

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
OAL DOCKET NO. CRT 05662-18  
DCR DOCKET NO. EG09WB-63409

\_\_\_\_\_ )  
and Director, Division on )  
Civil Rights, )  
 )  
Complainants, )  
 )  
v. )  
 )  
Tyce Transportation and )  
Curtis Horn, Individually, )  
 )  
Respondents. )  
\_\_\_\_\_ )

**Administrative Action**  
**FINDINGS, DETERMINATION**  
**AND ORDER**

**APPEARANCES:**

\_\_\_\_\_, pro se, Complainant

James R. Michael, Deputy Attorney General, for the New Jersey Division on Civil Rights  
(Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Curtis Horn, pro se, for the Respondents

**BY THE DIRECTOR:**

This employment discrimination matter is before the Director of the New Jersey Division on Civil Rights (DCR) for a final agency decision, based on allegations that Tyce Transportation and Curtis Horn (Respondents) violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On January 15, 2019, Administrative Law Judge (ALJ) Thomas R. Betancourt issued an order for partial summary decision, concluding that Respondents violated the LAD. On May 13, 2019, the ALJ issued an initial decision recommending remedies.<sup>1</sup> Neither Complainant \_\_\_\_\_ nor Respondents filed any exceptions to the ALJ's decision. After a thorough evaluation of the initial decision and the record, the Director adopts the ALJ's decision in full, for the reasons set forth below.

<sup>1</sup> Hereinafter, the ALJ's initial decision will be referred to as ID, the ALJ's January 15, 2019 Order Granting Partial Summary Decision will be referred to as SD, and Complainant's exhibits admitted into evidence will be referred to as Ex. P. Although both \_\_\_\_\_ and the Director of the Division on Civil Rights are complainants in this matter, "Complainant" will refer to \_\_\_\_\_

## Procedural History

Tyce Transportation, which is owned by Curtis Horn, hired Complainant [REDACTED] as a school bus aide on November 15, 2010. (ID 6.) She earned \$8.50 per hour, working two hours in the morning and two hours in the afternoon, five days a week, on one of two bus routes for special needs students attending the Center for Autism. (ID 7; SD 4.)

Complainant filed a verified complaint with DCR on October 22, 2012, alleging that Tyce Transportation discriminated against her and discharged her in reprisal for objecting to and reporting sexual harassment by Curtis Horn. Respondent did not file an answer to the complaint.<sup>2</sup> DCR investigated the matter, and on January 30, 2018 issued a Finding of Probable Cause (FPC) supporting allegations of sexual harassment and retaliation. The FPC noted that although the initial complaint alleged discrimination based on national origin, Complainant clarified early in the investigation that she intended to allege sexual harassment rather than national origin discrimination. Based on DCR's investigation of the clarified allegations, the FPC amended the complaint to add a claim of sexual harassment and to add Curtis Horn, the owner of Tyce Transportation, as an individual respondent. (FPC page 1.)

DCR held a conciliation session in accordance with N.J.A.C. 13:4-9.4(a). The parties attended, but did not reach a settlement. On April 20, 2018, DCR transmitted the matter to the Office of Administrative Law (OAL) for a hearing pursuant to N.J.A.C. 13:4-11.1(b).

On May 11, 2018, the ALJ held a telephone prehearing conference and issued a prehearing order scheduling a hearing for October 3, 2018. That hearing date was adjourned.

On October 31, 2018, a Deputy Attorney General (DAG) representing DCR served Respondent Horn with Request for Admissions, noting that they had been served twice before, and that Respondents had not filed a response. Respondents did not respond to the Requests for Admissions. (SD 12.)

On December 19, 2018, the DAG representing DCR filed a motion for summary decision. That motion asked the ALJ to enter judgment in favor of Complainants regarding liability, and to schedule a hearing on damages. Respondents did not file a response to the motion. On January 15, 2019, the ALJ issued an Order Granting Partial Summary Decision.

