#123119-EM05 Jennifer L. Baumler
vs. General Management Services, Inc.
aka General Management Temporary Help Services, Inc.
and James R. Roberts, President, jointly and severally,

Order
Nanette L. Reynolds, Director

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Street
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel JENNIFER L. BAUMLER,

Claimant,

Case No. 123119-EM05

v

GENERAL MANAGEMENT SERVICES, INC.,
aka GENERAL MANAGEMENT TEMPORARY HELP
SERVICES, INC. and JAMES R. ROBERTS,
PRESIDENT, Jointly and Severally,

Respondent.
_____/

ORDER

**At a meeting of the Michigan Civil Rights Commission
held in Ferndale, Michigan
on the 24th day of April, 2001**

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed Findings of Fact and Recommendations regarding the issues involved in this case. The parties had an opportunity to make presentations in support of or in objection to the Referee's proposals at the public meeting of the Commission held on February 28, 2000. Commissioner Mossa-Basha has issued an Opinion, which has been adopted by a unanimous vote of the Commission. That Opinion shall be made a part of this Order. The Commission, therefore, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, General Management Services, Inc. (GMS), is a Michigan corporation. GMS has never furnished any documentation to the effect that it filed bankruptcy or is otherwise dissolved. GMS has never been dismissed from this case.

2. Respondent, James R. Roberts (Roberts) is the owner and President of GMS.

3. Claimant, Jennifer Baumler Hopkins, a female, worked for Respondents, GMS and Roberts from October 1990 until November 1991 as a senior counselor.

4. Claimant's starting wage was $10.00 an hour. Claimant was given a raise in June 1991 to $11.00 an hour, when respondent Roberts told her she was doing a good job. Claimant earned $19,531.70 in 1991.

5. Claimant received no performance evaluations while at GMS, received no negative feedback regarding her work and was given a $500.00 bonus for bringing in the Dunham's Sporting Goods account.

6. Claimant was not involved in the initial applications and I-9 forms for employees of one of respondent's clients.

7. Respondent Roberts, through a co-employee Louise Pastula, told claimant to start losing weight because she was getting a fat ass and to wear shorter skirts and higher heels. Roberts stated that "if her butt got any bigger...she wouldn't fit in the chair and wouldn't have a job."

8. Respondent Roberts threatened to fire the claimant three or four times a week, saying, "I'll fire your ass." Roberts threatened to "kick her ass" and have "Guido" break her legs."

9. Respondent Roberts made comments about the claimant being Catholic, stating Catholic girls spent a lot of time on their knees. Claimant reasonably inferred that such comments referred to performing oral sex. Roberts asked the claimant if she was a virgin.

10. Respondent Roberts repeatedly called claimant the "blonde bombshell." When claimant objected, Roberts' references became more frequent.

11. Roberts told the claimant that she had a "big chest," and "big boobs." Roberts stated they should have office orgies.

12. During a meeting in Roberts's office, claimant was asked if she had dropped her vagina.

13. Roberts engaged in several incidents of nonconsensual touching of the claimant by Roberts, including: touching the cleavage of her bosom; placing his hand on her thigh while reaching to get things out of the glove compartment in his car; massaging her shoulders while at her desk; smacking her on the butt while entertaining clients at a restaurant and repeatedly smacking her arm and putting his arm around her to pull her toward him on the same occasion.

14. A sign stating, "Sexual harassment isn't a problem around here, it's "one of the benefits of the job," was placed outside the kitchen/bathroom area at respondents' offices and allowed to remain there after being advised that its message could be considered offensive to the female employees.

15. On one occasion, Roberts appeared at the door to his home in only his shirt and socks when claimant delivered some dry cleaning to his home.

16. Claimant objected to such incidents and felt embarrassed and humiliated by them.

17. Roberts' overall treatment of the claimant caused the working conditions to become so difficult and unpleasant that she was forced to resign in November 1991.

18. Claimant suffered severe depression, marked by insomnia, loss of appetite, weight loss and nightmares as a result of Roberts' conduct.

19. In 1993, Claimant received counseling for her depression. The counselor opined that claimant's depression was precipitated by her having to resign from her employment at GMS and her need to overcome the victimization of sexual harassment which resulted in an inability to assert herself and a loss of control over her own life. Claimant had 18 sessions with the therapist, which she paid for out of pocket.

