

**BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY**

<hr/> RACHEL DURBIN,)	HRC Case No. 0031010290
)	
Charging Party,)	
)	
vs.)	FINAL AGENCY DECISION
)	
ROGERS' JEWELERS,)	
)	
Respondent.)	
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I. INTRODUCTION

Rachel Durbin (Durbin) filed a human rights complaint alleging that Rogers' Jewelers, Inc. (Rogers' Jewelers), discriminated against her in employment because of her marital status. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on October 1, 2, and 8, 2003 in Great Falls, Montana. Kim Schulke, attorney at law, represented Durbin. Sara Sexe and James Gardner, attorneys at law, represented Rogers' Jewelers.

Durbin's exhibits 2 through 4 and 6 through 15 were admitted into evidence by stipulation of the parties. Rogers' Jewelers' exhibits 101, 104, 105, 107, 108, 109, 111, 113, and 114 were also admitted by stipulation of the parties. Durbin's exhibits 1, 5, and 16, were admitted over the objection of Rogers' Jewelers' counsel. Testimony under oath was provided from the following witnesses: (1) Daryl Rogers, owners of Rogers' Jewelers, Inc.; (2) Rachel Durbin, Charging Party and former manager and sales associate for Rogers' Jewelers, Inc.; (3) Kay Lassila, Daryl Rogers' wife and manager for Rogers' Jewelers, Inc.; (4) Yvonne Stillwell, former manager and sales associate; (5) Genie Williams, former sales associate; (6) Rebecca Hannant, former sales associate; (7) Sunshine Whitish, former sales associate; (8) Tracy Hurd, former sales associate; (9) Twila Palmer, former sales associate; (10) Tammy Nader, manager of the Dollar & More Store; (11) Ken Krueger, former business associate of Daryl Rogers and customer; (12) Beta McKnight, customer of Rogers' Jewelers; (13) Mike Lassila, son of Kay Lassila and Charging Party's former husband; and (14) Jesse Lassila, son of Kay Lassila.

During the hearing, Rogers' Jewelers attempted to introduce two statements Durbin made to her ex-husband, Mike Lassila, while the two were still married. Durbin's first statement was to the effect that she would sue Rogers if she were discharged. Durbin's second statement indicated that she did not care if store sales goals were met. Durbin objected to the admission of these statements, arguing that

both are subject to the marital privilege encompassed in Mont. Code Ann. § 26-1-802.¹ The hearing examiner deferred ruling on the objection until the time of the decision. Having reviewed the case law, the hearing examiner finds that Durbin's statement about not caring if sales goals were met is protected by the privilege. The threat to sue Rogers, however, is not. *State v. Nettleton*, (1988), 233 Mont. 308, 760 P.2d 733.

In *Nettleton*, the Montana Supreme Court found that in order for a communication to be privileged under this statute, it must (1) be an utterance intended to convey a message from one spouse to the other, rather than an act, and (2) the message must be intended by the communicating spouse to be confidential in that it was relayed in reliance on the confidence of the marital relationship. *Op. cit.*, at 317, 760 P.2d at 739. In *Nettleton*, the defendant killed a woman named Brisson. At the time he committed the murder, he had a common law marriage to another woman named Semenze. He subsequently married a second woman named DuMontier. During his marriages, he threatened first Semenze and then DuMontier with physical harm and even death if either should ever reveal that he had committed the murder.

In finding that the threats against his wives were not protected by the privilege, the court reasoned the defendant's statements were not "remorseful outpourings of guilt and anxiety" to the two women. They were instead an effort to terrify and intimidate the women into keeping silent about Brisson's death, and in Semenze's case, to induce her to cooperate in a cover-up and then live in Nettleton's home under his control. Nettleton did not rely on the confidence of his marital relationships with Semenze and DuMontier. He relied on fear and intimidation. His threatening statements do not possess the threshold characteristics of confidential marital communications protected by spousal privilege." *Id.*, quoting *People v. D'Amato* (N.Y. Sup. Ct. 1980), 105 Misc. 2d 1048, 430 N.Y.S. 2d 521.

Admittedly, Durbin's threat to Mike Lassila to sue Rogers is not of the magnitude of the threats inflicted in *Nettleton*. Nevertheless, at the very least, it was not uttered as a "remorseful outpouring of guilt and anxiety." It was uttered as a threat. Because it is the type of threat that can bear on a witness' credibility, and since it is not privileged, Durbin's threat to Mike Lassila to sue Rogers is admissible.

