

**Ohio Civil
Rights Commission**

Memo

To: Desmon Martin, Director of Enforcement & Compliance

From: Denise M. Johnson, Chief Administrative Law Judge

Date: 9/6/2013

Re: *Wendy Basinger Sigley v. Edwin E Ferrell d/b/a Sun-Shine
Transport v. Taxi*

AKRE(35233)072722010 22A-2011 -00105F

Complaint No. 10-EMP-AKR-35233

**CONSIDERATION OF
ADMINISTRATIVE LAW JUDGE'S REPORT**

ALJ'S RECOMMENDS CEASE AND DESIST ORDER

Report Issued: **September 5, 2013**

Report Mailed: **September 6, 2013**

*****Objections Due:*** September 29, 2013**



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, Chairman
Stephanie M. Mercado, Esq.
William W. Patmon, III
Tom Roberts
Rashmi N. Yajnik

G. Michael Payton, Executive Director

September 6, 2013

Wendy Basinger (Sigley)
3932 Edward Street,
Mineral Ridge, Ohio 44440

Edwin E. Ferrell
dba Sun-Shine Transport & Taxi
6260 Sodom-Hutchings Road
Girard, Ohio 44420

Re: *Wendy Basinger (Sigley) v. Edwin E. Ferrell dba Sun-Shine Transport & Taxi*
AKRE (35233) 07272010 22A-2011-00105F Complaint No 10-EMP-AKR-35233

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 **September 29, 2013**. *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.

*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, OH 43215-3414.** All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin / apo

Desmon Martin
Director of Enforcement and Compliance

Enclosure

DM:apo

Cc: Lori A. Anthony – **Chief Civil Rights Section**/David A. Oppenheimer, **Principal AAG**/ Edwin Ferrell, **Respondent**/ Wendy Basinger Sigley, **Complainant**/ Denise M. Johnson – **Chief Administrative Law Judge**

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Wendy Basinger (Sigley)

Complainant

Complaint No. 10-EMP-AKR-35233

v.

Edwin E. Ferrell d/b/a Sun-Shine Transport & Taxi

Respondent

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

**MIKE DeWine
ATTORNEY GENERAL**

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Counsel for the Commission

Wendy Basinger Sigley
3922 Edward Street
Mineral Ridge, Ohio 44440

Complainant

Edwin E. Ferrell
dba Sun-Shine Transport Ohio
& Taxi,
6260 Sodom-Hutchings
Girard, Ohio 44420

Respondent

ALJ'S REPORT BY:

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
State Office Tower, 5th Floor
30 East Broad Street
Columbus, OH 43215-3414
Phone (614) 466-6684
Fax (614)644-8776

INTRODUCTION AND PROCEDURAL HISTORY

Wendy Basinger (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on July 27, 2010.

The Commission investigated the charge and found probable cause that Edwin E. Ferrell d/b/a Sun-Shine Transport & Taxi (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 November 18, 2010.

The Complaint alleged Respondent conditioned Complainant's employment on Complainant's willingness to engage in sexual relationship with Respondent which constitutes *quid pro quo* sexual harassment in violation of R.C. 4112.02(A).

Respondent did not file an Answer. The Commission filed a Motion for Default on April 4, 2011 which was thereafter granted by the ALJ.

A public hearing was held on March 8, 2012 at the Trumbull County Courthouse, Warren, Ohio. The Commission's Motions were granted at the hearing.

The record consists of the previously described pleadings, a transcript of the hearing consisting of 57 pages, exhibits admitted into evidence during the hearing, and a post-hearing brief filed by the Commission on May 22, 2012.

