

Respondent.

FINAL DECISION AND ORDER

I. INTRODUCTION & PROCEDURAL HISTORY

Chief Counsel, Hawai'i Civil Rights Commission

the Commission granted a six-month extension to hold the hearing, pursuant to Hawai‘i Administrative Rules (“HAR”) § 12-46-46.

The Executive Director filed a Motion for Summary Judgment (“Motion for Summary Judgment” or “Motion”), and on November 7, 2025, argument on the Motion was heard before the HCRC’s administrative Hearings Examiner, Jo-Ann Adams, Esq. After consideration of the Motion for Summary Judgment and its exhibits, the pleadings, and record, the Hearings Examiner granted the Executive Director’s Motion on November 12, 2025.

A hearing on damages was held on January 30, 2026 in Hilo, Hawai‘i. All parties and/or representatives attended in-person. The hearing was reopened for additional memoranda on the issue of punitive damages and the hearing was officially closed on February 24, 2026. On April 24, 2026, the Hearings Examiner filed her Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) (attached as “Exhibit A”). Neither party filed written exceptions to the Hearings Examiner’s Recommended Order.

II. FINDINGS OF FACT

The Commission adopts and incorporates by reference the section entitled, “Findings of Fact” as set forth in the Hearings Examiner’s Recommended Order. Should any of the findings be later deemed conclusions of law, they are hereby so construed.

III. CONCLUSIONS OF LAW

Except for subsection 5) within section IV, Conclusions of Law, the Commission adopts and incorporates by reference the section entitled, “Conclusions of Law”, as set forth in the Hearings Examiner’s Recommended Order. The Commission deletes subsection 5) of section IV, as set forth in the Recommended Decision and replaces it as follows:

5) **Compensatory damages:** It is well established that the testimony of a complainant alone may, if sufficiently specific, be enough to support an award of emotional distress damages. *William D. Hoshijo, Executive Director on behalf of the Complaint filed by Serena M.Y. Kyi-Yim vs. Morning Hill Foods, LLC, dba Mana Bu's*, Dkt. No. 16-002-E-A (2017), Final Decision and Order at 9, quoting *Webner v. Titan Distribution. Inc.*, 267 F.3d 828, 836-37 (8th Cir. 2001); *Migis v. Pearle Vision. Inc.*, 135 F.3d 1041, 1046-47 (5th Cir. 1998); *Turic v. Holland Hosp. Inc.*, 85 F.3d 1211, 1215 (6th Cir. 1996); *Merriweather v. Family Dollar Stores of Indiana. Inc.*, 103 F.3d 576, 580 (7th Cir. 1996). Objective evidence of emotional distress damages in discrimination cases is demonstrated by testimony of a complainant's own experience of the impact the discriminatory conduct has, which may have outward manifestations that are observed by others, and by the nature of the discriminatory conduct. *U.S. v. Balistreri*, 981 F.2d 916, 932 (7th Cir. 1992); *Cowan v. Prudential Ins. Co. of America*, 852 F.2d 688, 690-91 (2nd Cir. 1988). The more inherently degrading or humiliating a respondent's discriminatory conduct, the larger a reasonable award for emotional distress may be. *Lopez-Rosende v. U.S. Postal Service*, E.E.O.C. Appeal No. 0120102789, 2010 WL 4973686 at *3 (Nov. 30, 2010).

While testimony from healthcare professionals, clergy, or lay witnesses (including family and friends) are not necessary to establish an award, such testimony may strengthen a complainant's proof of emotional distress and causation of the emotional distress and, thereby, may lead to a relatively higher award. *Kyi-Yim citing Williams v. U.S. Postal Service*, E.E.O.C. Appeal No. 0120130887, 2013 WL 2456626 at *3 (May 31, 2013); *Lopez-Rosende*, 2010 WL 4973686 at *3, *Accord Farfaras v. Citizens Bank and Trust of Chicago*, 433 F.3d 558, 566 (7th Cir. 2006); *Williams v. Donahoe*, E.E.O.C. Appeal No. 01922369, 2013 WL 2456626 (May

31, 2013).

The Commission in *William D. Hoshijo, Executive Director on behalf of the Complaint filed by Serena M.Y. Kyi-Yim vs. Morning Hill Foods, LLC, dba Mana Bu's*, Dkt. No. 16-002-E-A (2017), considered persuasive case law along with jury instructions to find that an award for emotional distress damages is a consideration of the following factors:

1. The nature of the discriminatory conduct to which the complainant was exposed, including its willfulness, its severity, and its inherent tendency to degrade, humiliate or to cause other significant emotional, including dignitary, harm;
2. The complainant's own testimony as to the existence, nature, severity, duration of his or her experience of emotional distress;
3. Whether the complainant experienced physical as well as emotional harm as a result of the distress;
4. Factors relating to the complainant's vulnerability to emotional harms of a kind foreseeably caused by the discriminatory conduct;
5. Whether the complainant sought professional or other assistance in coping with emotional distress;
6. The testimony of professional healthcare providers regarding the severity, duration, and cause(s) of the emotional distress;
7. The testimony of lay witnesses regarding their observations of complainant's behavior as it might reasonably relate to the complained of emotional distress; and
8. Evidence regarding possible sources of emotional distress, the nature or timing of which suggests that factors other than the respondent's discriminatory conduct caused or contributed to complainant's emotional distress.

