

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**
on the Complaint of

JONG OH,

Complainant,

v.

**MULTIMEDIA COMMUNICATIONS, INC. AND
WIRELESS CATV SYSTEMS, INC.,**

Respondent.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case No. 2305197

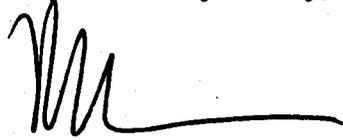
PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on March 23, 2007, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights ("Division").

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist

from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED, this 3rd day of May, 2007.



KUMIKI GIBSON
COMMISSIONER

TO:

Jong Oh
80-18 47th Avenue, 2nd floor
Elmhurst, NY 11373

Multimedia Computer Communications, Inc.
c/o Wireless CATV Systems
725 Allen Street
Allentown, PA 18109
Attn: Jong On Jung

Wireless CATV Systems
725 Allen Street
Allentown, PA 18109

Wireless CATV Systems
725 Allen Street
Allentown, PA 18109
Yeon Tai John Jung

Yeon Tai John Jung
c/o Wireless CATV Systems
725 Allen Street
Allentown, PA 18109

Wireless CATV Systems, Inc.
1220 Broadway
New York, NY 10001

Multimedia Communications, Inc.
1220 Broadway
New York, NY 10001

Jong On Jung
Multimedia Communications, Inc.
1220 Broadway
New York, NY 10001

Yeon Tai John Jung
Multimedia Communications, Inc.
1220 Broadway
New York, NY 10001

Wireless CATV Systems, Inc.
350 Fifth Ave, Suite 6107
New York, NY 10118

Multimedia Computer Communications, Inc.
350 Fifth Ave, Suite 6107
New York, NY 10118

Multimedia Communications, Inc.
350 Fifth Ave, Suite 6107
New York, NY 10118

Jong On Jung
350 Fifth Ave, Suite 6107
New York, NY 10118

Yeon Tai John Jung
350 Fifth Ave, Suite 6107
New York, NY 10118

Michael G. Zapson, Esq.
Zapson & Galanter
450 Seventh Avenue, Suite 1400
New York, NY 10123

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights
Caroline J. Downey, Acting General Counsel
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Arlyne Zwyer, Esq., of Counsel
Prosecutions Unit

Sara Toll East
Chief, Litigation and Appeals

Albert Kostelny
Chief, Prosecution Unit

Peter G. Buchenholz
Adjudication Counsel

Matthew Menes
Adjudication Counsel

Trevor G. Usher
Chief Calendar Clerk

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the complaint of

JONG OH,

Complainant,

-against-

MULTIMEDIA COMMUNICATIONS,
Inc., WIRELESS CATV SYSTEMS,
INC., JONG ON JUNG, and YEON TAI
"JOHN" JUNG,

Respondents.

RECOMMENDED FINDINGS
OF FACT DECISION AND
OPINION AND ORDER

CASE NO. 2305197

PROCEEDINGS IN THE CASE

On January 30, 1997, Jong Oh ("Complainant") filed a complaint with the New York State Division of Human Rights ("Division") against Multimedia Communications, Inc. ("Respondent"). Complainant charged the Respondent with discriminatory practices relating to employment in violation of Executive Law Article 15 of the State of New York. Complainant alleged that she was discriminated against by Respondent based upon sex and disability when her employment was terminated in January of 1997.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that the Respondent engaged in an unlawful discriminatory practice. The Division then referred the case to a public hearing.

After due notice, the case came on for public hearing before Thomas S. Protano, an Administrative Law Judge of the Division. A preliminary conference was held on June 28, 2001. Respondent did not appear by an attorney, but sent a non-attorney employee to the conference. After the preliminary conference, Respondent hired Michael G. Zapson, Esq., of Zapson & Galanter, LLP. Settlement negotiations were initiated and, when negotiations failed, Respondent, by its attorney, made an application for an equitable order. By Interim Order dated March 4, 2002, the application was denied.

Thereafter, a public hearing was scheduled for March 21, 2002 and March 22, 2002. At the hearing, Respondent, Multimedia Communications, Inc. did not appear. By that time, Mr. Zapson had withdrawn from the case. Complainant appeared at hearing. The complaint was represented by Gina M. Lopez, Esq., General Counsel for the Division of Human Rights, by Sharon Field, Esq.

While testifying at the hearing on March 21, 2002, Complainant alleged that Wireless CATV Systems, Inc., was her employer in addition to Multimedia Communications, Inc.

According to Complainant, these two entities were interchangeable and she worked for both of them. Based on this, Ms. Field made an application to amend the complaint to add Wireless CATV Systems, Inc. as a Respondent. The request was granted on the record and, thereafter, Ms. Field amended the

complaint and served notice of the amendment on Wireless CATV Systems, Inc. on March 26, 2002.

