct created a hostile work environment, such that Jones was constructively discharged. Therefore, Mary Madison and Lagniappe - A Creole Cajun Joynt, LLC are jointly and severally liable for Madison's discriminatory conduct.

Madison is individually liable pursuant to Section 2-160-30 of the Human Rights Ordinance, which provides that no "person" shall directly or indirectly discriminate in violation of the Ordinance. Individuals, not just employers, can be held liable under the CHRO if they personally took the actions shown to be discriminatory. *Lopez v. ClearStaff, Inc., et al.*, CCHR No. 06-E-6 (June 2, 2006).

Lagniappe A Creole Cajun Joynt, LLC, is vicariously liable for Madison's discriminatory conduct because Madison was functioning as its agent when she sexually harassed Complainant. She was the primary owner of the Lagniappe LLC and the primary manager of the Lagniappe restaurant where Complainant worked, with the right to control the manner in which the work was being done. *Warren et al. v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR NO. 07-P-62/63/92 (July 15, 2009).

It is immaterial whether Lagniappe actually paid Complainant's wages. Although Complainant was placed at Lagniappe by Heartland under a publicly-funded jobs program, and it appears that she was paid through Heartland, Complainant was nevertheless in an employment relationship with Lagniappe. She completed Lagniappe's application, was interviewed, and was instructed and supervised on a day-to-day basis by Lagniappe, which also set her work hours. As pointed out in *Peterson v. Rosenthal Collins Group, LLC, et al.*, CCHR No. 06-E-57 (May 7, 2010), only some sort of employment relationship is needed for the Human Rights Ordinance to

apply, even if the parties may not fit a strict definition of "employer" and "employee." Control over the worker is the important factor. Madison and Lagniappe held and exercised such control.

V. RELIEF

Under the Chicago Municipal Code, Section 2-120-510(I), the Commission may award a prevailing Complainant the following forms of relief:

> [A]n order ... 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 ...; 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 for violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Damages

Jones seeks damages for the discrimination she suffered. To be awarded such damages, Jones must prove by a preponderance of the evidence that she is entitled to damages claimed. Jones has asked for $24,173 in lost wages; damages for emotional distress in the amount of $50,000; punitive damages in the amount of $100,000; an appropriate amount of front pay; and attorneys' fees in an appropriate amount to be determined.

1. Out-of-Pocket Losses: Lost Wages

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). However, compensatory damages for out-of-pocket losses or emotional distress should not be awarded when they cannot be shown to have been caused by the discriminatory conduct or foreseeable to the respondents. *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al*, CCHR No. 99-H-39/53 (Apr. 18, 2001).

Jones testified that she was hired at $10 per hour to work an eight hour day and 40 hour week. This amounts to $400 per week. After her brief employment at Lagniappe, Jones went back to earning only the $300 per week (on average) she had been earning as a hairstylist, except for two more weeks of employment at a Family Dollar store under the same job program administered by Heartland Alliance. The hearing officer found that if Jones had continued working for Lagniappe, she would have earned $16,000 in 2010, $20,800 in 2011, and $11,600 in 2012 through the hearing date of July 17, 2012, for a total of $48,000. The hearing officer found that this amount was mitigated by Jones' continued work as a hairstylist in her home averaging $300 per week or $33,300 ($900 in 2010, $5,600 in 2011, and $8,700 in 2012),

leaving losses through the date of hearing of $15,100 rather than the $24,173 requested. The hearing officer recommended that Jones be awarded back pay through the date of the final ruling,[4] less any earnings in mitigation, thereby increasing the recommended amount.

Neither Complainant nor the hearing officer explained precisely how they arrived at their back pay calculations. The Commission has recalculated back pay based on the estimated weeks from Jones' last day of employment on May 1, 2010, a Sunday, through the date of this final ruling on December 19, 2012, a Wednesday. This amounts to 137.5 weeks (35 weeks in 2010, 52 weeks in 2011, 50.5 weeks in 2012). However, for two weeks in 2010, Jones worked at a Family Dollar store, thus mitigating her lost wages to 135.5 weeks. At $400 per week, this results in gross pay of $54,200 for the 135.5 weeks. But during these 135.5 weeks, Jones further mitigated her lost wages by continuing her hairstyling business earning an average of $300 per week, or $40,650.[5] This calculation leaves unmitigated lost wages of $13,550. The Commission awards back pay in that amount.