A hearing on remedies was scheduled for February 20, 2019. Respondent Curtis Horn appeared at the hearing, and indicated that he was "unsure" if he ever received any documents from DCR. (ID 2.) On the hearing date, Horn received copies of the FPC, the complaint, the Notice of Motion for Summary Decision, the brief supporting that motion, the Order Granting Partial Summary Decision, and the prehearing order. *Ibid.* The ALJ granted Horn until February

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<sup>2</sup> Respondents did not respond to DCR's requests to participate in the investigation until November 6, 2017, when Curtis Horn appeared for an interview in response to a subpoena. DCR's memo summarizing that interview was submitted as Exhibit S to DCR's Motion for Summary Decision.

27, 2019 to file a response,<sup>3</sup> and granted Complainants until March 6, 2019 to reply. Respondents made no submission.

On March 6, 2019, Complainants submitted certifications and exhibits from DAG James R. Michael and DCR Investigator Dale Steven Frediani, presenting evidence that, prior to the February 20, 2019 hearing, Respondents were served with the complaint, the FPC, Motion for Summary Decision, the brief supporting that motion, the Order Granting Partial Summary Decision and the prehearing order.

The hearing on remedies took place on March 21, 2019. Respondent Horn appeared and testified. Complainant also testified, and presented the testimony of a witness, [REDACTED]. The ALJ left the record open for submissions regarding requested remedies, giving the DAG one week to file a submission, and giving Respondents one week from receiving the DAG's submission to file a reply. The DAG filed and served on Respondents a March 28, 2019 letter brief regarding requested remedies, and a separate certification in support of DCR's attorney's fee application. Respondents did not reply to either submission.

On May 13, 2019, the ALJ issued his initial decision, which notified the parties that any exceptions to that decision must be filed with DCR within 13 days. In a May 22, 2019 letter, DCR reminded the parties of the deadline to file exceptions. DCR received no exceptions to the ALJ's decision.

The DCR Director's final decision was initially due on June 27, 2019. On June 21, 2019, the OAL granted DCR's request for a 45-day extension of time to issue the final decision. The DCR Director's decision is now due on August 12, 2019.

### **The ALJ's Decision**

#### **A. The ALJ's Findings and Conclusions of Law Regarding Liability**

The ALJ made factual findings regarding liability in his Order Granting Partial Summary Decision, based on the undisputed evidence provided with DCR's Motion for Summary Decision. These factual findings can be summarized as follows:

Shortly after Complainant was hired, Horn began telling her she was attractive and asking her out on dates. When she declined, he persisted and began making sexually explicit comments. She asked him to stop, but his comments persisted, and escalated to physical harassment. (SD 5-6.)

Complainant began keeping a written log of Horn's sexual comments and conduct. The log included, but was not limited to, the following:

- Horn stated that Complainant would look good in his bed. (SD 5.)

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<sup>3</sup> The ALJ indicated that Respondent Horn was to "advise the [ALJ] in writing why he never replied to the motion," (ID 3), while DAG James R. Michael indicated that Respondents were "to file an explanation as to whether he received the materials." (March 6, 2019 letter, page 1.) Since Respondent submitted nothing at all, there is no need to resolve this discrepancy.

- On several occasions, Horn told Complainant that he would love to kiss her “bottom lips,” or “the lips she was sitting on,” referring to her genitals. Complainant told him to stop, or that she had nothing for him to kiss. He would laugh, and on one occasion, Horn said that all she needed to do was “say yes, get it done, and it would be over with.” (SD 5-6.)
- Complainant began eating lunch in her car to avoid Horn, and when she was not in her car, she would walk away when he made sexual comments. On one occasion, Horn followed her, and Complainant told him that if he did not stop, she would report it. Horn laughed. (SD 5-6.)
- On one occasion, Complainant was waiting to sign some paperwork, and Horn began rubbing her shoulders. She jumped up, and he then asked her to come into his office. When she entered the room, she saw a bed there, and began to back out of the room, but Horn grabbed her tightly and locked the door. He began pulling her towards the bed while kissing and licking her neck and tried to remove her shirt. He tried to put his tongue in her mouth. She escaped his grasp and tried to open the door, but found that it was locked. He refused to unlock the door, and let her out only when he heard someone on the other side of the door. (SD 6.)

Complainant began recording Horn’s sexually explicit comments on her cellphone, but the recording was no longer available at the time of the OAL proceedings. Complainant provided corroborating evidence from witnesses confirming that around the time of the incidents, she had either played the recording for them or confided in them about the sexual harassment. (SD 6-7.)