FINDINGS OF FACT

The following Findings of Fact 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's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on July 27, 2010.
2. The Commission determined it was probable that Respondent engaged in unlawful discriminatory practices in violation of R.C. 4112.02(A).
3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint on November 18, 2010 after conciliation failed.
4. Respondent operates a business providing taxi service to the general public and employs four employees. (Comm. Exhibit 1)
5. Respondent is owned and operated by Edwin E. Ferrell.
6. During the time that Complainant interviewed with Respondent for the job he told her that she was a beautiful woman who he'd like to take out to dinner sometime.
7. Complainant ignored Respondent's overture as she needed employment. (Tr. 12-15, Comm. Exh. 2)

8. Complainant started working for Respondent as a cab driver on June 23, 2009.
9. Complainant was a probationary employee from June 23-29th, 2009 during which time she received 32(thirty-two) hours of training.
10. Complainant was to be paid four weeks after she started as a regular employee, and bi-weekly thereafter at a rate of \$350.00 per week plus tips. (Tr. 15-17, 21-22, Commission Exh. 3)
11. Respondent picked Complainant up from her home for the training.
12. Respondent continued to compliment Complainant on her looks and said that he would like to date her.
13. Complainant rebuffed Respondent's advances. (Tr. 16, 23)
14. Respondent began buying gifts for Complainant including a necklace and earrings. (Tr. 25-26)

15. At the end of the training Respondent paid Complainant \$169.00.
16. Complainant starting working full time on June 27, 2010. (Tr. 24-25, Comm. Exh. 1 & 3)
17. Complainant worked eight (8) hours a day five(5) days a week the week of June 27th.
18. Complainant did not have a cell phone so the Respondent gave her one and put her on his plan in order to call her and send her on runs.
19. Complainant's cab was stationed at a McDonald's parking lot.
20. During the week of June 27th July 3, 2010, Respondent continued to pick Complainant up at her home to take her to her cab.
21. When Complainant was in the car with Respondent, Respondent attempted to pressure Complainant into having a

sexual relationship. He also called Complainant on the cell phone and made advances. (Tr. 28-29)

22. Respondent asked Complainant to marry him. Complainant refused his proposal for marriage and to move in together. (Tr. 30-35)

23. Respondent made Complainant the head of the mid-night turn, working 7:00 PM-7:00 AM. (Tr. 35-36)

24. On July 15th and 16th Complainant's son was hospitalized.

25. Complainant needed to take a couple of days off from work to deal with her son and her own medical problems. (Tr. 39-43)

26. Respondent called Complainant on July 17th and left a voice mail saying he wanted Complainant to go to Lake Geneva with him.

27. Complainant called Respondent and left a voicemail saying that she did not want a romantic relationship with him, just a business relationship.

28. Respondent called Complainant back and left a voicemail saying that she was fired.
29. Complainant returned the gifts to Respondent and attempted to return the cell-phone but he refused it. (Tr. 44, 47-51; Commission Exhibit 2)
30. Complainant's last day of work was July 14, 2010.
31. Complainant looked for work up until the time that she was diagnosed with leukemia in July of 2012.

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. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.¹

¹ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

1. The Commission alleged in the Complaint that Respondent subjected Complainant to different terms, conditions, and privileges of employment, based on her sex and in violation of R.C. 4112.02(A).

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the ... sex, ... of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

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(A) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone*, (1998), 82 Ohio St.3d 569. Therefore, 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).
5. Title VII prohibits quid pro quo harassment where an employee's submission to or rejection of a supervisor's unwelcome sexual advances is used as the basis for employment decisions. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993).
6. O.A.C. 4112-5-05 (J) defines quid pro quo sexual harassment, in pertinent part:
 - (1) Harassment on the basis of sex is a violation of division (A) of section 4112.02 of the Revised Code. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; (...)

7. The instant case involves an allegation of quid pro quo sexual harassment.

8. To prevail on a claim for quid pro quo sexual harassment, the Commission must show:

(1) that the employee was a member of a protected class;

(2) that the employee was subjected to unwelcomed sexual harassment in the form of sexual advances or requests for sexual favors;

(3) that the harassment complained of was based on sex;

(4) that the employee's submission to the unwelcomed advances was an express or implied condition for receiving job benefits,

or that the employee's refusal to submit to a supervisor's sexual demands resulted in a tangible job detriment.