Front pay was requested, but the hearing officer did not recommend such an award. Front pay may be awarded in lieu of reinstatement where reinstatement is not practicable, as in this case where there was constructive discharge due to a hostile work environment. See, e.g. *Steward v. Campbell's Cleaning Services et al.*, CCHR No. 96-E-270 (June 18, 1997). However, given that back pay has been awarded to cover a period of more than two and one-half years, along with emotional distress and punitive damages, the Commission concurs with the hearing officer's approach and finds that a front pay award is not warranted to make Jones whole for her lost employment opportunity at Lagniappe.

2. 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 (5 Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior and (2) the complainant's reaction to the discriminatory conduct. 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 13-4; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the more recent discussion of the applicable standards in *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

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[4] The Commission has held in two prior decisions that back pay runs from the date of discrimination until such time as the complainant fully mitigates the damages, is offered reinstatement, or the final ruling is issued. *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002), citing *Steward v. Campbell's Cleaning Services et al.*, CCHR No. 96-E-270 (June 18, 1997).

[5] Jones testified that she felt safe working at home after her experience at Lagniappe. (Tr. 46)

In addition, "The Commission does not require 'precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.*, CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003), aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

The testimony at the hearing was sufficient to establish compensable emotional injury under the Ordinance and Regulations. (FOFs 17, 18, and 32) Emotional distress damages amounts in employment discrimination cases at the Commission have varied based on the particular facts of the case. In this case, Jones presented only minimal evidence of emotional distress. She testified that she felt violated and especially felt embarrassed over the incident which occurred in front of other employees. Her hearing testimony reflects anger and outrage about Madison's sexual overtures, which she endured because she needed the work and wanted to succeed in the jobs program which placed her at Lagniappe. She testified that she now doesn't trust women. (Tr. 47)

Based on the nature of the discrimination in this case, especially its short duration of about three weeks, and the minimal evidence of emotional distress presented, the Commission accepts and adopts the hearing officer's recommendation to award $2,000[6] for emotional distress. This is similar to the emotional distress damages awarded in comparable recent sexual harassment cases where the evidence of emotional distress was minimal: *Williams v. RCJ Inc. et al., CCHR No. 10-E-92* (Oct. 19, 2011), where the sexual harassment of a store cashier took place over a three-week period; *Shores v. Charles Nelson d/b/a Black Hawk Plumbing*, CCHR No. 07-E-87 (Feb. 17, 2010); and *Hawkins v. Ward and Hall*, CCHR No. 03-E-114 (May 21, 2008).

3. Punitive Damages

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, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "the purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also Restatement (Second) of Torts §908(1) (1979).

In determining the amount of punitive damages to be awarded, the "size and profitability [of the respondent] are factors that normally should be considered." *Soria v. Kern*, CCHR No.

[6] Complainant pointed out in her Motion to Correct Recommended Decision, which has been treated as an objection pursuant to CCHR Reg. 240.610(b), that the hearing officer's recommended ruling states the emotional distress damages as $2,000 in one place and $500 in another. The Commission finds that the hearing officer's intent was clearly to recommend $2,000 for emotional distress.

95-H-13 (July 18, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 22, 1993) at 18. However, "neither Complainants nor the Commission have the burden of proving Respondent's net worth for purposes of...deciding on a specific punitive damages award." *Soria, supra* at 17, quoting *Collins & Ali v. Magdenovski*, CCHR No. 91-H-70 (Sept. 16, 1992) at 13. Further, "If Respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances." *Soria, supra* at 17.

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the respondent disregarded the Commission's procedures. *Brennan v. Zeeman*, CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.*, CCHR No. 97-H-187 (Jan. 20, 1999).