20. Claimant paid for health insurance benefits at $135 or $150 a month under COBRA.

21. Claimant, after receiving 26 weeks of unemployment, began looking for full-time employment following her separation of employment from GMS. Claimant earned $1,274.50 in 1992, continued to work part-time and earned $1,663.00 in 1993, earned $7,605.00 in 1994, earned $9,168.00 in 1995. Claimant's wage loss from November 1991 to December 1995 was $52,302.00. claimant was also required to obtain COBRA insurance and pay for her eighteen (18) counseling sessions.

22. Respondent GMS filed a response to the Charge on or about January 17, 1992 but was not represented by counsel at the time of the hearing, had no agent present at the hearing and failed to defend. There is no record of respondent GMS being dismissed from this case.

CONCLUSIONS OF LAW

1. Claimant, a female, is protected from sexual harassment under the Elliott-Larsen Civil Rights Act, specifically, § 103(h)(iii) and § 202(l).

2. Respondent GMS was claimant's employer and subject to the provisions of the Elliott-Larsen Civil Rights Act.

3. Respondent Roberts was the owner and President of GMS.

4. Claimant established the elements of a hostile work environment sexual harassment claim under *Radtke v Everett*, 442 Mich 368, 382; 501 NW2d 155.

5. Respondent constructively discharged the claimant.

6. Claimant suffered wage loss, emotional distress and mental anguish and was required to obtain medical insurance coverage and pay for counseling as a direct result of respondents' sexual harassment and constructive discharge.

7. Claimant made reasonable efforts to mitigate her damages through calendar year 1995, with the exception of a portion of calendar year 1993.

8. Claimant is entitled to recover economic damages for her lost wages, COBRA payments and counseling expenses, along with statutory interest.

9. Claimant is entitled to recover noneconomic damages for her mental anguish, embarrassment and humiliation, along with statutory interest.

10. Claimant is not entitled to attorney fees, since this is not a private action.

IT IS HEREBY ORDERED That

A. Respondents, forthwith, pay claimant the sum of fifty-two thousand three hundred two dollars ($52,302.00) for lost wages, together with statutory interest from the date when claimant filed her complaint until the date when payment is made in full.

B. Respondents, forthwith, pay claimant the sum of thirty thousand dollars ($30,000.00) for mental anguish, humiliation, and embarrassment, together with statutory interest from the date of this Order until the date when payment is made in full.

C. Respondents, forthwith, pay claimant the sum of four thousand eight hundred sixty dollars ($4,860.00) as reimbursement for her COBRA insurance payments and counseling expenses, together with statutory interest from the date when claimant filed her complaint until the date when payment is made in full.

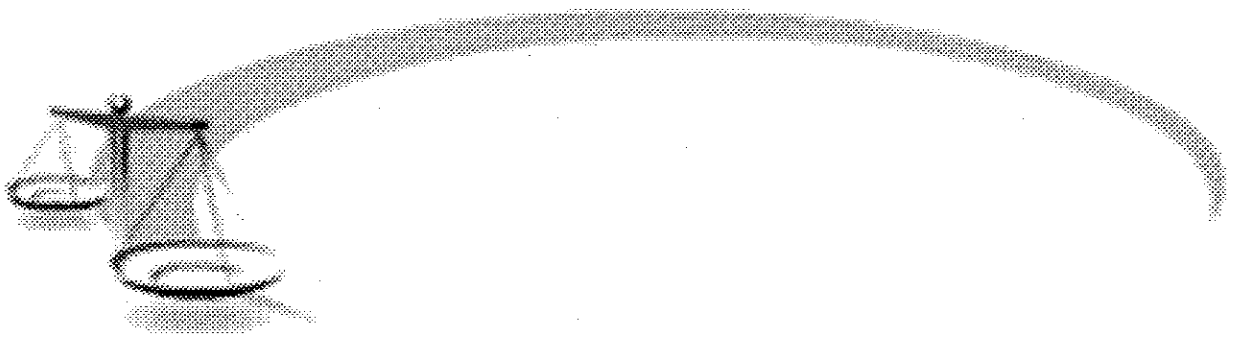
MICHIGAN CIVIL RIGHTS COMMISSION

Dated: April 24, 2001

Nanette Lee Reynolds, Ed.D., Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction provided by law. MCLA 37.2606



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Opinion
Dr. Yahya Mossa-Basha, Commissioner

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Case No. 123119-EM05

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PRESIDENT, Jointly and Severally,

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OPINION

Dr. Yahya Mossa-Basha, Commissioner

I

Introduction

On November 14, 2000, the Commission issued an Interim Order and Opinion, which decided several procedural and evidentiary issues raised by the parties during the course of these proceedings.[1] That same decision gave respondent the opportunity to present further testimony in this matter, provided respondent timely paid those costs related to the re-opening of the proofs and concluded such additional hearings within the

[1]The Commission Interim Order and Opinion, dated November 14, 2000, are incorporated herein by reference.

time frame established in the Order.[2] Respondent declined this opportunity. The Commission, therefore, is now prepared to decide this matter.