In accordance with the Division's Rules of Practice, Respondent, Wireless CATV Systems, Inc., was afforded an opportunity to answer the complaint and to object to the amendment. A copy of the amendment has been placed in the record. A copy of the complaint was forwarded to Respondents and their attorneys along with a new notice of hearing including the new Respondent on December 12, 2003. Respondents offered no objections and failed to answer the complaint. The case proceeded with Multimedia Communications, Inc. and Wireless CATV Systems, Inc. as Respondents.

A public hearing continued on June 7, 2004. A copy the letter notifying the parties of the hearing was sent to Respondent Wireless CATV Systems, Inc. at their listed address in Pennsylvania. It was not returned by the post office and is presumed received. Complainant appeared at hearing. Respondents did not appear at the hearing and did not answer the amended complaint. The case proceeded in the Respondents' absence. The Division was represented at the June 7, 2004 hearing by Gina M. Lopez-Summa, Esq., General Counsel, by Arlyne R. Zwyer, Esq., of counsel. Ms. Zwyer waived her right to file a post-hearing brief.

After the hearing, ALJ Exh. XV, an AutoTrack printout was added to the record. It shows that Multimedia Communications, Inc. was dissolved on June 19, 2002 and is no longer an active corporation.

FINDINGS OF FACT

Complainant was employed by the Respondents in February, 1996. Multimedia Communications, Inc. and Wireless CATV Systems, Inc. were one and the same and Complainant worked for both of them. (Tr. 14-15) Her title was administrative assistant. (Tr. 16) Complainant was told by her supervisors, John Jung, Jung on Jung and Isaac Twerski that her work performance was "very fast and efficient." (Tr. 19)

On Friday, January 24, 1997, Complainant sprained her ankle during her lunch break. She came back into the office and worked until 5:30 p.m., although she was in great pain. After work, she went to the Cornell New York Hospital Emergency Room, where she was treated and given a cane and some Ibuprofen.

(Complainant's Exh. 5; Tr. 20, 21) Complainant followed up with a visit to another doctor, Dr. Ralph C. Marcove, who advised her to rest. (Tr. 27)

The following Monday, January 27, 1997, Complainant called in sick because of her ankle. (Tr. 30) She spoke to Mr. Twerski, who was Respondents' Vice President. About an hour

later, Mr. Twerski called her back and told her that her employment had been terminated. (Tr. 31-32, 54)

Respondent subsequently sent Complainant a letter advising her of her termination. The letter was dated January 28, 1997. The letter indicated that the decision to fire Complainant "...does not reflect our opinion of your capabilities. However, as we form the team that will lead us into our future business, we have decided to take this action." (Complainant's Exh. 8)

Complainant said another employee, a male with no disabilities or injuries, took a week off from work but was not fired. (Tr. 54) She also stated that Mr. Jung treated female employees very badly. He screamed at the female employees, including Complainant and Mrs. Jung, but did not scream at male employees. (Tr. 56) Respondent had five employees during Complainant's tenure. (Tr. 55)

At the time of her termination, Complainant was being paid \$1,600.00 per month. (Tr. 61) Complainant was out of work for four months. During that four month period she received \$3,400 in unemployment insurance benefits. (Tr. 62) After four months, Complainant took a job as a real estate agent. She did not receive a salary in this position but was paid strictly on a commission basis. (Tr. 64) As a real estate agent, she earned \$12,387.00 in gross income and \$4,112.00 in net profits during 1997. (Complainant's Exh. 10) The previous year, while working

for the Respondent, Complainant earned \$16,000.00 in gross receipts and \$6,808.00 in net income. (Complainant's Exh. 9) Complainant filed a Schedule C (Form 1040) in each of those years, which is a statement filed to calculate profit or loss from business. Because she was paid as an independent contractor by Respondents, she did not collect unemployment insurance benefits right away. She was, however, able to secure benefits ultimately. (Tr. 61-62)

As a result of her termination, Complainant said she became extremely upset and helpless. Her heart was pounding. She described her firing as "unthinkable." (Tr. 32, 54) She stated that after her employment was terminated, she was "very depressed for a whole week." (Tr. 36) She felt she couldn't trust Korean business people after this incident. She couldn't sleep and she "cried a lot." Her relationship with her then fiancé suffered and, ultimately, ended in the summer of 1997. (Tr. 67-68)

DECISION AND OPINION

An employer may not fire or otherwise discriminate against an employee with a disability unless that disability precludes the employee from performing the essential duties of the job. 18 Executive Law §296.1(a). See also, Miller v. Ravitch, 60 N.Y.2d 527 (1983). A "disability" is "...a physical, mental or medical impairment resulting from anatomical, physiological or

neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory techniques...." 18 Executive Law §292.21. In order to meet this definition, an employee must only show she suffers from some diagnosable impairment. Nowak v. EGW Home Care, Inc. 82 F.Supp.2d 101, 111 (W.D.N.Y., 2000), citing, State Division of Human Rights v. Xerox Corp., 65 N.Y.2d 213, 218-19, 491 N.Y.S.2d 106, 480 N.E.2d 695 (1985), and Reeves v. Johnson Controls World Servs., Inc., 140 F.3d 144, 154-56 (2d Cir. 1998). Complainant's sprained ankle clearly fits this definition of a "disability".