Here, Respondents failed to produce Lagniappe's 2011 tax return in response to a discovery request. Complainant sought an order of default, which the hearing officer did not grant. But the hearing officer did impose a negative inference (Tr. 9, 170). In combination with the responsibility of Respondents to produce mitigating evidence, the result of the negative inference is that Respondents may not defend against an award of punitive damages by asserting inability to pay based on their financial status in 2011.

The hearing officer concluded that Madison's conduct throughout the administrative hearing process, as detailed above, supports an award of punitive damages. Again this case is comparable to *Williams, supra*, where punitive damages of $4,000 were awarded against a respondent in a workplace sexual harassment case who disregarded both the rights of the complainant and the importance of the proceedings by failing to appear at both the pre-hearing conference and the administrative hearing. Accordingly, the Commission adopts the hearing officer's recommended punitive damages award of $4,000.

4. Interest on Damages

Section 1-120-510(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 pre- and post-judgment interest on all damages awarded in this case, starting from May 1, 2010. Although the hearing officer incorrectly characterized this date as the date of the final decision, in fact it reflects her determination as to the date when the violation accrued, as this was the date when Jones decided she could no longer tolerate the hostile environment created by Madison. After the incident of May 1, Jones did not return to work at Lagniappe. Although arguably Madison's conduct became severe a few days earlier, on April 13, 2010, when Madison first kissed Jones in the workplace without her consent, the Commission accepts the hearing officer's recommendation to calculate interest from May 1, 2010, by which time Madison's conduct clearly had become both severe and pervasive, creating a hostile work environment in violation of the Human Rights Ordinance.

B. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance requires a fine to be assessed against a party found in violation of the Ordinance in an amount not less than $100 and not more

than $500. In this case, where Respondents discriminated against Complainant and failed to cooperate throughout the Commission's process, the hearing officer recommended that Respondents pay a fine of $250 to the City of Chicago.

The Commission finds this amount insufficient. First, both Lagniappe as a business entity and Mary Madison individually are responsible for violating the Human Rights Ordinance, and each should be separately fined. Second, the maximum fine of $500 is still a modest penalty to remedy Respondents' maintenance of a sexually hostile work environment which deprived Complainant of a job opportunity which she strongly desired and needed to improve her family's economic status. This sexual harassment undermined the effectiveness of a public-private partnership supported by the Chicago Housing Authority in the public interest of promoting the long term economic welfare of low income Chicago families like Complainant's. Accordingly, Respondents Lagniappe and Madison are each fined in the maximum amount of $500, for a total of $1,000 in fines for violation of the Human Rights Ordinance.

C. Injunctive Relief

Complainant did not seek injunctive relief; however, the Commission finds it warranted in this case. Section 2-120-510(l) of the Chicago Municipal Code authorizes the Commission to order injunctive relief to remedy a violation of the Human Rights Ordinance or the Fair Housing Ordinance. The Commission has ordered respondents found to have violated one of these ordinances to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, record-keeping, and reporting. See, e.g., *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Walters et al. v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994); *Metropolitan Tenants Organization v. Looney*, CCHR No. 96-H-16 (June 18, 1997); *Leadership Council for Metropolitan Open Communities v. Souchet, supra*; *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al*, CCHR No. 99-H-39/53 (Apr. 18, 2001); *Sellers v. Outland, CCHR No. 02-H-73 (Oct. 15, 2003)*, aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008); and *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

Most recently, in *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission ordered a restaurant which had discriminated against a customer based on gender identity to promulgate an anti-discrimination policy and deliver staff training designed to prevent further discrimination. Also, in a recent decision finding workplace harassment based on sexual orientation, the Commission ordered an employer to train its managers and staff about applicable laws and existing internal policies prohibiting such discrimination. *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010).