In this case, the Commission is being asked to decide the following issues:

First, whether respondent harassed claimant on the basis of sex in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

Second, if the initial issue is answered in the affirmative, whether such conduct resulted in the constructive discharge of the claimant, in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

Third, if liability is found in respect to either or both of these issues, whether claimant is entitled to relief, and, if so, what is the appropriate relief in this case.

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[2]The rationale for re-opening this case, provided Respondent paid the costs associated with remanding this matter for further evidence, is set forth in the Opinion accompanying the Interim Order. It is to be observed that Respondent's counsel well understood the conditional nature of the Commission Order and raised no objection at oral argument.

CHAIRMAN VILLARRUEL: You know, assuming that -- and I don't know what the other Commissioners will do because we haven't heard from the opposing side here, but assuming that one of the options available to us is to remand the case, you appreciate that should be the decision, that in all likelihood there's going to be substantial cost assessed against the Respondent?

MR. REYNOLDS: Well, you know, we're determined to get a fair hearing, or complete hearing at some point in time. And if that's one of the incidents necessary to accomplish that, then so be it.

(Oral Argument, dated February 28, 2000; pps. 22-23).

The Commission decided to re-open this matter even though respondent's Counsel offered three conflicting reasons to explain Roberts' absence from the public hearings held on June 18 and 19, 1998. (Earlier Opinion, pps. 9-10).

II

Factual Background

In October 1990, the claimant, Jennifer Baumler, hereinafter Baumler, was interviewed and hired by respondent James R. Roberts, hereinafter Roberts, the President and Owner of General Management Services, Inc.[3] claimant's job title at GMS was senior counselor. Her starting wage was $10.00 an hour. She also learned to do the office payroll and considered this position to be an advancement. (3/26/98: 12-13).

Claimant learned about the GMS position from Louise Pastula. Pastula, who had previously worked with claimant at Somebody Sometime, another temporary employment services, was now at GMS. (3/26/98: 13; 1/15/98: 123). Pastula had recommended claimant to Roberts because "she [the claimant] was very good at what she did" (1/15/98: 123; 148-149).

Claimant enjoyed her job. She worked 8:00 a.m. to 5:00 p.m. and on Saturdays, filling client orders for temporary employees. She called the temporary employees, placed ads for temporary employees, scheduled them for work, gave them job descriptions and sent them to companies for placement. She worked with the client companies regarding their employment needs and problems and took care of unemployment forms and social

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[3]Throughout the proceedings respondents' counsel claimed that he was appearing only on behalf of Roberts. Counsel represented that GMS was a defunct corporation as of the time of the January 16, 1998 hearing, even though GMS had filed a response to the Charge on or about January 17, 1992 (1/15/98: 3; 1/16/98: 3).

GMS never filed a motion to be dismissed from these proceedings. Nor was the Commission ever furnished with documents that would show this corporation had filed bankruptcy or was no longer in business. Consequently, GMS will be treated as a viable entity for purposes of this case.

service forms. (3/26/98: 14-15; 55; 99). She was not paid for working on Saturdays and was never asked to work on Saturdays but did so because she felt it was her responsibility. *Id.*, at 16.

Claimant was never given a performance evaluation on her work and never received negative feedback about her work in any way. *Id.*, at 60.[4] Shortly after claimant brought in the Dunham's Sporting Goods account, Roberts gave her a $500.00 bonus.[5]

In June 1991, claimant received a raise to $11.00 an hour. Roberts told her she "was doing a good job." *Id.*, at 40; 56.

During her employment, claimant was singled out for particularly harsh treatment. On almost a daily basis, Roberts referred to her as the "blonde bombshell." On several occasions, Roberts told the claimant that she had a big butt. He commented that "if her butt got any bigger ... she wouldn't fit in the chair and wouldn't have a job." He also made comments about her "big chest" and said she had "big boobs." (1/15/98: 156-159; 3/26/98: 23; 25).