Based upon the evidence adduced at the hearing and the argument of counsel, the hearing examiner makes the following findings of fact, conclusions of law, and final order.

¹ The statute states: "A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other."

II. ISSUES

1. Did Rogers' Jewelers discriminate against Durbin on the basis of marital status?
2. Is this a mixed motive case that prevents Durbin from recovering damages?

III. FINDINGS OF FACT

1. Daryl Rogers and Kaye Lassila (common law husband and wife) own and operate several jewelry stores in the Great Falls area. Until May, 2003, those stores included an outlet at the Holiday Village Mall.
2. Rogers hired Durbin in October of 1999 to work as a sales associate at the Holiday Village Mall store. She did well as a salesperson. She left that position in May of 2000.
3. On September 15, 2001, Durbin married Mike Lassila, Kay Lassila's son.
4. Yvonne Stillwell worked for Rogers' Jewelers at the Holiday Village Mall store from July 1998 to September of 2002. She became the manager in March or April of 1999. She resigned as manager in early June of 2002 because she did not believe that Rogers was giving her the backing she needed to manage the sales associates. She stayed on as a sales associate and was assigned the extra tasks of inventory and the computer bookkeeping.
5. Rogers rehired Durbin on June 25, 2002 to take over as manager of the Holiday Village Outlet. Her base compensation was \$1,300.00 per month. In addition, she would get 1% of the store's total sales. If the store met its monthly sales goal, she would get 2% of the store's total sales. She would also receive one week's paid vacation after working in the position for more than one year.
6. Durbin had no previous management or supervisory skills when Rogers hired her for the management position. Prior to working as a sales associate at Rogers', Durbin had worked at Taco Johns, an after school child care program, and as a teller at various banks.
7. Rogers hired Durbin for the management position because of her marriage to Mike Lassila. Rogers was interested in putting a family member into a management position in this family-owned, and family-run business.
8. Initially, Durbin was not responsible for inventory or computer book work associated with running the store. Stillwell, who as manager had previously completed

these tasks, was staying on in the store to work as a sales associate and continued to have responsibility for these tasks. This, however, changed. Gradually, Durbin was to become responsible for the management duties of inventory and bookkeeping.

9. Rogers held a store meeting with the employees of the Holiday Village Mall outlet near the end of June, 2002. At the meeting, Rogers introduced Durbin as the manager.

10. The Holiday Village Mall exceeded its sales goals in July and August of 2002. During these time periods, however, the store was not at all times kept up to Rogers' standards. Jewelry display cases were not properly dusted. Jewelry displays were not changed as frequently as they should have been. Stillwell noticed that Rachel was frequently in the office and on the phone.²

11. The work atmosphere of the store was lax. Stillwell noticed these problems and apprised Kay Lassila of the difficulties she felt Durbin was having in managing. Toward the end of August, Stillwell began speaking to Rogers about Durbin's difficulties in carrying out her management duties. Because Durbin socialized with some of the sales associates both during and outside of work, she could not manage them with the discipline necessary to ensure that things were done in the manner that Rogers and Lassila expected in the Holiday Village Mall store. Stillwell recognized at that time that "Rachel was going to get into trouble" because she could not separate her management responsibilities from her socializing with some of the store sales personnel (such as Sunshine Whiting, with whom Durbin was friends and with whom Durbin socialized outside of work).

12. Williams also noticed that Durbin's management style was lax. On a few occasions (fewer than five times), Durbin "shared sales" (gave credit to another sales person for a sale Durbin had completed) with a sales associate in direct contravention of Rogers' policy that sales were not to be shared. This was not unique to Durbin, however. All of the sales associates (including Williams) also shared sales. In addition, all of the

²Durbin contends that admission of her cell phone records was impermissible because the employer could not have known about the cell phone records at the time of Durbin's discharge. This contention fails to apprehend the purpose for the admission of those documents. The hearing examiner permitted those documents to be admitted for the limited purpose of proving that Durbin had been using her cell phone to make personal calls (which Durbin disputes) while on duty at the Holiday Village store. Though not admissible in itself as a separate basis to legitimize the discharge, the evidence was admissible to show that Durbin made personal calls in derogation of Rogers' policy at some point in time. For this limited purpose, the cell phone records were admissible. *Hearing Aid Institute v. Rasmussen* (1987), 258 Mont. 367, 374-75, 852 P.2d 628. However, as a practical matter, the cell phone calls attributed to Durbin could in fact have been made by Mike Lassila or other persons. Thus, the cell phone usage records are entitled to no weight in determining whether Durbin made excessive personal phone calls while on duty at the Holiday Village store.

sales associates ignored Rogers' policies against making private phone calls while working in the store.