Horn also sexually harassed other female employees, including [REDACTED], a bus driver who submitted a certification to DCR. [REDACTED] certified that Horn subjected her to sexual overtures and would rub up against her, touch her neck and attempt to kiss her. She made sure that she was never alone in a room with him, and ultimately felt compelled to find another job. [REDACTED] stated that two female bus aides also quit because of Horn’s harassment. (SD 8.)

Driver [REDACTED] told DCR that Complainant was visibly upset when she told him that Horn had tried to force himself on her. He also recalled that Complainant played a recording of Horn for him, but he could not recall the details. (SD 7.) [REDACTED], who worked as a bus aide and also in Respondents’ garage, told DCR that Complainant played the recording for him, and he heard Horn say that he wanted to suck on Complainant’s “bottom lips.” (SD 6-7.)

Driver [REDACTED] told DCR that Complainant confided in him about the sexual harassment, in part because he also served as a [REDACTED]. After hearing the recording and recognizing Horn’s voice making inappropriate sexual comments, [REDACTED] confronted Horn, told him about the recording, and advised him that the conduct was inappropriate. After [REDACTED] confronted Horn, he observed that Complainant’s work hours were cut drastically, and his own hours were drastically cut as well. Horn also cut his hourly rate, and [REDACTED] then found another job and resigned. (SD 7-8.)

Horn cut Complainant’s scheduled work hours, and would also wait until she showed up for a scheduled shift, and then tell her that he had no work for her that day. Horn did not cut the hours of others assigned to same routes, and also hired new bus aides. (SD 9.)

Horn eventually terminated Complainant's employment, telling her that it was because he had lost the contract for her assigned Center for Autism route. Complainant learned that the route continued after she was discharged. Horn had hired another aide shortly before firing Complainant, and had retained the other three employees who worked on the Center for Autism routes, and they continued to work for Respondents in 2014. (SD 10-11.)

After Horn terminated Complainant's employment, he called her and said, "you must know how bad you want your job and like I told you, I'm not taking no for an answer." Complainant understood this to mean that Horn would reinstate her if she submitted to his sexual advances. (SD 10.)

Horn is responsible for all personnel and employment decisions for Tyce Transportation, which does not have a written sexual harassment policy. Horn told DCR that employees report problems to him, and if they have a complaint against him, they can report it to DCR. (SD 4; Motion for Summary Decision, Exhibit S.)

The ALJ noted that Respondents did not reply to DCR's Request for Admissions or file a response to the summary decision motion. (SD 12.) On that basis, the ALJ found the facts set forth in DCR's motion undisputed, and adopted them. *Ibid.* The ALJ laid out the law applicable to claims of sexual harassment, hostile work environment based on sex, and reprisal. (SD 12-15). He then concluded that there were no genuine issues of material fact in dispute, and that the matter was ripe for summary decision. (SD 15.) Applying the appropriate legal standards (discussed in the Director's decision below), the ALJ concluded that Respondents had subjected Complainant to sexual harassment and reprisal in violation of the LAD.

#### **B. The ALJ's Factual Findings and Conclusions of Law Regarding Remedies**

The ALJ made factual findings regarding remedies based on the record and his assessment of the witnesses at the remedies hearing. The ALJ summarized the relevant testimony at the remedies hearing on pages 3-5 of the ID, and assessed the credibility of the witnesses. He found the testimony of Complainant and [REDACTED] credible, noting that they each were sincere and emotional in their testimony, and that Complainant "did not shy away from an obviously difficult subject for her." (ID 5-6.)

At the hearing, Horn denied sexually harassing Complainant. (ID 5.) The ALJ found his testimony not credible, noting that he "contradicted himself at times" and that his "manner and presentation were that of a person trying to persuade that the impossible happened." (ID 6.)

