

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

PADDY & PATRICIA GRIFFITH,)
CHARGING PARTY,)
)
)
vs.)
)
EDISON PALACIOS,)
RESPONDENT.)

CASE NO. 9802008368
9802008369

**ORDER AFFIRMING IN PART
AND REVERSING IN PART
THE FINAL AGENCY DECISION**

The above-captioned matter came before the Montana Human Rights Commission (Commission) on July 13, 1999. The matter was before the Commission for consideration of the respondent’s appeal from the final agency decision and for consideration of the charging parties’ exceptions to the final agency decision. Appearing before the Commission was Linda Hewitt, attorney for the respondent, and Timothy Kelly, attorney for the charging parties.

After reviewing the record and considering the arguments of the parties, the Commission first considered the charging parties’ exceptions to the final agency decision. The first exception requests an award of statutory interest on the damage award. The respondent concedes that interest is appropriate and does not contest the request. The Commission finds an award of statutory interest is appropriate to run from the date of the final agency decision. *See generally, Plouffe v. Burlington Northern, Inc.*, 224 Mont. 467, 730 P.2d 1148 (1986).

Charging parties’ second exception concerns the award of affirmative relief. The Commission is authorized to “prescribe conditions on the accused’s future conduct relevant to the type of discriminatory practice found.” *Section 49-2-506(1)(a), MCA*. In the present matter it is clear that the respondent engaged in conduct that was harassing and intimidating in retaliation for the charging parties act of filing a human rights complaint. The conduct of the respondent in filing theft charges, reporting the charging parties to child protective services, filing suit seeking excessive amounts and other acts is nothing short of reprehensible behavior. Under these circumstances, the Commission agrees that additional affirmative relief is justified. Given the behavior of the respondent, the Commission finds that the respondent should be enjoined from renting residential property in Montana until he has attended at least four hours of training in fair housing laws and four hours of training concerning the Montana Landlord Tenant Act. The Montana Bar Association or the Montana Department of Commerce must certify the training for continuing education credit.

Charging parties’ third exception requests the respondent to be taxed with the costs of purging false reports filed with the district court and department of public health and human services. The Commission has broad discretion to “require any reasonable measure to correct the discriminatory practice and to rectify any harm...” *Section 49-2-506(1)(b), MCA*. The Commission believes it is appropriate to allow the charging parties’ reasonable costs and attorney fees in any action filed by them to purge the record of false accusations made by Palacios in conjunction with his illegal retaliatory conduct. The costs and fees are to be established by the district court in connection with the action filed.

The final aspect of the case presented for Commission review is the respondent's appeal from the monetary award. The respondent argues that the monetary award by the hearing examiner was excessive. The Commission agrees. The Commission is authorized to "accept or reduce any award or penalty but may not increase it without reviewing the complete record." *Mont. Admin. R. 24.9.1717(2)*. After reviewing the record, the Commission concludes that the damage award is excessive. In considering whether the damage award was excessive, the Commission considered prior Montana case law as well as recent past awards by the Commission. Although there is no mathematical precision that can be used to calculate an emotional distress award the Commission finds that the award in the present matter is not reasonable.

In considering an appropriate level of compensation for emotional distress, the Commission is fully cognizant of the egregious conduct on the part of the respondent. The two most disturbing acts are those of reporting the charging parties to child protective services for failing to protect their daughter and the theft report filed with the police. The Commission is also cognizant of the threatening letter writing campaign by the respondent, the filing of suit, which sought unsubstantiable damages, and the false insurance claims. In assessing the appropriate level of compensation for emotional distress the Commission finds the appropriate maximum level of damages for the illegal retaliatory conduct of the respondent is \$25,000 for each charging party. There is no doubt that each charging party suffered embarrassment, humiliation and emotional stress. The Commission cannot conclude that the emotional distress suffered by each charging party was more than twice that of an individual who was subjected to the extremely invasive sexual harassment referenced in *Vainio v. Brookshire*, 258 Mont. 277, 852 P.2d 596 (1993). In reducing the damage award, the Commission finds it notable that there was the absence of medical treatment for the emotional distress.

For the foregoing reasons, the final agency decision is reversed to the extent that the damage award exceeds \$25,000 per charging party. The Commission agrees largely with the hearing examiner's decision and accepts the findings of fact except for finding of fact number 76 on page 10-11 of the final agency decision. That finding is found to be not supported by substantial credible evidence in the record so far as it concludes that the Griffiths are entitled to recover \$50,000 each for severe emotional distress. As stated above, the charging parties have suffered emotional distress which is properly compensated in the amount of \$50,000 (\$25,000 each). The opinion section of the final agency decision is also reversed to the extent that it references the award of \$50,000 to each of the Griffiths and is inconsistent with the rationale provided by the Commission, above. Conclusion of law number 3, page 14 of the final agency decision is reversed to the extent that it awards \$50,000 to each of the Griffiths. The proper amount determined by the Commission is \$25,000.

ORDER

1. The final agency decision is affirmed in part and reversed and modified in part consistent with the body of this order.
2. Judgment is found in favor of charging parties, Paddy and Patricia Griffith, and against respondent, Edison Palacios on the complaint of illegal retaliation.
3. Edison Palacios is ordered to pay the sum of \$25,000.00 to Paddy Griffith and the sum of \$25,000.00 to Patricia Griffith, for a total of \$50,000.00 together with statutory interest from the date of entry of the final agency decision until paid.

4. Edison Palacios is enjoined from engaging in any further unlawful discriminatory practices. Edison Palacios is further enjoined from any contact with Paddy and Patricia Griffith or any member of their family, direct or indirect, through any person, entity, organization or representative, excepting only contact through his counsel in this case with Griffiths' counsel in this case regarding this case. Edison Palacios is further enjoined from renting out any residential property in Montana unless and until he has attended at least four hours of training in fair housing laws and four hours in training in the Montana Landlord Tenant Act which are approved for continuing education credit by the Montana Department of Commerce or the State Bar of Montana
5. Edison Palacios is ordered to reimburse to the Griffiths reasonable costs and attorney fees incurred in an action to purge the record at the district court and Department of Public Health and Human Services of false statements made by Palacios in the course of his unlawful retaliatory conduct regarding the Griffiths.

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

Dated this ___ day of October, 1999.

Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **ORDER AFFIRMING IN PART AND REVERSING IN PART THE FINAL AGENCY DECISION** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of October, 1999.

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