

**THE PRINCE GEORGE'S COUNTY
HUMAN RELATIONS COMMISSION**

IN RE: GONZALEZ, Zulma

Complainant,

By

EXECUTIVE DIRECTOR

v.

ESCOBAR, INC., T/A El Triunfo

Respondent.

CLERK

MAR 3 1 2017

Prince George's County
Human Relations Commission

HRC Case No.: HRC-14-0504

EEOC Case No.: N/A

OPINION AND ORDER
DAMAGES AWARD

Under the authority of Article 12 of the Code of Public Local Laws of Maryland, Prince George's County § 2-185 et seq. (2011 Edition, as amended), the Prince George's County Human Relations Commission ("Commission") held a hearing on the merits of the complaint of illegal discrimination and retaliation filed by the Complainant, Zulma Gonzalez ("Ms. Gonzalez" or "Complainant") against Escobar, Inc. ("Escobar" or "Respondent"). On September 26, 2016, the Commission followed the recommendation of the Employment Panel and made the determination that Ms. Gonzalez's complaint failed to establish a *prima facie* case for discrimination based on age, but that Escobar did retaliate against her by terminating her employment after she engaged in a protected activity. (Commission Order for Case No. HRC14-0504). The Commission held an additional hearing concerning damages on Thursday, November 10, 2016, because it found the evidence presented at the original hearing insufficient to correctly

determine damages. (Notice of Damage Award Hearing, dated October 18, 2016). After hearing the testimony presented at that hearing and reviewing the exhibits, the panel determined that it was appropriate to award back pay in the amount of the paystubs received into evidence for the period of time from October 10, 2014 to July 15, 2015. The Commission determined that after July 15, 2015, Ms. Gonzalez, without explanation, did not sufficiently mitigate her damages. Based on the evidence presented, Ms. Gonzalez's damage award shall be \$8,265.60.

FINDINGS OF FACT

The Commission held the Damages Hearing to determine the award, if any, Ms. Gonzalez was entitled to receive in damages from Respondent. During the course of the Damages Hearing, the Commissioners reviewed Complainant's paystubs and heard testimony concerning Ms. Gonzalez's pay to determine the average weekly amount Ms. Gonzalez earned during her employment with Respondent. (Tr. 12:13 – 20; Ex. 2,3,4). The Commission also ascertained the amount of assistance Ms. Gonzalez received from the government. (Tr. 13: 2-8).¹ Lastly, the Commission determined the extent to which Ms. Gonzalez mitigated her damages by seeking new employment opportunities and the dates to which she was entitled to back pay. (Tr. 45:15-25; 52: 3-53:4).

Ms. Gonzalez testified that the paystubs included as exhibits were accurate representations of her base pay while she was employed at Respondent's restaurant. (Tr. 12: 13-20). Ms. Gonzalez reported that she received a total of \$206.64 every week as her total pay. (Exhibit 1,2,3,4). This amount included both the salary paid and the tips received. (Exhibit 1).²

¹ Ms. Gonzalez also received child support payments from the fathers of her two children; however, the Commission did not take this amount into consideration in calculating damages. The child support payment was used only to determine her methods of supporting herself and mitigating her damages after her termination. (Tr. 45; 2-11).

² The Commission heard Ms. Gonzalez testify that Escobar encouraged employees to report only \$210.00 in tips received per day regardless of the actual amount. (Tr. 22:3-18). However, the Commission determined that without further evidence as to the amount of tips actually earned, the amount of damages awarded would be calculated based upon the pay stubs submitted into evidence.

Ms. Gonzalez also testified that she received assistance from the government in the form of Medicaid benefits. (Tr. 13:2-8). These payments were made monthly in the amount of \$400.00. (Tr. 13:2-8).³ Ms. Gonzalez also testified regarding the number of places she applied for work after her termination on October 10, 2014 and prior to the birth of her daughter on July 17, 2015. (Tr. 14:10-15; 26:18). After the birth of her daughter, Ms. Gonzalez testified that she did not apply for employment for 40 days. (Tr. 30:1-30:25). The Complainant did not specifically testify as to the date of any of her applications. (Tr. 30:16-30:25). Ms. Gonzalez also included multiple bills from the period of her unemployment, as well as estimations of her transportation costs. (Ex. 6A, 6; Tr. 32:1-38:24).⁴

LEGAL FRAMEWORK AND ANALYSIS

Under the Prince George's County Code of Ordinances, when employers are found to have retaliated against an employee for that employee's participation in a protected activity, damages are awarded to the complainant employee. Prince George's County Code of Ordinances, Division 12 §195(b) states specifically, "Such order must be reasonably related to the violation... and in employment cases may include the awarding of back pay and reimbursement of actual expenses caused by wrongful conduct of the respondent to a complainant employee." Therefore, the Commission has the authority to determine the appropriate amount of damages given the evidence in each particular case and "...may include... back pay."