The ALJ's factual findings regarding remedies can be summarized as follows. Tyce Transportation, which is owned by Curtis Horn, hired Complainant as a school bus aide on November 15, 2010. (ID 6.) She earned \$8.50 per hour, working two hours in the morning and two hours in the afternoon, five days a week, on one of two bus routes for special needs students attending the Center for Autism. (ID 7; SD 4.) Soon after Complainant was hired, Horn began sexually harassing her, and she rebuffed his sexual advances. (ID 7, incorporating by reference SD.) In retaliation for rejecting his sexual advances, Horn first cut Complainant's work hours, and on November 1, 2012, terminated her employment. *Ibid.* Complainant lost 52 days of work due to the retaliatory reduction in hours, resulting in lost wages of \$1,768. After the retaliatory

termination of her employment, Complainant was unemployed for forty weeks, resulting in lost wages of \$6,800. *Ibid.*

Complainant suffered emotional distress due to the sexual harassment, the reduction in work hours, and the termination of her employment. Due to Horn's actions, Complainant entertained suicidal thoughts and sought medical attention. She sought medical treatment at Irvington Emergent Care Rehabilitation Center on August 19, 2011. Her physician recommended that she not work for two weeks due to stress, depression and anxiety, and prescribed medication. (ID 8; Ex. P-3.)

The ALJ noted that the LAD provides for discrimination victims to recover economic losses, including back pay, and compensation for emotional distress, to the same extent available in common law tort actions. (ID 9.) Regarding emotional distress damages, the ALJ cited un rebutted evidence that Complainant "suffered from depression, anxiety, and stress." He noted that expert testimony is not required to support an award, and that "the unique circumstances of each case must guide the outcome," citing Cuevas v. Wentworth Group, 226 N.J. 480, 509 (2016). The ALJ summarized the relevant circumstances of the present matter as follows:

[Horn's] actions were unconscionable and were made worse by the fact he was the owner of Tyce Transportation and [Complainant's] boss. It seemed nothing she would do or say to reject his unwanted advances would deter Horn. Indeed, after he terminated her he let her know she could return to work if only she would accede to his demands. His behavior towards [Complainant] started almost immediately upon her hire and continued throughout her employment. It caused her to seek medical assistance. She had to borrow money from her friend . . . due to loss of work.

(ID 12.)

Based on the evidence, the ALJ awarded Complainant \$8568 in lost wages and \$250,000 for emotional distress. The ALJ also assessed a \$10,000 statutory penalty for Respondents' violations of the LAD. (ID 12.) Pursuant to N.J.S.A. 10:5-27.1, the ALJ also awarded \$27,870 to DCR for attorney's fees. The ALJ also issued an order for Respondents to cease and desist from further violations of the LAD, and to disseminate informational materials to employees regarding discrimination and harassment. (ID 13-14.)

## **The Director's Decision**

### **A. Factual Findings and Legal Analysis**

After reviewing the record submitted by an ALJ, the DCR Director may adopt, reject, or modify the initial decision. N.J.S.A. 52-14B-10(c). If the Director rejects or modifies findings of fact, conclusions of law, or interpretations of policy, she must state clearly the reasons for doing so. *Ibid.* The Director may not reject or modify findings of fact as to issues of credibility of lay witness testimony "unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible

evidence in the record.” Ibid.; S.D. v. Division of Med. Assist. and Health Services, 349 N.J. Super. 480, 485 (App. Div. 2002). That rule recognizes that it is the ALJ—and not the Director—who heard the testimony in person and therefore is uniquely situated to assess witness credibility. Clowes v. Terminix Int’l, 109 N.J. 575, 587 (1988).

For the reasons discussed below, the Director adopts the ALJ’s ruling granting summary decision regarding liability against Respondents for sexual harassment, hostile work environment based on sex, and reprisal.

In his initial decision granting summary decision, the ALJ set forth the relevant law applicable to “quid pro quo” sexual harassment (SD13) and hostile work environment based on sex. (SD 13-14.) Briefly, the LAD prohibits an employer from discriminating against an employee based on sex. N.J.S.A. 10:5-12(a). Sexual harassment is a form of sex discrimination. See Lehmann v. Toys ‘R’ Us, Inc., 132 N.J. 587, 607 (1993). The LAD prohibits both “quid pro quo” sexual harassment and hostile work environment sexual harassment. To prevail on a claim of quid pro quo sexual harassment, an employee must show that the harasser attempted to make her submission to sexual advances a condition of her employment, or indicated that rejecting such advances would result in some adverse employment consequences. Lehmann, 132 N.J. at 601. To prevail on a claim of hostile work environment sexual harassment, an employee must show that she was subjected to conduct that was sexual in nature or otherwise would not have occurred “but for” her gender, and the conduct was severe or pervasive enough for a reasonable female employee to find the conditions of employment altered, rendering the working environment hostile or abusive. Id. at 602-603. The Supreme Court has recognized that where the harasser is the ultimate supervisor, the employee’s dilemma is “acute and insoluble” because she has “nowhere to turn.” Taylor v. Metzger, 152 N.J. 490, 503-505 (1998).