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[4]Claimant worked with a client, which had problems with the INA I-9 employment forms. The temporary employees, in connection with their applications, were allowed to filled out these forms improperly. (3/27/98: 12-13). Laura Younger testified that the I-9 problems were the client's fault because Roberts allowed the client to hire temporary employees on the spot rather than having them first go to GMS to fill out the applications and forms. (8/9/93: 14-15; 23).

Claimant was not involved in this process, but did inform Roberts of these improper procedures. Claimant was never made aware of any complaints or problems connected with this process. (6/19/98: 11).

[5] Roberts told her to use the bonus to buy new business suits and offered to accompany Claimant when she went shopping for them. When claimant refused, she was given a cash bonus. *Id.*, at 56-59.

Claimant testified he told Roberts that she did not like being called a "blonde bombshell." That encouraged him to make such comments even more. (3/26/98: 23-24).

Roberts also constantly threatened claimant with termination. Beginning a couple days after she was first employed, Roberts told her three to four times a week that "you're fired," or "I'll fire your ass." (3/26/98: 116-117). Roberts also threatened to "kick her ass," or "get Guido to break her legs." (1/15/98: 112). At one point claimant told Roberts that he could not fire her, to which he responded that he was God almighty and could do whatever the hell he wanted. (1/15/98: 17-20).

Roberts also commented about the claimant being Catholic. He stated, "I suppose you're a virgin, too" and actually asked the claimant if she was a virgin. (3/26/98: 25-26; 1/15/98: 103). Claimant testified that Roberts also asked why Catholic girls were always on their knees, implying they were involved in sexual activities. (3/26/98: 27-28).

Claimant testified that Roberts would frequently come up and massage her shoulders, causing her to cringe, attempt to wiggle out of it, get up from her desk and instruct him to stop, in a "real get-your-hands-off tone." The claimant testified that she felt embarrassed by this non-consensual touching. (1/15/98: 158, 164-165, 173; 3/26/98: 51-52).

Respondent engaged in similar conduct on another occasion while they were entertaining clients in a restaurant. Roberts smacked claimant on the butt when she got up to go to the rest room and twice followed there. In each instance, claimant was forced to show him out. Throughout the same evening, respondent also repeatedly smacked her on the arm. (3/26/98: 40-45).

Claimant testified that on a weekly basis she was required to go with Roberts while he got his car washed "so they could talk shop." On many of those occasions, Roberts would claim that he had to get something out of the glove compartment, reach over and touch claimant's right upper thigh and slide his hand across her lap and rest his arm on her legs while reaching into the glove box. Roberts would not let claimant get whatever he needed out of the glove box. (3/26/98: 45-48; 130-131).

In another instance, Roberts put his arm around the claimant's shoulder, so that the entire left side of her body was touching him. On still another occasion, Roberts put his hand on the cleavage of her breast and told her she should wear low cut blouses. (3/26/98: 33; 48-50).

Pastula worked as Sales Manager at GMS from summer 1990 to January or February 1991. Pastula hated her job because Roberts was rude, obnoxious and always threatening. Roberts would begin yelling for no reason, raise his fist in the air and threaten to have "Guido" break her legs. (1/15/98: 81-87).

Pastula testified that Roberts made it clear that he wanted his female employees to wear high heels and short skirts to impress the clients.[6] Pastula said nothing to Roberts about the requirement for shorter skirts and high heels because she was afraid of losing her job. (1/15/98: 87-88; 161).

Pastula also testified that Roberts directed her to tell the claimant to start losing weight or he was going to fire her because "she was getting a fat ass." He wanted the claimant to wear shorter skirts and higher heels. (1/15/98: 89-91).

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[6]No men worked at GMS during claimant's employment with the company .

Pastula recalled an uncomfortable incident where she was with Roberts on their way to visit a client. Roberts showed her women's clothing he had purchased for someone he was dating. He looked at her and said, "[I]f you were real nice to me you could have things like this, too." (1/15/98: 91). Roberts also told Pastula to get rid of her long time boyfriend, "split up with him" or she "was going to get fired." *Id*, at 93.

Pastula was subsequently moved from her office and into a cubicle which she decorated with her boyfriend's photos. Two weeks later she was laid off. Pastula attributed this action to her refusal to break up with her boyfriend. (1/15/98: 93-94).

Both the claimant and Pastula testified to an incident which occurred while they were meeting with Roberts in his office. The claimant dropped her pen and said, "[0]ops, I dropped my pen," to which Roberts replied, "[W]hat'd you do, drop your vagina?" (1/15/98: 102; 3/26/98: 35). The claimant said nothing but felt embarrassed and humiliated. (3/26/98: 36). Pastula was also shocked, but likewise said nothing. (1/15/98: 102).