³ The Commission did not consider deleting these Medicaid payments, nor did it subtract the child support payments made to Ms. Gonzalez from the fathers of her two children in the amount of \$1000 a month collectively. (Tr. 45:2-11).

⁴ The Commission notes that Ms. Gonzalez provided many examples of her costs of living during her unemployment; however, in its discretion the Commission has determined awarding damages for these amounts would be inappropriate as these costs were unrelated to her unemployment. Ms. Gonzalez's estimates for medical and gas expenses were inconsistent and not credible. Therefore, the Commission decided to not award routine living expenses.

In this case, the Commission determined that Ms. Gonzalez had been retaliated against and that damages were appropriate. It is undisputed that the recorded pay that Ms. Gonzalez received per week prior to her termination was \$206.64, including tips. (Exhibit 2,3,4). While the Complainant testified that she received tips in an amount that far exceeded the amount that appeared on her weekly paystubs, she presented no documentary evidence or corroborating testimony to support such a claim. Thus, the Commission denies Ms. Gonzalez's claim for additional pay to account for nonreported tips.

On the other hand, the Commission finds credible Ms. Gonzalez's testimony that she actively sought employment from the date of her termination, October 10, 2014, until July 17, 2015, the birth of her daughter, i.e. 280 days or 40 weeks. (Tr. 14: 10-15; 26:18). Ms. Gonzalez conceded that she did not seek work from the date of the birth of her child, i.e., July 17, 2015, until her 40 days after the birth of her child. Subsequent to the birth of her child, Ms. Gonzalez testified that she actively sought work. Notwithstanding, Ms. Gonzalez's testimony that she sought work, her supporting documentary evidence (Exhibit 6) failed to persuade the Commission that she attempted to mitigate her damages by consistently looking for work after the birth of her child. (Tr. 30:2- 30:5). The Complainant's exhibit was deficient in providing the dates that she sought employment at the various locations outlined on her exhibit and she could provide no copies of applications to support her exhibit. Without the supporting dates and/or copies of applications, the Commission finds that Ms. Gonzalez's testimony was not credible. Even though Ms. Gonzalez testified that she could no longer work in restaurants, where she had significant experience, she failed to credibly or convincingly provide locations and dates of other places that she sought work or submitted applications for employment in the 15 months since her daughter's birth.

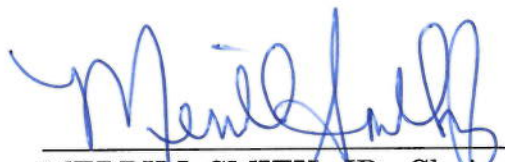
Based on the foregoing, the Commission finds that Ms. Gonzalez is entitled to the rate of pay she had received prior to her termination, from the date of her discharge until the date of the birth of her child. In its discretion, the Commission chose not to deduct from Ms. Gonzalez's damage award the amounts she received from Medicaid and child support, since those amounts were dedicated to her children. Thus, the Commission finds that Ms. Gonzalez is entitled to \$206.64 for 40 weeks or \$8,265.60 from Respondent.

CONCLUSION

For the reasons stated above, the Commission awards Ms. Gonzalez a total for damages in the amount of \$8,265.60. Said amount shall be paid by Respondent to Zuma Gonzalez within 35 days of the date of this decision. The Respondent shall deliver a certified check payable to **Zuma Gonzalez** to the Commission's Clerk at 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772 within 35 days of this Opinion and Order.

It is so **ORDERED** as of 27th March 2017.

Under Section 2-197-C of the Prince George's County Code, any party aggrieved by a final decision of the Commission in a contested case is entitled to file an appeal pursuant to Subtitle B of the Maryland Rules of Procedure, Annotated Code of Maryland, within (30) days from the date last entered above.


MERRILL SMITH, JR., Chair
Prince George's County
Human Relations Commission

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Katrina Burson, Commissioner
Eugene Langbehn, Commissioner

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