13. In late July or early August of 2002, Stillwell told Durbin that she was looking for other work and that someone needed to learn the inventory and computer book work procedures. Stillwell tried to train Durbin in some of the procedures. They made a few attempts at training at the computer during regular work hours, but encountered some distractions and interruptions that caused them not to be able to complete the training. Durbin was not always focused during these training times. Stillwell got the impression that Durbin could have put more effort into learning the manager duties.

14. Stillwell tried to make a booklet for Durbin describing the procedures that she used for the computerized inventory and reports. She started some notes in that regard, but never completed it.

15. Durbin and Mike Lassila had problems throughout their marriage. Durbin discussed those on occasion with Kay Lassila. In early August, Durbin and Mike Lassila were again having problems in their marriage. Durbin had just purchased a house. She moved into it by herself and Mike stayed at their rental house. They lived separately for a week.

16. Sometime in August, Rogers went to Stillwell to discuss her possible return to the management position at the store. The reason he gave her was that Durbin and Mike were having problems in their marriage, were thinking of getting a divorce, and under those circumstances, he could not have Durbin knowing about the store.

17. Rogers did not tell Stillwell that he was considering the change due to poor work performance by Durbin. He said he did not know if he was going to fire Durbin or transfer her to the other store or do something else. Rogers told Stillwell that the management change would occur when he returned from vacation. Stillwell reminded Rogers of her concerns about the existing staff, which had led to her stepping down in June. She told Rogers that her return to management might cause some sales associates to quit. Rogers assured her that he wanted her to manage and he did not care if others quit.

18. Later in August, Stillwell asked Rogers about her return to the Holiday Mall store manager position. Rogers told Stillwell that Durbin and Mike were going to work on their marriage and so they would see how things went and possibly make the change on September 1, 2002. Rogers also stated that if Stillwell was moved to management, they were going to move Durbin, not fire her. Stillwell was not happy that her return to management was going to be postponed and as a result, she started looking for another job again. Rogers did not tell Stillwell that Durbin's management was problematic.

19. Ultimately, Rogers decided to rehire Stillwell as the manager of the Holiday Village Store. Rogers and Kay Lassila told Durbin that they wanted to have Stillwell return as manager of the mall store and that they wanted her to move to the new jewelry store as manager. Her compensation would remain the same.

20. Stillwell returned to the mall store as manager on the Friday before the Labor Day weekend, 2002. The next day (Saturday), other store employees and a customer overheard Stillwell on the telephone discussing the fact that she had replaced Durbin as manager of the Holiday Village Mall store. Stillwell used loud and profane language during the phone call. Durbin learned of Stillwell's phone conversation, and reported it to Rogers. On Sunday, Rogers fired Stillwell, in part because of the Saturday telephone conversation overheard by the store employees and the customer and in part because some of the sales associates had threatened to quit if Stillwell became manager again.

21. After firing Stillwell, Rogers again made Durbin manager of the mall store, deciding to give her a second chance. Lassila, or Rogers, or both asked Durbin to learn the inventory and to complete end of month inventory reports (testimony of Williams) and to train the salespersons. Durbin was aware of these responsibilities, having told Williams that these were her (Durbin's) tasks.

22. Within a week or two after Stillwell was fired, Rogers asked Williams to help Durbin to try and figure out the computer inventory system to get a handle on the store's actual inventory. Williams proceeded to do so, but Durbin did not work diligently on the request. Williams would come into the store to find that Durbin had done nothing to complete the inventory. When Williams asked Durbin why nothing had been done, Durbin responded that she did not feel well for a variety of reasons.