Claimant and Pastula also testified about a sign outside the kitchen/bathroom which said "Sexual harassment isn't a problem around here, it's one of the benefits of the job." Pastula stated that the sign was there when she began employment in the summer of 1990 and when she left in early 1991 (1/15/98: 107; 151; 3/26/98: 30-31). The claimant testified that she noticed the sign three days after starting her employment and told Roberts it was not funny. (3/26/98: 35; 134-135).

Mary Jones Coleman testified she worked as a regional sales representative for respondent for approximately one month, between August 1991 to September 1991.

Coleman heard Roberts make the statement about Catholic girls being on their knees, referring to the fact that they were performing oral sex. (1/15/98: 154-155, 160). Coleman resigned on September 27, 1991 because of the unprofessional work environment, the use of profanity and constant threats of being fired. *Id*, at 156.

Pastula, Coleman and the claimant testified that Roberts would frequently make remarks about orgies at office meetings, saying they should have office orgies. When any of them expressed their disgust, it only seemed to worsen the situation: "[i]f it was something that we found offensive it [the objection] just seemed to encourage it" (1/15/98: 104; 161-162; 3/26/98: 28-29).

Laura Younger was deposed on August 8, 1993.[7] She worked for respondent from September 1990 to December 1991. (Deposition, p.3) Younger admitted in her deposition that Roberts could have made statements about orgies. She confirmed the presence of a sign by the kitchen/bathroom, which read, "sexual harassment is not a problem here, it's one of the fringe benefits" (8/9/93: 8-9). Younger told Roberts to take down the sign because some employees might misconstrue it and find it offensive. A few weeks later, the sign was taken down. *Id*, at 9-10. Younger also heard Roberts frequently use the F word and threaten to fire the claimant. *Id.*, at 21; 30.

Claimant testified that Roberts' conduct made her feel humiliated and violated. (3/26/98: 52). Claimant could not take her complaints to him because he would just continue the same inappropriate and obnoxious behavior, knowing that it was annoying to her. *Id.*, at 28-29; 56. Claimant put up with the work environment because she felt

[7]Younger is the daughter of respondents' attorney.

trapped. She felt there were only so many temporary employment companies where she could work. (1/15/98: 156, 162).

Claimant also testified that she was frequently asked to do personal errands for Roberts. On one occasion in September 1991 Roberts asked her to pick up his dry cleaning and take it to his home. Roberts came to the door with no pants on, wearing only his shirt and socks. The claimant testified that she was embarrassed and "flabbergasted," said nothing and left abruptly. (3/26/98: 37-38; 53; 122). Claimant testified that this incident led to her resignation because "no job was worth that to me." (3/26/98: 61).

Claimant resigned on November 6, 1991. Her resignation was delayed because there were not enough people in the office to do the work and she wanted to have someone in her place to assure that the temporary employees would get paid. (3/26/98: 53). In a letter dated November 7, 1991, claimant stated: "[Y]ou have put me down in front of clients and from the way that you treat me in the office which I feel that I don't have to put up with." (3/26/98: 52-54).

III

Sexual Harassment Claim

The Elliott-Larsen Civil Rights Act (ELCRA) specifically prohibits sexual harassment. Section 103(h)(iii) provides:

> Sec. 103. As used in this act:
>
> (h) Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of sexual nature when:
>
> (iii) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public

services, education, or housing, or creating an intimidating, hostile, or offensive employment ... environment.

Similarly, Section 202(1) of the Act, states, in pertinent part:

> Sec. 202. (1) An employer shall not:
>
> (a) Fail or refuse to hire, or recruit, or discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of ... sex ... .
>
> (b) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive the employee or applicant of an employment opportunity, or otherwise adversely affects the status of an employee or applicant because ... sex ... .
>
> (c) Segregate, classify, or otherwise discriminate against a person on the basis of sex with respect to a term, condition, or privilege of employment including a benefit plan or system.

It is well settled that to succeed on a hostile work environment sexual harassment claim, the plaintiff (claimant) must prove the following:

(1) the plaintiff belonged to a protected group;

(2) the plaintiff was subjected to communication or conduct on the basis of sex;

(3) the plaintiff was subjected to unwelcome sexual conduct or communication;

(4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and

(5) respondent superior.

Radtke v Everett, 442 Mich 368, 382-383; 501 NW2d 155 (1993); *Chambers v Trettco, Inc,* 463 Mich 297 (2000). For the reasons set forth below, we find that claimant has made out her hostile work environment sexual harassment claim.

