



325610 – Mazyn Barash v SMART

October 13, 2011

OPINION & ORDER

Michael Zelle, Commissioner



**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel Mazyn Barash
Claimant,

Case No. 325610

v.

SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION,
Respondent.

**OPINION AND
FINAL ORDER**

At a meeting of the Michigan Civil Rights Commission
Held in Lansing, Michigan on the 21st day of May 2012

In accordance with the rules and the Michigan Civil Rights Commission (Commission), a Hearing Referee heard proofs and arguments in this matter during seventeen days of hearing held between November 7, 2007 and June 4, 2009. This hearing referee subsequently issued a report recommending a dismissal of this case without a finding of liability.

The Commission considered exceptions filed by both parties and heard oral argument in July of 2011. On October 13, 2011, in an opinion prepared by Commissioner Mike Zelle, the Commission rejected the hearing referee's report. After stating its findings of fact and conclusions of law the Commission's opinion and order finds SMART to be liable, concluding that Petitioner "presented facts sufficient to establish that Respondent violated the Elliott-Larsen Civil Rights Act and Title VII of the Civil Rights Act of 1964 by discriminating against him on the basis of his national origin." The October 13, 2011 Opinion is made part of this Order by reference.

The Commission did not make a determination on damages or attorney fees in its October 13, 2011, Order, instead soliciting briefs on damages from the parties. Following receipt of the briefs, the Commission, on January 18, 2012 remanded the case to the Michigan Appellate Hearing System for the appointment of a new referee for the purpose of holding a hearing on, and issuing a proposal for decision covering, damages, attorney fees and a motion for suppression filed by Respondent. The second hearing officer's proposed findings were issued on April 24, 2012 and are made part of this Order by reference.

The parties were provided an opportunity, and both did submit, exceptions to the recommendations, and oral argument before the Commission was held on May 21, 2012. Having considered all of the above, and following discussion held as part of an open meeting, the Commission voted to adopt the second referee's Proposal for Decision with one exception. The Commission rejected the referee's conclusion that Claimant had not mitigated and was therefore not entitled to recover any economic damages for lost wages prior to his termination. The Commission stated: "We believe Claimant Barash is entitled to, and we do award, economic damages for lost wages during the time he was employed," and adopted the hearing officer's conclusion that absent the failure to mitigate Claimant would be entitled to "the difference between sick leave pay and full pay for 26 weeks and 78 weeks of pay for his unpaid leave time." (PFD, p. 23) The Commission's May 21, 2012, order, which also includes the specific amounts included below, is made part of this Order by reference.

The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Commission adopts and incorporates the findings of fact as stated in the opinion prepared by Commissioner Zelle and adopted by the Commission October 13, 2011.
2. The Commission further adopts and incorporates the findings of fact as stated in the Proposal For Decision prepared by the Michigan Administrative Hearing System and adopted by the Commission May 21, 2012.

CONCLUSIONS OF LAW

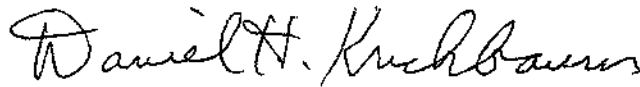
1. The Commission adopts and incorporates the conclusions of law as stated in the opinion prepared by Commissioner Zelle and adopted by the Commission October 13, 2011.
2. The Commission further adopts and incorporates the conclusions of law as stated in the Proposal For Decision prepared by the Michigan Administrative Hearing System and adopted by the Commission May 21, 2012, EXCEPT THAT THE COMMISSION REJECTS the conclusions (PFD, p. 24) that Claimant should be denied compensation for lost wages during the full period during which he was employed, AND INSTEAD FINDS that Claimant is entitled to the difference between sick leave pay and full pay for 26 weeks, and that he is entitled to full pay for 78 weeks of his unpaid leave time.

Therefore:

IT IS HEREBY ORDERED that:

- A. Respondent cease and desist from discriminating against any employee by creating, maintaining, or failing to address a hostile work environment.
- B. Respondent's Motion to strike Claimant's Evidence and Documents Produced after the Hearing Record was closed is GRANTED.
- C. Claimant is awarded \$68,016.00 for lost wages and/or other economic damages together with statutory interest
- D. Claimant is awarded \$150,000.00 for mental/emotional distress and/or other non-economic damages.
- E. Respondent shall remit \$83,925.00 to the Schechter Law Firm for attorney fees.
- F. Respondent shall remit \$37,325.75 to the Akeel Law Firm for attorney fees.
- G. Respondent shall reimburse \$2,331.67 to the Schechter Law Firm for costs.
- H. Respondent shall reimburse \$1,017.20 to the Akeel Law Firm for costs.
- I. Statutory interest shall be awarded from the date of the filing of this civil rights complaint on June 8, 2004 until the judgment is satisfied.
- J. This is a final order and resolves this case.

Michigan Civil Rights Commission



Daniel H. Krichbaum, Director

May 25, 2012
Date

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 as provided by law. MCLA 37.2606

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MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rei Mazyn Barash
Claimant,
v
SUBURBAN MOBILITY AUTHORITY
FOR REGIONAL TRANSPORTATION,
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ORDER
Case No. 325610

At a meeting of the Michigan Civil Rights Commission
Held in Lansing, Michigan on the 21st day of May 2012

The Michigan Civil Rights Commission ("Commission") having previously determined that discrimination occurred and that SMART was liable therefore; having remanded the matter to the Michigan Administrative Hearing System (MAHS) for a calculation of damages, a calculation of attorney fees and a ruling on Respondent's Motion to strike Claimant's Evidence and Documents Produced after the Hearing Record was closed; having reviewed the Proposal For Decision (PFD) prepared by the Administrative Law Judge assigned by MAHS; having reviewed the exceptions to the PFD submitted by both parties; having heard the arguments of the parties, and after due consideration and discussion having voted in favor of the following:

IT IS HEREBY ORDERED that the Proposal for Decision is adopted by the Commission in its entirety, with the following exception(s):

We believe Barash is entitled to, and we do award economic damages for lost wages during the time he was employed.

IT IS FURTHER ORDERED THAT Respondent's Motion to strike Claimant's Evidence and Documents Produced after the Hearing Record was closed is GRANTED.

IT IS FURTHER ORDERED THAT damages are awarded in the amount(s) of:

\$ 68,016 for lost wages and/or other economic damages

\$ 150,800 for mental/emotional distress and/or other non-economic damages.

IT IS FURTHER ORDERED THAT attorney fees are awarded in the amount(s) of:

\$ 83,985.00 payable to the Schector firm.

\$ 37,235.75 payable to the Akeel firm.

IT IS FURTHER ORDERED THAT costs are awarded in the amount(s) of:

\$ 2,331.67 payable to the Schector firm.

\$ 1,017.20 payable to the Akeel firm.



Michigan Civil Rights Commission
Michael Zelle Chair