The allegations of sexual harassment are set forth in detail in the ALJ’s decision. In brief, Respondent Horn, who is the owner of the company, repeatedly subjected Complainant to overt and graphic sexual advances. Despite her consistent demands that he stop, the harassment continued. Eventually, Horn locked her in a room containing a bed, forcibly kissed and touched her body, and tried to remove her clothing. The testimony and documents in the record demonstrate that the conduct was sexual in nature, and was sufficiently severe and pervasive that a reasonable woman would find that her working environment was hostile and abusive.

Horn’s actions in reducing Complainant’s hours after she rejected his advances were evidence of an unstated quid pro quo demand. However, even if the quid pro quo nature of the harassment was not entirely clear during Complainant’s employment, it became explicit after Horn fired her, when he indicated that he would reinstate her if she would agree to his sexual demands.

In addition to her sexual harassment claims, Complainant alleged a claim for reprisal. The Director also adopts the ALJ’s findings regarding Complainant’s reprisal claim. The ALJ laid out the appropriate legal framework for a reprisal claim. (SD 14-15.) The LAD prohibits reprisal for complaining about workplace discrimination or harassment, or otherwise asserting rights protected by the LAD. N.J.S.A. 10:5-12(d). To establish a prima facie claim of unlawful reprisal, an employee must show that she engaged in LAD-protected activity, and the employer subjected her to an adverse action or other form of retaliation after learning of the protected

activity and that there was a causal connection between the LAD-protected activity and the adverse action. Craig v. Suburban Cablevision, 140 N.J. 623, 629-630 (1995). If the employer provides a non-retaliatory reason for the adverse action, the employee must show that the employer's reason is merely a pretext for unlawful reprisal.

Horn was the owner, Complainant's supervisor, and performed all personnel functions for Respondent Tyce Transportation. Because Tyce Transportation provided no procedure for reporting Horn's sexual harassment, Complainant repeatedly reported the harassment directly to Horn himself and asked him to stop. She also reported the harassment to several co-workers, including [REDACTED], whom she believed might be able to help because he was also a [REDACTED]. Horn learned that Complainant complained to [REDACTED] when [REDACTED] confronted him. Complainant's complaints to Horn, [REDACTED], and others were LAD-protected activity.<sup>4</sup>

Soon after [REDACTED] confronted him, Horn began cutting Complainant's work hours, and telling her that he had no assignments for her. [REDACTED] corroborated that in reprisal for the objections and report of sexual harassment, Horn cut Complainant's work hours (as well as his own.) Eventually, Horn terminated Complainant's employment. Although Horn told Complainant that she was being discharged because the company lost the Center for Autism Route, Complainant presented evidence demonstrating that the other three employees assigned to that route were retained and reassigned to other routes, and that Respondents hired other bus aides after discharging her. The evidence refutes Respondents' articulated reason for discharging Complainant, and demonstrates that it was merely a pretext for unlawful reprisal.

Based on the above analysis, the ALJ's factual findings support his conclusion that Respondents subjected Complainant to quid pro quo sexual harassment, created a severe and pervasive sexually hostile work environment, and cut her hours and then terminated her employment in reprisal for complaining about the sexual harassment. In the absence of evidence that any factual findings were arbitrary, capricious, unreasonable, or not supported by sufficient competent and credible evidence, the Director has no basis for rejecting those determinations. N.J.A.C. 1:1-18.6; N.J.S.A. 52-14B-10(c); Clowes, 109 N.J. at 587.

The Director also finds that the ALJ applied the appropriate legal framework in determining that Respondents violated the LAD and adopts his legal conclusions.

Respondents did not oppose the motion for summary decision and filed no exceptions to the initial decision granting summary decision. Accordingly, the Director adopts the ALJ's factual findings and conclusions of law with regard to Complainant's sexual harassment and reprisal claims.