First, claimant is a member of a protected class in that she was an employee who

was "the object of unwelcomed sexual advances." *Radtke* at 383.

Second, claimant was subjected to harassing communication and conduct on the basis of sex. Roberts made numerous comments about claimant having a "big chest" and said she had "big boobs." (1/15/98: 156-159; 3/26/98: 23; 25). He insinuated that because claimant is Catholic that she spent a lot of time on her knees performing oral sex. Roberts asked her if she was a virgin, said she was getting a fat ass and told her the should wear short skirts and high heels. (1/15/98: 89-91; 160; 3/26/98: 25-26). These statements were made because of claimant's sex and "but for the fact of her sex, she would not have been the object of harassment." *Id.*

Third, Roberts' conduct and communication toward the claimant were unwelcome. Among other things, claimant told Roberts to stop when he massaged her shoulders. She told him her dress was appropriate when he touched the cleavage of her bosom and instructed her to wear low cut blouses. She walked out of an unwanted embrace when he put his arms around her. She kept removing Roberts' hands from her leg while he was getting things out of his car's glove compartment. She told him the sign about sexual harassment being one of the benefits of the job was not funny. (3/26/98: 45-52; 135).

Fourth, Roberts' sexual conduct and communication substantially interfered with the claimant's employment, creating an intimidating, hostile and offensive work environment. The *Radtke* Court explained that

> The essence of a hostile work environment action is that "one or more supervisors or co-workers create an atmosphere that is so infused with hostility toward members of one sex that they alter the conditions of employment for them." *Id.*, at 385 (citations omitted).

The existence of a hostile work environment is determined by whether a reasonable

person, in the totality of the circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile or offensive work environment. *Id.*, at 394. The totality of the circumstances may include the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with the employee's work performance. *Quinto v Cross & Peters*, 451 Mich 358, 370, n9 (1996); *Williams v General Motors Corp*, 187 F3d 553 (CA 6, 1999).

In the present case, Roberts' constant sexually derogatory comments, questions about her virginity and personal life, non-consensual touching and threats of employment termination created an intimidating, hostile and offensive work environment. Roberts continuously called claimant a "blonde bombshell," even after she told him to stop. Such requests, in fact, only caused respondent to persist with his insults. (3/26/98: 23-24). He made repeated references to having office orgies. (1/15/98: 104; 112; 161-162; 3/26/98: 28-29; 116-117). He would massage claimant's shoulders even though she had told him not to do so. He continued to touch her legs when they were in his car together, even though she kept removing his hand. During a business meeting at a restaurant, Roberts smacked her on the butt and arm, thereby insulting her in front of clients. Roberts regularly commented about Catholic girls being on their knees, which claimant reasonably inferred was a reference to oral sex. Even more offensive was Roberts asking claimant if she had dropped her vagina. (1/15/98: 102; 3/26/98: 35).
Respondent also repeatedly told the claimant, "I'll fire your ass," and said he would get "Guido" to break her legs.

We find that a reasonable person, under the totality of the circumstances, would determine that Roberts' conduct created a hostile work environment which substantially interfered with the claimant's employment. This conclusion is supported by the testimony of claimant's co-workers. Pastula "hated" her job because she felt threatened. (1/15/98: 85-87). Coleman left GMS because of the "unprofessional work environment," the constant use of profanity, the belittling, screaming and berating of employees. *Id.*, at 156-157.

Clearly, Roberts' behavior made claimant feel humiliated and violated. (3/26/98: 52). Ultimately, his conduct and communication became so offensive and demeaning that claimant found it necessary to resign. *Id.*, at 52-54.

Fifth, respondent superior has been established. Roberts was the claimant's employer and the owner of GMS. *Radtke*, at 396.

Claimant has established her claim of hostile work environment sexual harassment. It must now be determined if such conduct resulted in claimant's constructive discharge.

IV.

Constructive Discharge Claim

Under Michigan law, constructive discharge is found where the working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign. *Jenkins v Southeast Mich Chapter, American Red Cross*, 141 Mich App 785, 796 (1985). See also, *Pitts v Michael Miller Car Rental*, 942 F2d 1067, 1073 (CA 1971). In *Vagts v Perry Drug Stores*, 204 Mich App 481, 487; 516 NW2d 102 (1994), the Court stated:

> A constructive discharge is established where "an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." (citation omitted). *Id.*

An employer is held to intend the reasonably foreseeable consequences of his conduct. *Jenkins, supra*, at 796.

