

FINDINGS OF FACT*

1. On or about December 29, 2006, Complainant, William Scott, (hereinafter "Scott"), filed a PHRC Complaint against Freshwater of Harrisburg, LLC, (hereinafter "Freshwater"), in which Scott alleged that he had been paid unequal wages because of his race, African American and his sex, male. Scott also alleged that he had been harassed because of his race and then discharged in retaliation for his expression of opposition to discrimination. (O.D. 1).
 2. The Complainant's initial complaint was served on January 26, 2007. (O.D. 1)
 3. On January 27, 2009, Scott verified an Amended Complaint that added James Behrend, owner (hereinafter "Behrend") to the named Respondent. (O.D. 1; N.T. 5)
 4. The Complainant's Amended Complaint was served on both Freshwater of Harrisburg, LLC and Behrend on January 27, 2009. (O.D. 1)
 5. Under cover letter date April 1, 2009, the PHRC's Harrisburg regional office filed a Petition for Rule to Show Cause. (O.D. 1).
 6. On April 6, 2009, PHRC Motions Commissioner Dr. Raquel O. Yiengst, issued a Rule to Show Cause which, in effect, notified Freshwater and Behrend that they had until May 6, 2009 to file a properly verified answer to Scott's complaint. (O.D. 2).
- To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

O.D. Official Docket
N.T. Notes of Testimony
C.E. Commission Exhibit

7. Neither Freshwater nor Behrend filed an answer. (O.D. 3).
8. On May 27, 2009, Motions Commissioner Yiengst recommended to the full PHRC that Freshwater and Behrend be found liable for Scott's allegations. (O.D. 3).
9. By Order dated June 22, 2009, the PHRC found Freshwater and Behrend liable for paying Scott unequal wages because of his race and his sex, and for harassing Scott because of his race and for terminating Scott in retaliation for his expression of opposition to the discrimination. (O.D. 3).
10. A public hearing on the issue of what, if any, damages are appropriate was held on January 11, 2010 in Harrisburg, Pennsylvania. (N.T.1)
11. Scott worked 40 hours a week for Freshwater. (N.T. 19).
12. On June 1, 2006, Scott was promoted to the position of painter where his wages were \$9.50 per hour. (N.T. 8, 20).
13. On or about June 29, 2006, Freshwater hired Brandy (LNU), a female, as a painter and began to pay her \$11.00 per hour. (N.T. 20).
14. Scott was terminated on August 23 2006. (O.D. 1; N.T. 11).
15. After being terminated by Freshwater, Scott found part-time employment in 2008 with MEF Commercial Services, Inc.. where he earned a total of \$1,334.00. (N.T. 16; C.E. B).
16. In 2008, following his employment with MEF Commercial Services, Inc., Scott worked for Continental Health Equipment, where he earned a total of \$11,281.00. (N.T. 14, 17).
17. Until January 14, 2009, Scott's hourly wage with Continental Health Equipment, Inc. was \$10.35. (N.T. 14, 16; C.E. B)

18. On January 14, 2009, Scott's hourly wage was increased to \$12.20 per hour.

(N.T. 16; C.E. B).

19. Scott continues to work for Continental Health Equipment, Inc.. (N.T. 16).

20. Scott did not ask to be reinstated.

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission (“PHRC”) may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, Freshwater and Behrend’s failure to file a properly verified answer resulted in the entry of a judgment for Scott on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.