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<sup>4</sup> Although not explicitly included in the ALJ's' factual findings, Complainant stated in her log of events and a certification submitted in support of the motion for summary decision that she also complained to the Irvington police department, and heard a [REDACTED] speak to Horn about her complaint by phone. (Motion for Summary Decision, Exhibit 2.) Horn was aware of this additional LAD-protected activity when he cut Complainant's work hours and terminated her employment.



## **B. Remedies**

### **Lost Wages**

In LAD cases, lost wages may be awarded to a complainant as the prevailing party. N.J.S.A. 10:5-3. Here, the ALJ granted Complainant's request for \$8568 to reimburse her for the wages she lost when Horn cut her work hours and then terminated employment.

A complainant holds the burden of providing an evidentiary basis for calculating lost wages. See Brooks v. Andolina, 826 F. 2d 1266, 1270 (3rd. Cir. 1987). The ALJ's factual findings, summarized above, demonstrate that Complainant presented detailed evidence of the wages she would have earned but for Horn's retaliatory conduct. And Complainant's testimony at the remedies hearing detailed her diligence in mitigating her damages after her discharge.

The ALJ's award is consistent with the LAD's policy to "make all victims whole." See Terry v. Mercer County Bd. of Chosen Freeholders, 86 N.J. 141, 157 (1981) (quoting Director, Div. on Civil Rights v. Slumber, Inc., 166 N.J. Super. 95, 108 (App. Div. 1979), mod., 82 N.J. 412 (1980)).

### **Emotional Distress Damages**

The courts have long recognized that a victim of unlawful discrimination is entitled to recover for the mental anguish or emotional distress proximately related to that discrimination. See Anderson v. Exxon Co., 89 N.J. 483, 502-03 (1982). A victim is entitled to receive, at a minimum, a threshold pain and humiliation award for enduring the indignity that may be presumed to be a "natural and proximate" result of discrimination. Gray v. Serruto Builders, Inc., 110 N.J. Super. 297, 315-316 (Ch. 1970).

In 1990, the Legislature amended the LAD to explicitly provide that that the LAD "shall be liberally construed" to provide remedies for personal hardships including "economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment controversies." N.J.S.A. 10:5-3. In 2003, the Legislature again amended the LAD to clarify that "a prevailing complainant may recover damages to compensate for emotional distress . . . to the same extent as is available in common law tort actions." N.J.S.A. 10:5-17.

"[I]n discrimination cases, which by definition involve willful conduct, the victim may recover all natural consequences of that wrongful conduct, including emotional distress and mental anguish damages arising out of embarrassment, humiliation, and other intangible injuries." Tarr v. Ciasulli, 181 N.J. 70, 82 (2004). The standard of proof for emotional distress awards under the LAD is "far less stringent" than for a common law claim of intentional infliction of emotional distress. *Ibid.* Neither expert testimony nor corroborating evidence is required to support an emotional distress damage award. Rendine v. Pantzer, 141 N.J. 292, 312 (1995).

The DCR Director has the "unique discretion and expertise to effectuate fully the 'make-whole' policy of the [LAD]." See Terry, supra, 86 N.J. 141, 157. As the ALJ noted, there is no

precise formula for measuring emotional distress damages; awards must be based on the unique circumstances of each case. ID 11, citing Rendine, 141 N.J. at 311-13 and Cuevas v. Wentworth Group, 226 N.J. at 509. “[T]here is no gauge for pain and suffering. Therefore, a certain amount of imprecision is acceptable as long as it appears that the damage award was not based upon speculation, passion, or prejudice.” Klawitter v. City of Trenton, 395 N.J. Super. 302, 336 (App. Div. 2007).

The ALJ heard and observed the demeanor of the witnesses, and is therefore in the best position to judge their credibility. Clowes v. Terminix Int’l, 109 N.J. 575, 588 (1988). Here, the ALJ explicitly found Complainant credible. He noted that “she did not shy away from an obviously difficult subject for her.” (ID 5-6.) The ALJ also found Complainant’s friend, [REDACTED] credible, noting that she was aware of the harassment and reprisal, and “was obviously upset at what [Complainant] endured.” (ID 4, 6.)

