

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )

Plaintiff, )

v. )

R.G. & G.R. HARRIS FUNERAL )  
HOMES INC., )

Defendant. )

CIVIL ACTION NO.  
2:14-CV-13710  
Hon. Sean F. Cox

---

KENNETH BIRD  
DALE PRICE (P55578)  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Attorneys for Plaintiff  
477 Michigan Ave., Room 865  
Detroit, MI 48226  
(313) 226-7808  
dale.price@eoc.gov

JOEL J. KIRKPATRICK  
JOEL J. KIRKPATRICK, P.C.  
Attorney for Defendant  
843 Penniman Ave. Ste. 201  
Plymouth, MI 48170  
(734) 404-5170  
Joel@JoelKirkpatrick.com

**PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION'S RESPONSE TO MOTION TO INTERVENE**

Plaintiff Equal Employment Opportunity Commission for its  
Response to the Motion to Intervene states:

1. Admitted.

2. Admitted. Further, Commission attorneys fully-briefed and argued the appeal on behalf of the rights of Aimee Stephens and took a videotaped deposition of Ms. Stephens to preserve her testimony and protect her interests while the case was on appeal.

3. Admitted.

4. Admitted.

5. No contest.

6. The filing speaks for itself.

7. The filing speaks for itself.

8. The filing speaks for itself.

9. Since the remand by the Supreme Court, the Commission has engaged in good faith efforts to resolve this matter by proposing appropriate and reasonable terms of settlement. To that end, both prior to and during the August 7<sup>th</sup> phone conference with Intervenor, the Commission sought the input of the Estate regarding the monetary components of relief, including compensatory damages for Intervenor and the Estate's attorney fees. On August 7, the Estate stated that it

would take at least two weeks for the Estate to be able to provide an approximation of its attorney fees. (*See Exhibit, August 10, 2020, redacted email exchange between counsel for the EEOC and counsel for the Estate.*) Since that time, the Estate has not provided the EEOC with information related to either additional compensatory damages for Intervenor that it deems appropriate nor the amount of its attorney fees. However, the EEOC understands that the Estate has recently informed the Defendant of a general approximation of its attorney fees. The Commission's conditional consent to intervention was based on its good-faith belief that all parties were in a position to resolve the matter, properly protecting the interests of the Estate, so that no intervention was necessary.

### **RESPONSE TO PRAYER FOR RELIEF**

The Commission has no objection to the intervention of Donna Stephens on behalf of the Estate.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )

Plaintiff, )

v. )

R.G. & G.R. HARRIS FUNERAL )  
HOMES INC., )

Defendant. )

CIVIL ACTION NO.  
2:14-CV-13710  
Hon. Sean F. Cox

---

KENNETH BIRD  
DALE PRICE (P55578)  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Attorneys for Plaintiff  
477 Michigan Ave., Room 865  
Detroit, MI 48226  
(313) 226-7808  
dale.price@eeoc.gov

JOEL J. KIRKPATRICK  
JOEL J. KIRKPATRICK, P.C.  
Attorney for Defendant  
843 Penniman Ave. Ste. 201  
Plymouth, MI 48170  
(734) 404-5170  
Joel@JoelKirkpatrick.com

**BRIEF IN SUPPORT OF PLAINTIFF EQUAL  
EMPLOYMENT OPPORTUNITY COMMISSION'S  
RESPONSE TO MOTION TO INTERVENE**

**CONTROLLING LEGAL AUTHORITY**

The provisions of Fed.R.Civ.P. 24 control.

**QUESTION PRESENTED**

Should the Court grant leave for the Estate to intervene in this case?

The Plaintiff EEOC answers:

Since remand by the Supreme Court, both prior to and during the August 7<sup>th</sup> phone conference with Intervenor, the Commission sought the input of the Estate regarding the monetary components of relief, including compensatory damages for Intervenor and the Estate's attorney fees.

The Commission's conditional response to intervention was based on its good-faith belief that the parties were in a position to resolve this matter in a manner that included the interests of the Estate. It believed that the Estate's information would help the parties reach a timely and complete resolution and render intervention (and the accrual of additional costs and fees) unnecessary.

That said, the Commission does not object to the Motion to Intervene.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

BY:     /s/ Dale Price      
DALE PRICE (P55578)  
Trial Attorney for Equal Employment  
Opportunity Commission  
(313) 226-7808

Dated: August 25, 2020

**Certificate of Service**

I hereby certify that on August 25, 2020, I electronically filed the forgoing with the clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all record attorneys.