Lagniappe did not have any policy or procedures in place to prevent or address sexual harassment of its employees. Moreover, Lagniappe's primary and most visible owner was the harasser. This violation points up the need for Respondents to adopt a policy prohibiting sexual harassment and make sure all employees are aware of it. Accordingly, the Commission orders Lagniappe and Mary Madison to take the following steps as injunctive relief:

- **Order of Injunctive Relief**

1. On or before 90 days from the date of mailing of the Commission's Final Order and Ruling on Attorney Fees and Costs (or 120 days from the date of mailing of the Final Order and Ruling on Liability and Relief if no petition for attorney fees and costs is filed or if the parties settle on the amount of such fees and costs), Respondents Lagniappe – A Creole Cajun Joynt LLC and Mary Madison are ordered to distribute to all employees and management personnel engaged in the operation of any Lagniappe restaurant located in the City of Chicago (including managers and employees of any franchisee or subsidiary operating a restaurant or place of entertainment under the Lagniappe name) a written policy which prohibits sexual harassment of Lagniappe employees as defined in the Chicago Human Rights Ordinance and which establishes an internal procedure to report sexual harassment to one or more managers or owners, who shall be required to promptly investigate such reports and take reasonable corrective action. The policy shall also prohibit retaliation against any employee who reports sexual harassment or provides information in an internal investigation or legal proceeding involving sexual harassment. The policy shall provide that compliance is mandatory for all employees as well as management and administrative personnel.

2. After initial distribution of the policy as described above, Lagniappe shall give a copy of the policy to each subsequent new employee, including any individuals assigned to work at Lagniappe in conjunction with a publicly or privately funded program of job training or job placement.

2. Respondents are not required to obtain prior approval of the sexual harassment policy from the Chicago Commission on Human Relations or to work with the Commission on Human Relations in complying with this order of injunctive relief. Respondents may request assistance with compliance, and the Commission may assist as feasible consistent with its neutral adjudicatory role. However, the responsibility to comply with this order of injunctive relief is entirely that of Respondents, with or without Commission assistance.

3. On or before 120 days from the date of mailing of the Commission's Final Order and Ruling on Attorney Fees and Costs (or 150 days from the date of mailing of the Final Order and Ruling on Liability and Relief if no petition for attorney fees and costs is filed or if the parties settle on the amount of such fees and costs), Respondents shall file with the Commission and serve on Complainant a report detailing the steps taken to comply with this order of injunctive relief. The report shall include a copy of the required written policy and a signed certification by an owner or manager of Lagniappe that a copy of the policy has been distributed to all existing and new employees.

4. This order of injunctive relief shall remain in effect for a period of three years following the initial compliance date described in Paragraph 1 above.

D. Attorney Fees and Costs

Section 2-120-510(l) 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 recommended 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); *Soria v. Kern, supra* at 19.

Accordingly, attorney fees and costs are awarded with the amount to be determined by further ruling of the Commission pursuant to the procedures stated in CCHR Reg. 240.630.

VI. SUMMARY AND CONCLUSION

In conclusion, Complainant has established by a preponderance of the evidence that she was sexually harassed and constructively discharged from her employment by Respondents. Therefore, Respondents Mary Madison and Lagniappe-A Creole Cajun Joynt LLC have violated the Chicago Human Rights Ordinance, in particular Sections 2-160-030 and 2-160-040 of the Chicago Municipal Code and CCHR Regs. 340.100 and 240.110. The Commission orders the following relief:

1. Respondents jointly and severally shall pay the following damages to Complainant:

   a. Back pay of $13,550.

   b. Emotional distress damages of $2,000.

   c. Punitive damages of $4,000.

   d. Pre- and post-judgment interest on the foregoing damages starting from May 1, 2010.

2. Each Respondent shall pay a fine of $500 to the City of Chicago, for a total of $1,000 in fines for violation of the Human Rights Ordinance.

3. Respondents shall pay reasonable attorney fees and costs to Complainant's attorney in an amount to be determined pursuant to CCHR Reg. 240.630 and further orders of the Commission.

4. Respondents jointly and severally shall comply with the order of injunctive relief set forth in this ruling.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: _____

Mona Noriega, Chair and Commissioner
Entered: December 19, 2012