In order to prevail, the Complainant must first make out a prima facie case by showing that she is a member of a protected class; that she performed the duties of her job adequately; and that the Respondent fired Complainant under circumstances which would lead one to infer that she had been discriminated against. Pace College v. Commission on Human Rights of the City of New York, 38 N.Y.2d 28, 377 N.Y.S.2d 471 (1975); McDonnell Douglas Corp. v. Green, 411 U.S.792 (1973); Burlington Industries, Inc. v. New York City Human Rights Commission, 82 A.D.2d 415, 441 N.Y.S.2d 821 (1st Dept. 1981). Assuming the Complainant succeeds in establishing a prima facie case, the burden shifts to the Respondent to articulate a legitimate, non-discriminatory reason for its actions. Thereafter, the Complainant must

demonstrate that the reasons offered by the Respondent are merely a pretext for unlawful discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000).

In the instant case, Complainant has made out a prima facie case. She suffered a sprained ankle, and her employment was terminated almost immediately. She has shown that at least one other employee, a male who did not have a disability, was treated favorably. In addition, she has shown that Mr. Jung treated women with less respect than men. Respondent has not come forward with an answer and has not offered any legitimate, non-discriminatory explanation for its actions. Complainant's assertion that she was terminated unlawfully is un-rebutted. Respondent is, therefore, liable to Complainant for damages owing to her termination. Any remedy should put the Complainant in the same position she would have occupied had the discrimination not occurred. Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

With respect to lost wages, Complainant earned a gross amount of \$1,600.00 per month. Her net monthly income for 1996, according to the deductions she claimed on her Schedule C, was \$680.80 (\$6,808 net income divided by ten months worked). In seven months as a real estate agent, Complainant earned \$587.43 per month (\$4,112 net income divided by seven months worked).

In four months on unemployment, she earned \$820.00 per month (\$3,400 divided by four). Between unemployment and her real estate income, Complainant earned \$7,512.00 after being fired by Respondent. If she had not been fired, she would have earned \$7488.80 (\$680.80 multiplied by 11). She is, therefore, not entitled to back wages, since she earned more in net income from unemployment and her real estate work than she would have netted if she had continued to work for the Respondent.

Complainant is entitled to an award of compensatory damages for the mental anguish and humiliation she suffered as a result of her dismissal. I find that awarding the Complainant \$10,000.00 for her mental anguish will effectuate the purposes of the Human Rights Law. New York City Transit Authority v. State Division of Human Rights, 581 N.Y.S.2d 426 (1992). Exxon Shipping Co. v. New York State Div. of Human Rights, 303 A.D.2d 242, 755 N.Y.S.2d 608 (1st Dept., 2003); City of New York Bayport-Blue Point School District v. State Division of Human Rights, 131 A.D.2d 849, 517 N.Y.S.2d 209 (2d Dept. 1987). The Complainant's tearful testimony regarding her emotional distress is corroborated by the circumstances of the case. See Cullen v. Nassau County Civil Service Commission, 53 N.Y.2d 492 (1981). Complainant suffered grief upon losing her job.

ORDER

Based upon the foregoing and pursuant to the Rules of Practice of the Division it is hereby,

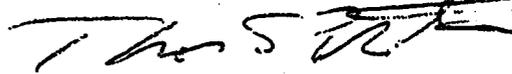
ORDERED, that Respondents, its agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within 30 days of the receipt of the final Order, Respondent shall pay to the Complainant the sum of TEN THOUSAND DOLLARS (\$10,000.00) without any withholding or deductions, as compensatory damages for mental anguish and humiliation suffered by Complainant as a result of Respondent's unlawful act of discrimination.
2. The aforesaid payment shall be in the form of certified check made payable to the order of Complainant and delivered to the Complainant at 80-18 47th Avenue, 2nd Floor, Elmhurst, NY, 11373, by registered mail, return receipt requested.

3. Respondent shall furnish written proof of the payments to the General Counsel of the Division and shall cooperate with the Division during any investigation into its compliance with the directives contained in this Order.

Dated: March 23, 2007
BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS



Thomas S. Protano
Administrative Law Judge