



OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

Commissioners: Lori Barreras, Chair | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director Angela Phelps-White

November 17, 2020

Christine Dawson
40015 Ryan Court
Elyria, OH 44035
Complainant

Pro Touch Lawn Care LLC
c/o Aaron Wood, Statutory Agent
69 Willowood Drive
Chippewa Lake, OH 44215
Respondent

Wayne Williams, Esq.
Principal Assistant Attorney General
615 West Superior Avenue, 11th Floor
Cleveland, OH 44113
Counsel for Commission

Re: Christine J. Clark v. Pro Touch Lawn Care LLC
Complaint No. 19-EMP-CLE-39962

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) (ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty-three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **December 10, 2020**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.



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Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, Ohio 43215-3414.** *All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin /kk

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Angela Phelps-White, Executive Director/Darlene Sweeney-Newbern, Director of Regional Operations/Stephanie Bostos-Demers, Chief Legal Counsel



IN THE MATTER OF:

Christine Clark
Complainant,

Complaint No. 19-EMP-CLE-39962

v.

ProTouch Lawn Care LLC
Respondent.

**ADMINISTRATIVE LAW JUDGE'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

**DAVE YOST
ATTORNEY GENERAL**

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Civil Rights Section
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Cleveland, Ohio 44113
Counsel for Commission

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Respondent

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Elyria, Ohio 44035
Complainant

ALJ'S REPORT

Denise M. Johnson
Ohio Civil Rights Commission
Division of Hearings
30 East Broad Street, 5th Floor
Columbus, OH 43215
(614) 466-6684
Chief Administrative Law Judge

INTRODUCTION AND PROCEDURAL HISTORY

Christine Dawson¹ (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on December 20, 2018.

The Commission investigated the charge and found probable cause that Pro Touch Law Care LLC (Respondent) engaged in unlawful employment practices in violation of Revised Code Section (R.C.) 4112.02(A).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on July 18, 2019.

The Complaint alleged that Respondent retaliated against Complainant for engaging in protected activity in violation of R.C. 4112.02(I).

Respondent did not file an Answer. On November 8, 2019, the Commission filed a Motion to Proceed as a Default Hearing. The Commission's Motion was granted on November 26, 2019.

¹ Complainant married after she filed a charge with the Commission.

A public hearing was conducted by the Administrative Law Judge (ALJ) via Zoom on September 15, 2020.²

The record consists of the previously described pleadings, a transcript of the hearing consisting of 27 pages, exhibits admitted into evidence during the hearing, and a post-hearing brief filed by the Commission on November 4, 2020.

² In April 2020, Governor Mike DeWine directed Boards and Commissions to telework because of the pandemic. The hearing was therefore conducted by the ALJ in Franklin County, Ohio via Zoom, a digital interactive communication platform.

FINDINGS OF FACT

The following findings are based, in part, upon the Administrative Law Judge's (ALJ) assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed; each witness's strength of memory; frankness or lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness was supported or contradicted by reliable documentary evidence.

1. Christine Dawson ("Complainant") filed a sworn charge affidavit with the Commission on December 20, 2018.
2. The Commission determined that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. 4112.02(I).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation.
4. The Commission's Complainant was issued on July 18, 2019.

5. Respondent is a landscaping and snow removal business. (Tr. 8)
6. Complainant is a female who began her employment with Respondent around October 2016. (id.)
7. Complainant left the Respondent in March of 2017 but returned in March 2018. (Tr. 8, 9)
8. On June 1, 2018 Respondent was sold to Aaron Wood (Wood). (Tr. 9)
9. In June of 2018, Complainant was sexually harassed and raped by her co-worker.³
10. Complainant complained to Wood about the harassment.
11. Wood told Complainant that she would be placed on paid leave until the matter was resolved. (id.)
12. Wood did not resolve the Complainant's complaint of sexual harassment but instead in September 2018 terminated her employment. (id.)

³ Complainant went to the Medina, Ohio police and filed a report. (Tr. 11-12)

13. Complainant did receive a check for work she had previously performed but did not receive a check while she was on leave. (id.)
14. Complainant earned \$18.00 per hour while working for Respondent. (Tr. 13, Comm. Exh. 1)
15. Complainant was hesitant to seek other employment because of her experience of being raped while she was at work. (Tr. 16)
16. Complainant worked with her husband in his business and then started her own landscaping business.⁴ (Tr. 19)
17. From the date of Complainant's termination until the date of the hearing, the Complainant's lost back pay offset by interim earnings totals \$78,243.00. (Tr. 13, Comm. Exh. 1)

⁴ Complainant's interim earnings total \$5,277.00 (Comm. Exh. 1)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.⁵

1. The Commission alleged in the complaint that the Respondent engaged in discriminatory conduct by terminating Complainant's employment in retaliation for engaging in a protected activity.
2. These allegations, if proven, would constitute a violation of R.C. §4112.02(I), which provides that it shall be an unlawful discriminatory practice:
 - (1) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation,