23. During September, Lassila had conversations with Durbin about why the jewelry cases were not getting cleaned as they should have been and why the inventory was not getting done. Lassila also left Durbin notes to remind her that cleaning and inventory needed to be done. Lassila on occasion asked Durbin how things were going, and Durbin responded that things were going well. Nevertheless, the computer inventory was not completed by Durbin. In fact, Durbin never completed the inventory. After Durbin left, Williams, using the computer program, completed the inventory in two days with few problems (working only part time, from 5:00 until 9:00 p.m.).

24. Throughout September and into October, Durbin spent less time selling jewelry. She had no personal sales during the month of September. During that month Rogers set a sales goals at \$26,400.00. The store did not meet this goal, missing it by \$2,384.00.

25. Neither Rogers nor Lassila reprimanded Durbin in writing for poor work performance during the entire time that Durbin worked as store manager.

26. On October 5, 2002, Mike Lassila and Durbin decided to get divorced and Mike moved out of the home they shared during their marriage. Mike moved in with his brother, Jesse. Rogers became aware at about this time that Mike had moved out of the home that he and Durbin shared.

27. Rogers and Kay Lassila knew about the Durbin's impending divorce from Mike before Durbin was demoted.

28. On October 9, 2002, when Durbin brought the store deposit over to Rogers, he called her into his office. Kay Lassila was present in the office. Rogers told Durbin that he could not have her continue as manager because she and Mike were getting a divorce. Rogers said Durbin could remain working as a sales associate earning \$5.50 per hour plus personal commissions. During this conversation, there was no discussion about Durbin's poor management performance. Rogers asked Durbin for the keys to the businesses and to the home of Rogers and Kay Lassila. Durbin left the meeting upset and crying.

29. Durbin believed that she could not work for Rogers having been demoted to a salesperson's position. She did not feel that Rogers and Lassila would treat her fairly in the future. As a result, she quit her job on October 10, 2002.

30. Durbin and Mike Lassila were divorced on November 20, 2002.

31. Durbin found another job within a month after leaving Rogers' Jewelers, accepting an assistant manager position with Blockbuster Video on November 4, 2002. She did not receive any other job offers. The assistant manager position paid \$6.50 per hour and she had the opportunity to earn overtime pay. Durbin advanced to a manager position at Blockbuster in March, 2003. Durbin has done well in her management position at Blockbuster.

32. Soon after her demotion, Durbin filed this Human Rights complaint. In investigating the matter, Ken Coman, an investigator with the Human Rights Bureau of the Montana Department of Labor and Industry, spoke to Rogers on the telephone. Rogers told Coman that he had to take Durbin out of the manager position after she divorced his stepson and he could not have her knowing the family business as there was a potential conflict of interest. He did not want her to have access to his files. During this conversation with Coman, Rogers never mentioned anything about Durbin's poor work performance. Coman explained to Rogers what marital discrimination involved and further suggested to Rogers that he consider settling the claim since he was admitting the discrimination. Rogers had no apparent difficulty in communicating with Coman that day.

33. On May 25, 2003, Rogers closed the Holiday Village Mall store due to deteriorating sales. None of the mall store employees were retained in employment for Rogers.

IV. DISCUSSION AND ANALYSIS³

A. *Rogers Discriminated Against Durbin.*

Montana law prohibits discrimination in employment based upon marital status. Mont. Code Ann. §49-2-303(1)(a). Discrimination in employment based on marital status includes employment discrimination based upon the identity of the spouse. *See, e.g., Thompson v. Board of Trustees*, 192 Mont. 266, 269-70, 627 P.2d 1229, 1231 (1981); **and** *Van Haele v. Hysham School District*, No. 9301005671 (Apr. 1, 1996). The department considers employment discrimination based upon marital problems with a member of the family of the employer or impending divorce from a member of the family of the employer to be within the rationale of *Van Haele*. *Matteson v. Prince, Inc.*, HRA No. 9901008658 (Sept. 27, 1999). If Rogers took adverse employment action against Durbin because she and Mike Lassila were divorcing, Rogers engaged in discrimination proscribed by the Montana Human Rights Act.

The respondent's assertion that this matter is subject to the three tier *McDonnell Douglas*⁴ test is incorrect. *Laudert v. Richland County Sheriff's Department*, 2000 MT 218, 301 Mont. 114, 7 P.3d 386, is controlling. In *Laudert*, the Montana Supreme Court determined that the *McDonnell Douglas* test was inapplicable where the charging party had presented "evidence of statements made by a decision-maker and related to the decisional process being challenged." 2000 MT at ¶ 29, 301 Mont. at 122, 7 P.3d at 392. Durbin has presented evidence that Rogers (the decision maker) made statements directly related to her demotion to sales person, a demotion which Durbin contends is unlawful discrimination. This case is a "direct evidence" case.