We affirm the use of these factors to determine damages for emotional distress in cases that come before the Commission.

IV. REMEDIES

The Commission adopts and incorporates by reference the section entitled, “REMEDIES”, as set forth in the Hearings Examiner’s Recommended Order, except for subsection A, within section V, entitled “COMPENSATORY DAMAGES”. The Commission deletes subsection A of section V, as set forth in the Recommended Decision and replaces it as follows:

A. COMPENSATORY DAMAGES

Pursuant to HRS § 368-17, the HCRC has the authority to award compensatory damages for any pain, suffering, embarrassment, humiliation, or emotional distress Complainants suffered as a result of Respondent’s discriminatory written and oral statements.

In the instant case, there were two instances of discriminatory statements made via text message and in court, Finding of Fact (“FOF”) #3, #8, #12. An ordinary listener would not find that these statements, while facially discriminatory, were an attempt to degrade, humiliate, or cause significant emotional harm. It was undisputed that Respondent later offered to Complainants another unit with an additional bedroom at no additional cost, FOF #4, and it was undisputed that Respondent never sent the Complainants a letter to officially raise their rent based on the birth of their newborn, FOF #9. Finally, it was undisputed that after the birth of Complainants’ second child together, Respondent did not make any additional discriminatory remarks based on Complainants’ familial status. FOF #11.

Nevertheless, the Complainants experienced emotional harm because of Respondent’s discriminatory statements based on their familial status. Respondent made statements directly targeting the Complainants’ familial status and his intent to treat them differently because of that protected status. The impact of these targeted discriminatory

statements could foreseeably add stress to any couple anticipating the birth of a child and actually did cause additional stress in this case. Complainant Gregory Payne testified that it was “anxiety-producing” to get the text message from Respondent regarding an increase in monthly rent because “we’re going to have extra expenses with the baby, and then this, you know, increase in rent.” Transcripts (“TR”) at 17. Complainant Brandie Payne testified that she felt humiliated and shamed for “increasing the population” by having a child. TR at 48, 53. She testified of the anxiety, frustration, and fear that Respondent’s statements made her feel during a time when there was so much uncertainty in the world. TR at 47.

At the same time, testimony by the Complainants during the hearing on damages pointed to other possible sources of emotional distress: a high-risk pregnancy due to maternal age, the COVID-19 global pandemic and social distancing, lack of extended family support, and the anticipated reduction in income due to spousal disability. TR at 47-50, FOF #7. These other factors likely contributed to the Complainants’ emotional distress.

The Complainants solely testified as to their personal experiences and the impact the discriminatory conduct had on themselves individually. No corroborating testimony was given by either Complainant as observed by the other, there was no testimony given on whether the Complainants sought professional or religious assistance in coping with the emotional distress, and no testimony on whether Complainants experienced physical harms in addition to emotional harms. Complainants had a second child while living on the subject property, and neither Complainant testified as to any fear that Respondent would discriminate against them because of the addition of their second child. FOF #10, #11.

Based on the consideration of the factors laid out in *Kyi-Yim* and the facts of this case, we conclude that the hearings examiner’s finding of \$3,000 in emotional distress damages

is appropriate. The Commission affirms the Hearings Examiner's finding that the Complainants suffered compensatory damages for emotional distress in the amount of \$3,000. This determination takes into account the Complainants' testimonies as to their personal experiences as to the impact of the discriminatory conduct, the nature of the discriminatory conduct, and evidence of other sources of stress that may have contributed to the emotional state of the Complainants. It is important to note that this determination does not discount the very real emotional distress caused by Respondent's discriminatory statements and does not ignore the impact such discriminatory statements have on individuals, especially in the context of housing instability within our State.

V. ORDER

The Commission adopts and affirms the Hearings Examiner's Recommended Order, and hereby orders that:

1. Discrimination based on familial status is proven by the preponderance of the evidence;
2. Compensatory damages in the amount of \$3,000 be awarded in total;
3. No punitive damages be awarded;
4. Respondent shall view the entire 2025 Fair Housing Conference training, which can be found at <https://www8.honolulu.gov/dcs/fair-housing-conference/>. This virtual training was held during Fair Housing Month in April 2025. Respondent will provide the Hawai'i Civil Rights Commission, c/o Executive Director, 830 Punchbowl Street, Room 411, Honolulu, Hawai'i 96813 or by e-mail to eric.k.pililaau@hawaii.gov, with

the date of completion of the training within 90 days of the Commission's final decision and order.

5. HCRC shall issue a press release regarding the results in this matter, the costs of publication, if any, shall be paid by Respondent.

DATED: Honolulu, Hawai'i, May 27, 2026.

HAWAI'I CIVIL RIGHTS COMMISSION



Alphonso Braggs, Chair



Jon Matsuoka, Commissioner



Arsima Muller, Commissioner

Appeal Rights: Under H.R.S. § 368-16(a), complainant(s) and respondent(s) have the right of appeal from the Final Decision and Order of the Commission by filing an appeal with the circuit court within thirty (30) days of service of the Final Decision and Order of the Commission.

MARCUS KAWATACHI, as Executive Director of the Hawai'i Civil Rights Commission, on behalf of the Complaint filed by Brandie Payne and Gregory Payne vs. Peary G. Wagner; Docket No. 25-001-H-F; FINAL DECISION AND ORDER