The record in this case shows that claimant was treated in a manner which was threatening, degrading, embarrassing, humiliating and offensive. Roberts constantly threatened to fire her. She was told that she had "big boobs" and a "fat ass." Claimant was told to dress in short skirts, low cut blouses and high heels. Roberts continued to touch her, even though she objected; insult her, even though she protested; criticize her in front of clients, even though she asked him to stop doing so.

Claimant enjoyed her job and was reluctant to leave because it removed her from her career path. (3/26/98: 55; 73). In the end, however, respondent created a difficult and unpleasant working environment for the claimant, one which caused her to resign. We conclude that respondent's conduct in this regard constituted a constructive discharge.

V.

Remedy

Section 605(2) of ELCRA provides for the recovery of economic and non-economic damages resulting from unlawful discrimination.

Claimant is entitled to recover both economic and non-economic damages as a direct result of respondent's discriminatory conduct. The nature and extent of such damages are discussed below.

The Commission has been as precise as possible in calculating claimant's back pay award.[8]

A.

Claimant's earnings in 1991 were $19,531.70. (3/26/98: 66). Notice is taken that this amount only covers 10 months since the constructive discharge took place on November 6, 1991.

Immediately after resigning from GMS, claimant collected 26 weeks of unemployment benefits. Claimant sent out about 150 resumes and went to approximately ten interviews. In each instance, she was told she was over qualified. Claimant subsequently took a few courses at Schoolcraft College in 1992, went to work at her family's business, Excel Screw Machine and Tool Co., Inc., on a part-time basis. She earned $1,274.50 in 1992. (3/26/98: 62-63; 69).

In 1993 claimant continued to work part-time in the family business. Claimant's efforts to find other work, however, were limited to the latter part of the year. Exhibit 10.

In 1994 claimant began working full-time at Excel Screw Machine and Tool Company and earned $7,605.00. Nonetheless, she continued looking for other full-time employment.

In 1995 claimant still worked full-time at Excel and earned $9,168.00. In June 1995 claimant was married and had a baby in early 1996. Thereafter, she only worked for a short time at Excel and then entered into the restaurant business with her husband. Her

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[8]Any difficulties in making our determinations are borne by or resolved against the respondent. *Meadows v Ford Motor Co*, 510 F2d 939 (6th Cir. 1975); *Rasimas v Michigan Dep't of Mental Health*, 714 F2d 614 (6th Cir. 1983), *cert denied*, 466 US 950 (1984).

W-2 earnings for 1996 were $238.50. (3/26/98: 69-70; 85).

It is well established Michigan law that claimant had a duty to mitigate her damages. In this regard, claimant was only obligated to make "reasonable efforts under the circumstances" to find a job and the job searched for did not have to be "reasonably similar." *Morris v Clawson Tank Co*, 459 Mich 256, 264-266, 269; 587 NW2d 253 (1998). Claimant was not required to look for a new job in the temporary employment services field. *Id.*, at 264-265. Nor was she required to accept a "demeaning, particularly inconvenient, or otherwise unacceptable job. *Id.*, at 265. Moreover, claimant's efforts to mitigate her damages did not need to be successful or substantial, only reasonable. *Id.*, at 264-265. Respondent has the burden of showing that claimant did not undertake reasonable efforts to mitigate her damages. *Id*, at 266.

In this case, claimant, had she not been constructively discharged, would have earned approximately an additional $3,813.00 between November 6, 1991 and the end of that year. Claimant is entitled to recover that amount.

Between 1991 and 1992, claimant received unemployment compensation benefits for 26 weeks. Respondent is not entitled to a setoff in an amount equivalent to these benefits. *Rasimas v Michigan Dep't of Mental Health*, 714 F2d 614 (6th Cir 1983), *cert denied*, 466 US 950 (1984).

During this year, claimant made reasonable efforts to find other employment, but was unsuccessful. Exhibit 10. Moreover, respondent did not show that claimant failed to act reasonably to mitigate her damages. In addition, claimant worked part-time in the family business and earned $1,275.00. If claimant had not been forced to resign, she would have earned $22,880.00 at GMS ($11.00 per hour multiplied by 2,080 hours).

Claimant is entitled to recover $21,605.00 for calendar year 1992.

In 1993, claimant earned $1,663.00 at Excel. Unlike 1992, however, claimant's efforts to mitigate damages were confined to the last three months of the year. Exhibit 10. Accordingly, claimant is entitled to recover $4,057.00 (one-fourth of her earnings at GMS less $1,663.00).