Kauffman v. Allied Signal, Inc. (C.A.6, 1992), 970 F.2d 178, 185-186, certiorari denied (1992), 506 U.S. 1041, 113 S. Ct. 831; *Highlander v. K.F.C. National Management Co.* (C.A.6, 1986), 805 F.2d 644, 648.

9. The Respondent made advances of a sexual nature toward Complainant. When Complainant refused and rebuffed Respondent's sexual advances he terminated her employment.
10. The credible evidence supports a determination that Respondent engaged in discriminatory conduct in violation of R.C. 4112.02(A).

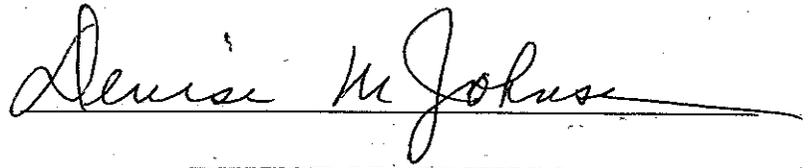
RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 10-EMP-AKR-35233 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112; and
2. The Commission order Respondent within 10 days of the Commission's Final Order to issue a certified check payable to Complainant for the amount she would have earned had she been employed as a cab driver on July 14, 2010 and continued to be so employed up until July 2012,² including any raises and benefits she would have received, plus interest at the maximum rate allowed by law.³

² On the date of the hearing Complainant's back pay damages totaled \$19,170.002.

³ Any ambiguity in the amount that Complainant would have earned during this period or benefits that she would have received should be resolved against Respondent. Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent.

A handwritten signature in cursive script, reading "Denise M. Johnson", written over a horizontal line.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

September 5, 2013



Governor
John Kasich

Ohio Civil Rights Commission

Board of Commissioners

Leonard J. Hubert, Chairman
Lori Barreras
William Patmon, III
Stephanie M. Mercado, Esq.
Tom Roberts

G. Michael Payton, Executive Director

January 13, 2014

Edwin E. Ferrell
Dba Sun-Shine Transport & Taxi
6260 Sodom-Hutchings Road
Girard, Ohio 44420

RE: Wendy LaShelle Basinger v. Edwin E. Ferrell
AKRE3(35233)07272010
22A-2011-00105F
Complaint No. 10-EMP-AKR-35233

The enclosed Order dismissing Complaint No. 11-EMP- AKR-35233 the above captioned matter was issued by the Ohio Civil Rights Commission at its meeting January 9, 2014.

This case is closed.

FOR THE COMMISSION

Desmon Martin/tms

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/tms
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section

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January 13, 2014

Wendy Basinger
3932 Edward Street
Mineral Ridge, Ohio 44440

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FOR THE COMMISSION

Desmon Martin/tms

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/tms
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section

Administrative Law Judge recommended that the Commission find that Respondent engaged in unlawful conduct and order Respondent to provide the following relief:

- (1) Cease and desist from all discriminatory practices in violation of R.C. Chapter 4112; and
- (2) Provide the Commission with a certified check payable to the Complainant in the amount she would have earned had she not been terminated. The amount of her back pay was \$19,170.02 as of the date of the hearing. From that day on, the amount would increase solely due to interest, and not additional back pay as Complainant's health had deteriorated to the point she could no longer work. Interest shall accrue at the maximum rate allowed by law until Respondent provides the check to the Commission.

With all matters now before it and carefully considered, the Commission hereby adopts and incorporates, as if fully rewritten herein, the findings of fact, conclusions of law, and recommendations contained in the Chief Administrative Law Judge's Report and Recommendation dated September 5, 2013.

This ORDER issued by the Ohio Civil Rights Commission on this 9TH day of January, 2014.



Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



Desmon Martin
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 1/13/2014