⁵ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02 by a preponderance of reliable, probative, and substantial evidence.
4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Little Forest Med. Ctr. v. Ohio Civil Rights Com.*, 61 Ohio St. 3d 607, 609-10, 575 N.E.2d 1164, 1167 (1991).
5. Thus, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).
6. Under the framework established in *McDonnell Douglas v. Green*, the Commission has the initial burden of establishing a *prima facie* case of discrimination, the burden then shifts to Respondent to articulate a legitimate non-discriminatory reason for its adverse employment action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973).
7. The *prima facie* case “raises an inference of discrimination only because we presume these acts, if otherwise

unexplained, are more likely than not based on the consideration of impermissible factors.” *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981), citing *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577 (1978), and *Teamsters v. United States*, 432 U.S. 324, 358, and n.

8. To establish a *prima facie* case of unlawful retaliation under Title VII, the Commission must demonstrate by a preponderance of the evidence that:

- 1) Complainant engaged in activity that Title VII protects;
- 2) Respondent knew that Complainant engaged in this protected activity;
- 3) Respondent subsequently took an employment action adverse to the Complainant; and
- 4) A causal connection between the protected activity and the adverse employment exists.

Greer-Burger v. Temesi, 116, 116 Ohio St.3d 324 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 F.2d 1064, 1066

9. An employee’s activity is “protected” under the applicable federal and state law if the employee has “opposed any unlawful discriminatory practice” (the “opposition clause”) or

“made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code” (the “participation clause”). *Gembus v. MetroHealth Sys.*, 290 F.App’x 842, 848 (6th Cir. 2008).

10. The temporal relationship between a Complainant’s participation in protected activities and a Respondent’s alleged retaliatory conduct is an important factor in establishing a causal connection. *Gonzales v. State of Ohio, Dept. of Taxation*, 78 FEP Cases 1561, 1564 (S.D. Ohio 1998).
11. The Commission must prove that the adverse action would not have occurred “but for” Respondent having engaged in unlawful retaliation. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533, 186 L. Ed. 2d 503 (2013).
12. In June of 2018, Complainant complained to Wood, Respondent’s owner, that her co-worker had sexually harassed and raped her.
13. Wood told Complainant that he would investigate her complaint and told her she was being placed on paid leave.

14. In September 2018, Respondent terminated Complainant's employment without informing her about the outcome of her complaint of sexual harassment.
15. A causal connection exists between Complainant's complaint to Wood about an alleged discriminatory practice and the termination of her employment.
16. The Commission has therefor established a *prima facie* case of retaliation.
17. The Respondent failed to refute the allegations in the Commission's complaint therefore, the allegations in the complaint are admitted. O.A.C. 4112-3-06(F).⁶
18. But for the Complainant's opposition to what she believed was sexual harassment, she would not have been terminated by Respondent.

⁶ Failure to file an answer. A respondent who has not filed an answer as provided in paragraphs (A) to (E) of this rule shall be deemed in default and the allegations of the complaint shall be deemed admitted. Upon application duly made to the commission or the administrative law judge, such default may be set aside for the following reasons:

- (1) Mistake
- (2) Surprise, or
- (3) Excusable neglect.

19. Respondent engaged in illegal retaliation in violation of R.C. 4112.02(I).

20. Complainant is entitled to relief as a matter of law.

DAMAGES

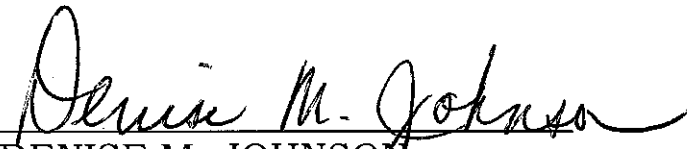
For all of the foregoing reasons, it is recommended in Complaint No. 19-EMP-CLE-39962 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
2. The Commission order Respondent within 10 days of the Commission's Final Order to pay Complainant back pay, including raises, benefits, and overtime pay based on the wages Complainant submitted in an amount of \$78,243.00
3. The Commission order Respondent to receive training on the anti-discrimination laws in Ohio within six (6) months of the date of the Commission's Final Order. As proof of participation in anti-discrimination training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training. The letter of certification shall be submitted to the Commission's Compliance Department within seven (7) months of the date of the Commission's Final Order; and
4. The Commission order Respondent within nine (9) months of the date of the Commission's Final Order to submit to the Compliance Department a draft for an Employee Handbook

outlining Respondent's policies and procedures regarding Ohio's anti-discrimination laws.

RECOMMENDATION

For all the foregoing reasons, it is recommended that the Commission issue a Cease and Desist Order in Complaint Number 19-EMP-CLE-39962.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: November 17, 2020

DMJ/kk