In 1994, claimant continued to look for other full-time work, while beginning to work full-time at Excel. Claimant made reasonable efforts to mitigate her damages and is entitled to recover $15,275.00 for this calendar year ($22,880.00 less $7,605.00).

In 1995, claimant earned $9,168.00 from working full-time in the family business. Claimant testified that she received $6.00 per hour, which means that she worked approximately thirty-eight weeks, based upon forty hour weeks. Since she gave birth to a baby in early 1996, it is reasonable to assume that the remainder of the year was taken off in preparation for the impending birth. Accordingly, claimant is entitled to recover $7,552.00 (the equivalent portion of her GMS salary for thirty-eight weeks, less her earnings from Excel).

Beginning in 1996, claimant entered into the restaurant business with her husband and effectively removed herself from the job market. *See*, *Wooldridge v Marlene Indus Corp*, 875 F2d 540 (1989), *later proceeding*, 898 F2d 1169 (6th Cir 1990); *Ford v Nicks*, 866 F2d 865 (6th Cir 1989). Consequently, her lost wages ended in 1995.

Claimant's total lost wages are $52,302.00 plus statutory interest from the date when she filed her complaint until the date when payment is made in full.

B.

Claimant is also entitled to recover non-economic damages. MCL 2.605(2)(i). *Howard v Canteen Corp*, 192 Mich App 427; 481 NW2d 718 (1991). Claimant testified that she suffered insomnia, experienced nightmares, had a loss of appetite and weight loss (3/26/98: 73). Claimant also testified that she was very frustrated at being unable to find full-time work after leaving GMS and felt having to leave GMS took her out of her career and affected her. *Id.* Claimant was also experiencing financial difficulties because of her inability to find other employment. (3/27/98: 28).

In 1993, claimant began treating for these issues with Donna Harber, an MSW in clinical social work. Harber's clinical work involved making assessments and diagnoses and developing treatment plans for individuals and families. Dr. Leon Rubenfair, a psychiatrist in the office, reviewed Harber's diagnoses as part of the office protocol. (3/27/98: 17; 24).

Harber treated claimant over the course of 18 sessions for severe depression, a diagnosis which was reviewed and concurred in by Dr. Rubenfair. *Id.*, at 34-35; 47. Harber testified that claimant's forced resignation from GMS was the precipitating event for her depression. Additionally, Harber stated that claimant had to overcome the victimization of sexual harassment, which resulted in a loss of control over her own life and an inability to assert herself. *Id.*, at 37-39; 41. Claimant also had an irrational fear that Roberts would contact prospective employers and somehow blackball her. *Id.*, at 36; 56. Harber's sessions focused on helping the claimant find work and overcome her experiences at GMS which left her fearful of returning to the work place. *Id.*, at 36. Claimant felt the counseling helped her address her depression and frustration at not being able to find a job. (3/26/98: 73-76).

The record shows that claimant suffered emotional distress as a result of the sexual harassment and constructive discharge. Claimant underwent counseling in 1993 to address both her negative experiences at GMS and her inability to find subsequent employment. This counseling, by claimant's own testimony, proved to be helpful. In subsequent years, she worked full-time in the family business before beginning a new venture with her husband.

On the basis of the entire record, claimant is entitled to recover $30,000.00 in emotional distress damages.

C.

Claimant is also entitled to reimbursement for the insurance benefits which she lost as a result of her constructive discharge. The record shows that claimant paid COBRA expenses in the amount of $135.00 per month for three years. Claimant is entitled to recover $4,860.00 for that period of time. See, *Coston v Plitt Theatres*, 860 F2d 834 (7th Cir. 1988).

In addition, claimant was required to pay for her counseling sessions. Accordingly, claimant is entitled to recover an amount equivalent to the monies paid out for eighteen (18) sessions. See, *Weiss v Parker Hannifan Corp*, 747 F Supp 1118 (D. N.J. 1990).

VI.

Rulings On Claimant's Proposed Findings of Fact

Claimant submitted proposed findings of fact. Pursuant to Section 85 of the Administrative Procedures Act, I would recommend the following rulings thereon:

1. - 2.	Adopted as modified.
3. - 8.	Adopted.
9.	Adopted as modified.
10. - 11.	Adopted.
12.	Adopted as modified.
13. - 14.	Adopted.
15.	Adopted as modified.
16. - 18.	Adopted.
19.	Adopted as modified.

Dated: 4-24-01

Yahya Mossa-Basha, M.D., Commissioner