Durbin has shown direct evidence of discrimination in this case. Her rendition of the conversation with Rogers on the day she was demoted is strongly bolstered by Rogers' subsequent conversation with Ken Coman and Rogers' letter to the Human Rights Bureau—neither of which mentioned any problems with Durbin's conduct as a basis for the demotion. Taken together, these factors convince the hearing examiner

³ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

⁴ *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).

that Rogers demoted Durbin because she was divorcing his stepson and he did not want a person who would no longer be a part of the family to be involved in this closely held business.

B. This Is A Mixed Motive Case Which Precludes Compensation For Damages.

As this is a direct evidence case, once the charging party shows by direct evidence that an unlawful consideration played a motivating role in an employment decision, the respondent employer must show by a preponderance of the evidence that it would have made the same decision even if it had not allowed the unlawful consideration to play a role in the decision. *Laudert, supra*, citing *Price Waterhouse v. Hopkins (1989)*, 490 U.S. 228. At this point, the inquiry regarding whether this matter is a “mixed motive case” becomes pertinent. A mixed motive case arises when the charging party proves illegal discrimination “but the respondent proves that the same action would have been taken in the absence of the unlawful discrimination . . .” Admin. R. Mont. 24.9.611. In a mixed motive case, the department will order a respondent to undertake affirmative steps to refrain from such discriminatory conduct in the future, but will not award compensation “for harm to the charging party caused by an adverse action that would have been taken by the respondent regardless of an unlawful discriminatory . . . motive.” *Id.* The employer must prove by a preponderance of the evidence that without the discriminatory motive, it would have made the same decisions. *Laudert, supra*.

Synthesizing the testimony of the various witnesses in this matter leads the hearing examiner to two inescapable conclusions. First, Durbin was not qualified for the management position when she accepted it. Second, for reasons not attributable to Rogers and Lassila, Durbin did not become qualified while she was in the position and could not carry out those management functions to the extent Rogers and Lassila reasonably demanded.

Durbin conceded that she had no management or supervisory skills when she took on the job. Durbin got the job because she was Rogers’ daughter-in-law.⁵

Durbin came into the management position and was expected to learn the tasks of not only managing salespersons on the sales floor (baby-sitting, as described by the charging party), but also the more extended tasks of inventory control and other

⁵The purpose in pointing out that Durbin did not get the job based on merit, but rather because of her in-law status with Rogers, serves only to reinforce the hearing examiner’s finding that Durbin did not have the skills to undertake the management job.

computer book work. The contention of Rogers and Lassila that they expected Durbin to learn these duties is supported not only by Lassila's statements but also by the testimony of Genie Williams and the testimony of Yvonne Stillwell.

Rogers asked Williams to assist Durbin in completing the computer inventory. Williams attempted to do so, but Durbin simply did not catch on, perhaps because of personal inability, or perhaps because things going on in her personal life prevented her from doing so. Since the inability did not stem from anything Rogers or Lassila did or failed to do, the actual reason is inconsequential. Rogers had a right to expect that Durbin would complete the computer inventory task in a timely fashion. In Rogers' business, inventory is unquestionably a critical consideration. Durbin did not take notes on computer use even when she was attempting to train with Stillwell. Even if the hearing examiner believes that Durbin asked for help in completing the tasks, such would not provide a basis to reject Rogers' contention that Durbin could not perform the tasks. Rogers provided that help by asking Williams to assist Durbin in understanding and utilizing the computer inventory system. Rogers did not set Durbin up for failure. His actions did not prevent Durbin from learning the computer end of taking inventory, nor did it prevent her from completing the inventory as she was directed to do but failed to do.