Although Horn denied the allegations of sexual harassment, (ID 5), the ALJ found his testimony “simply not credible” (ID 6) and found his actions “unconscionable” and “egregious.” (ID 12.)

The record amply supports the ALJ’s description of what Complainant endured as “egregious.” The ALJ found as fact, through Complainant’s testimony and documents supporting her Motion for Summary Decision, that Horn subjected Complainant to repeated verbal sexual advances and “[i]t seemed nothing she would do or say to reject his unwanted advances would deter Horn.” ID 12. It then escalated to Horn locking her in a room, forcibly kissing and touching her body, and trying to remove her clothing. Complainant was able to escape only after Horn heard someone on the other side of the door. (SD 6.)

While medical documentation is not required to support an emotional distress award, here the ALJ found as fact that Complainant sought medical attention due to Horn’s conduct, and was directed by her physician not to work for two weeks due to stress, depression and anxiety. (ID 8; Ex. P-3.) Her medical documentation indicated that her physician also prescribed medication. (Ex. P-3.) The ALJ also found that Complainant had “entertained suicidal thoughts due to Horn’s actions.” Ibid.

Based on his factual findings, the ALJ found that Complainant suffered emotional distress as a direct cause of Respondents’ sexual harassment and reprisal, and awarded her \$250,000 in emotional distress damages.

Factors to be considered in assessing the reasonableness of an award include “the witnesses’ testimony; the nature, extent and duration of the plaintiff’s injuries; and . . . the impact of those injuries on the plaintiff’s life.” Cuevas v. Wentworth Group, 226 N.J. at 510.

The award in this case is within the range of awards in other similar cases. See, e.g., Cuevas v. Wentworth Group, 226 N.J. at 510 (emotional distress awards of \$800,000 and \$600,000 to plaintiffs were not excessive based on hostile work environment over a nine-month period); Lockley v. Turner, 344 N.J. Super. 1, 12-14 (App. Div. 2001) (upholding \$750,000 emotional distress award in sexual harassment case), aff’d in part and modified in part on other

grounds 177 N.J. 413 (2003)); Braden v. Lockheed Martin Corp., 2017 U.S. Dist. LEXIS 207236, \*55 (D.N.J. December 18, 2017) (upholding \$520,000 emotional distress award in age discrimination case); Klawitter v. City of Trenton, 395 N.J. Super at 335-306 (upholding a \$79,538 award); Rendine v. Pantzer, 141 N.J. at 311-313 (upholding awards of \$105,000 and \$125,000 for gender discrimination).

After a thorough analysis of the record, the Director finds no basis on which to reject or modify the ALJ's assessment of damages. The nature, extent and duration of the unlawful conduct and the impact of that conduct on Complainant's life support the ALJ's award. The Director also finds that the ALJ's award of \$250,000 is fair and reasonable given the severity of the harassment and reprisal that Complainant endured, and the fact that Respondent Horn was not only the highest-ranking supervisor in the workplace, but also the company's owner. See Taylor v. Metzger, 152 N.J. at 503-505 (reasoning that a supervisor's "unique role in shaping the work environment" gives him ample power to contaminate the workplace and alter the terms and conditions of a subordinate's employment, and leaves that employee essentially without recourse.)

### **Counsel Fees**

A prevailing party in an LAD action may be awarded reasonable attorney's fees. N.J.S.A. 10:5-27.1. Fees should ordinarily be awarded unless special circumstances would make a fee award unjust. Hunter v. Trenton Housing Auth., 304 N.J. Super. 70, 74-75 (App. Div. 1997). When a case is prosecuted by a DCR attorney, reasonable fees for such representation may be assessed against the respondent. N.J.S.A. 10:5-27.1. The Supreme Court has held that to be compensable, the time expended must be supported by a certification of services that is sufficiently detailed to allow meaningful review and scrutiny, and must include more than a raw compilation of hours. Rendine v. Pantzer, 141 N.J. at 334-35 (1995). The certification in this case meets those requirements.

Here the ALJ awarded \$27,870 in counsel fees based on a certification of DAG Michael, attesting to the time he and a previously-assigned DAG spent on this case and the Division of Law's hourly rate for attorneys with their level of experience. The DAG's certification noted that a portion of the 92.9 DAG hours expended on this case were due to Respondents' inactions and "dilatatory tactics." After reviewing the certification, the Director finds that an award of attorney fees for prosecuting this case serves the public interest, and that the DAG's certification supports the requested hourly rate and the reasonableness of the time expended in prosecuting this case.