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Dated: August 25, 2020

s/ Dale Price  
DALE PRICE (P55578)  
Trial Attorney

# INDEX OF EXHIBITS

Exhibit: 8/10/2020 Emails between Sharon Gustafson and  
John Knight

# EXHIBIT

**SHAJINI KHAN**

---

**From:** SHARON GUSTAFSON  
**Sent:** Monday, August 10, 2020 10:38 AM  
**To:** jknight@aclu-il.org  
**Cc:** KENNETH BIRD  
**Subject:** Intervention and Settlement in Harris Funeral Homes

Mr. Knight:

You have asked the EEOC to consent to Aimee Stephens' Estate intervening as a party in EEOC v. Harris Funeral Homes at the district court. We will do so promptly as soon as the Estate provides the EEOC and the Funeral Homes the amount of attorneys' fees, accrued to the present, that the Estate will be seeking.

While I understand that the Estate may intervene in order to protect the Estate's claims and remedies and to resolve this matter, so far the Estate's proposed involvement has not really promoted those purposes but instead has actually impeded the possible resolution of the matter: You have not disclosed the attorney fees accrued but have stated that it will take two weeks for you to prepare even an approximation of your fees calculation. We have provided you our calculation of damages based on documents you have provided to us, and you have not responded to our calculation other than to say that you believe our estimation of compensatory damages [REDACTED] is too low. You have said that you want to add pecuniary compensatory damages but you have provided no calculations or support for those damages.

By our lights, you have shown little interest in a prompt settlement. On the contrary, you have told us you expect the Defendant to have no interest in settling prior to "the night before trial"--an assumption that contradicts my general experience in employment litigation and the express statements of the Defendant.

This matter should settle. The damages are easily calculable. Both the EEOC and Harris Funeral Homes are interested in settling the matter. The Estate should not intervene for the purpose of multiplying the litigation, as I'm sure you would agree.

You have said that you do not know why the EEOC is interested in an early settlement of this matter. I have explained that the mission of the EEOC is to prevent and remedy illegal employment discrimination. We are interested in doing so in the least expensive, most fair manner possible. In a case such as this one, where we have established liability, there is no reason to delay settlement while attorneys fees will only increase.

Harris Funeral Homes is a small employer, subject to the lowest statutory caps, and punitive damages are not possible. Employment litigation can result in the demise of such employers, to the detriment of their employees (whose interests we also wish to promote).

Please provide the EEOC your damage calculations, including those that support any claim for costs and attorney's fees so that the EEOC can attempt to accomplish a global settlement of this matter. Upon receipt of those calculations, the EEOC will promptly consent to the Estate's intervening as a party at the district court.

Sharon



Sharon Fast Gustafson  
General Counsel

From: John Knight <jknight@aclu-il.org>  
Sent: Monday, August 10, 2020 6:39 PM  
To: SHARON GUSTAFSON <SHARON.GUSTAFSON@EEOC.GOV>  
Cc: KENNETH BIRD <KENNETH.BIRD@EEOC.GOV>  
Subject: Re: Intervention and Settlement in Harris Funeral Homes

Ms. Gustafson:

We would be more than happy to engage in settlement discussions with both the EEOC and the funeral home once the court rules on our motion to intervene, which we will file shortly.

We are interested in settling the Estate's claims, but will not be rushed into discussions before the Estate is properly made a party to the case. Once the Estate is granted intervention, we will communicate with both the EEOC and the funeral home directly about settlement of the Estate's claims, but we do not consider the EEOC to be the broker of any such settlement discussions.

Your email suggests that we are not interested in settling this case promptly, which could not be farther from the truth. I believe that we have provided all the information that EEOC counsel has requested of us, with the exception of the information about attorney's fees and costs which we are working on collecting now.

In addition, we had not heard from the funeral home's counsel about settlement until last week. While I indicated that in the past I had worked on several employment cases where settlement was not discussed until the eve of trial, I did not say that I expected that to occur here and am very pleased to learn that the funeral home is already interested in discussing settlement.

John Knight  
*Pronouns: he, him*  
American Civil Liberties Union  
LGBT & HIV Project  
150 N. Michigan, Suite 600  
Chicago, IL 60601  
P: (312) 201-9740, 335  
F: (312) 288-5225  
[jknight@aclu.org](mailto:jknight@aclu.org)  
[www.aclu.org/lgbt](http://www.aclu.org/lgbt)  
[www.aclu-il.org](http://www.aclu-il.org)