Durbin's lax management style also presented a problem that would have constituted a basis for demotion. Both Stillwell and Williams observed it. Lassila observed the problematic management skills on an ongoing basis even into September. Lassila constantly reminded Durbin of the need to properly clean cases and rotate displays, apparently to no avail. Durbin's contention that Rogers could not rely on Stillwell's observations of Durbin's management that occurred prior to September 1, 2002 is incorrect. The fact that Durbin got one more chance did not erase from Rogers' mind the earlier concerns pointed out by Stillwell with regard to Durbin's management style. Taken in conjunction with Lassila's observations, Rogers could rely on Stillwell's earlier observations as a basis for Durbin's demotion on October 9, 2002. These concerns were borne out by Durbin's inability after September 1, 2002, to complete inventory, even with another sales person (Williams) assisting in the completion of the inventory.

The charging party relies on several arguments to dismiss Durbin's lack of a completed inventory and her lax management style as a basis for demotion. None of these convinces the hearing examiner that a mixed motive does not exist in this case. While the store's sales goals were met in July and August, this does not demonstrate adequate management skills on the part of Durbin. During that period, Stillwell was

doing the books and maintaining the inventory. In September, when Durbin had responsibility for these matters, the store missed its sales goal by almost ten percent.

Durbin's suggestion that the computer program was too difficult to understand or not properly taught to Durbin is not compelling. Lassila uses the inventory program herself without trouble. And, while Stillwell was unable to teach Durbin the methods of using the computer inventory program, this was not Durbin's only chance to learn. Williams worked with Durbin to try and learn to utilize the computer inventory program. Williams herself was able to utilize the program after a very short while. Durbin is obviously a very intelligent person (as demonstrated by her demeanor and testimony at the hearing). The hearing examiner, as stated above, can only conclude that Durbin's inability to learn the computer inventory system and her inability to complete the inventory stemmed from a lack of desire to do so.

Rogers' Jewelers, Inc., has demonstrated by a preponderance of the evidence that even in the absence of the discrimination, it would have demoted Durbin due to her inability or unwillingness to carry out her critical management duties. Rogers' Jewelers, Inc., has proven a mixed motive for its decision which precludes Durbin's recovery of damages. Mont. Code Ann. §49-2-506(1)(b), Admin. R. Mont. 24.9.611.

C. Affirmative relief is Appropriate.

The circumstances of the discriminatory conduct in this matter require affirmative relief in order to prevent future discriminatory acts by Rogers' Jewelers, Inc. Rogers' decision to terminate Durbin based on her marital status was wrong. The facts of this case show that if faced with the situation again, Rogers, without some type of additional training, might well engage in the same conduct again.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).

2. Respondent Rogers' Jewelers, Inc., acting through its owner, Daryl Rogers, unlawfully discriminated in employment against Durbin by reason of her marital status when it demoted Durbin to salesperson on October 9, 2002. Mont. Code Ann. § 49-2-303(1)(a).

3. Rogers' Jewelers would have taken the same adverse action against Durbin even without the discriminatory motive. Consequently, Durbin did not suffer any

harm, pecuniary or otherwise, from which she would have been free but for the illegal discrimination. Mont. Code Ann. §49-2-506(1)(b), Admin. R. Mont. 24.9.611.

4. The circumstances of the illegal discrimination mandate particularized affirmative relief. Mont. Code Ann. §49-2-506(1).

5. For purposes of Mont. Code Ann. § 49-2-505(7), Durbin is the prevailing party in this matter. *Laudert, supra*, 2000 MT ¶ 57, 301 Mont. at 131-32, 7 P.3d at 398.

VI. ORDER

1. Judgment is found in favor of Durbin and against Rogers' Jewelers, Inc., on the charge that Rogers' Jeweler's, Inc.. illegally discriminated against Durbin in employment by reason of marital status. Rogers' Jewelers, Inc., is enjoined from taking any adverse employment action against any employee by reason of marital status.

2. Within 90 days of this order, Daryl Rogers must attend four hours of training, conducted by a professional trainer in the field of personnel relations and/or civil rights law, on the methods and means of identifying and preventing discrimination in the workplace. Upon completion of the training, Rogers shall obtain a signed statement of the trainer indicating the content of the training, the date it occurred and that Rogers attended for the entire period. Rogers must submit the statement of the trainer to the Human Rights Bureau within two weeks after the training is completed.

3. Durbin is not entitled to any relief as she did not suffer any harm, pecuniary or otherwise, from which she would have been free but for the illegal discrimination.

DATED: March 4, 2004

/s/ GREGORY L. HANCHETT

Gregory L. Hanchett, Hearing Examiner
Hearings Bureau, Montana Department of Labor and Industry

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