### **Statutory Penalty**

The LAD states that any person who violates its provisions "shall be liable," in addition to any other remedies, for statutory penalties payable to the State Treasury. N.J.S.A. 10:5-14.1(a). The ALJ found that a \$10,000 penalty was appropriate in this case. After a review of the record, the Director finds that the penalty is appropriate in these circumstances.

## **Injunctive Relief**

The ALJ's recommended decision ordered Respondents to cease and desist from all unlawful conduct in violation of the LAD, and to "comply with the Order of the Director as to the dissemination of materials to employees to prevent discrimination and/or harassment." (ID 14.)

The DAG's letter brief regarding remedies clarifies the type of materials to be disseminated:

Respondents should be required to issue a statement to all employees of any company in which Horn is affiliated, including but not limited to Tyce Transportation and JAJO Learning Center, advising that employees who believe they have been subjected to discrimination and/or harassment may contact DCR, along with contact information for DCR's Newark Office and DCR's fact sheet on sexual harassment in the workplace. Respondents should also be required to report to DCR whenever they receive a complaint of discrimination and/or harassment during the next three years.

The Director finds that this remedy is reasonable and appropriate in this case. The Director also finds that Respondent should adopt an anti-discrimination and anti-harassment policy that comports with the LAD, and that Respondent Horn should attend training on the Law Against Discrimination.

## **ORDER**

After a thorough and independent evaluation of the initial decision and the OAL record, the Director finds no basis to reject any of the ALJ's factual findings or conclusions of law. Accordingly, the Director adopts and incorporates them by reference and concludes that Respondents subjected Complainant to unlawful sexual harassment and reprisal in violation of the LAD.

1. Within 45 days from the date of this order, Respondents shall forward to DCR a certified check payable to Complainant in the amount of \$258,568 comprised of \$8,568 as compensation for lost wages, and \$250,000 as compensation for emotional distress.
2. Within 45 days from the date of this order, Respondents shall forward to DCR a certified check payable to "Treasurer, State of New Jersey" in the amount of \$37,870, comprised of \$10,000 as a statutory penalty, and \$27,870 as payment for DCR's attorney's fees and costs incurred in this matter.
3. Respondents shall cease and desist from all unlawful conduct in violation of the LAD.
4. Within 60 days of this Order, Respondents shall adopt an anti-discrimination and anti-harassment policy that comports with the LAD, which shall include a procedure for employees to report allegations of discrimination and harassment, and a prohibition on reprisal or retaliation. Respondent must submit this policy to DCR within 50 days of this Order.
5. Respondent Tyce Transportation, and any company or business in which Respondent Horn is or shall become affiliated, including JAJO Learning Center, shall issue the

following to all current employees within 60 days of this Order, and to all new employees within 60 days of hire:

- a. DCR's Fact Sheet on sexual harassment;
  - b. Respondents' policy prohibiting employment discrimination and harassment, described in paragraph 4 above;
  - c. A statement notifying employees that if they believe they have been subjected to discrimination or harassment, they may contact DCR, and providing the name, address and telephone number for DCR's Newark office;
  - d. For three years from the date of this Order, Respondents and any company affiliated with Respondent Horn shall report to DCR whenever they receive a complaint of discrimination or harassment.
6. Within 60 days of this Order, Respondent Horn and all other supervisors and managers employed by Tyce Transportation shall attend training on the employment discrimination and sexual harassment provisions of the LAD, and shall provide DCR with proof of attendance.
  7. The penalty and all payments made by Respondents under this Order, as well as all reporting mandated by this Order, shall be forwarded to Carlos Bellido, Esq., New Jersey Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102 or [Carlos.Bellido@njcivilrights.gov](mailto:Carlos.Bellido@njcivilrights.gov).
  8. Any late payments will be subject to post-judgment interest calculated as prescribed by the Rules Governing the Courts of New Jersey, from the due date until such payment is received by DCR.



Rachel Wainer Apter, Director  
NJ Division on Civil Rights

Date: August 12, 2019