



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**
on the Complaint of

GUADALUPE PALETA,

Complainant,

v.

IRENE AUSTIN,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10177411

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on June 14, 2017, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:

- The sentence on page 5 of the Recommended Order that reads, “[b]ecause the Human Rights Law § 296-b.2(b) protects domestic workers against harassment

only and not discriminatory actions in hiring or firing, no back wages can be awarded to Complainant,” is not adopted. There are circumstances in which a lost wage award would be appropriate, for instance, when a hostile work environment culminates in a constructive discharge. *See e.g. Sandoval v. Adler*, Div. Case No. 10166190 (2017). Because Complainant in the instant matter has not shown that the termination was related to the harassment, however, the recommendation not to award lost wages is hereby adopted.

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **JAN 17 2018**
Bronx, New York



HELEN DIANE FOSTER
COMMISSIONER



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on the Complaint of

GUADALUPE PALETA,

Complainant,

v.

IRENE AUSTIN,

Respondent.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10177411**

SUMMARY

Complainant was a domestic worker who alleged that she was harassed by Respondent, her employer, because of her race and national origin. Respondent failed to appear at the public hearing. Complainant has proven her claims and is awarded damages owing to her emotional distress only. In addition, civil fines and penalties are assessed against Respondent.

PROCEEDINGS IN THE CASE

On August 13, 2015, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A public hearing was held on December 12, 2016.

Complainant appeared at the hearing. Complainant was represented by Elizabeth Sprotzer, Esq. Respondent failed to appear at the hearing although proper and timely notice of the hearing was served on all parties. The default was noted pursuant to Section 465.11(e) of the Division’s Rule of Practice (9 NYCRR §465.11(e)) and the hearing proceeded on the evidence in support of the complaint in Respondent’s absence pursuant to Section 465.12(b)(3) of the Division’s Rules of Practice (9 NYCRR §465.12(b)(3)).

FINDINGS OF FACT

1. Complainant is a Latina woman of Mexican national origin. (Tr. 11)
2. In February of 2014, Complainant began working for Respondent as a domestic worker. (Tr. 9)
3. Complainant’s duties included cleaning Respondent’s apartment, washing clothes, changing bedsheets, vacuuming and mopping. (Tr. 9)
4. Complainant received \$60.00 per day for three hours of work, three days per week. (Tr. 9-10)
5. Respondent often left the apartment while Complainant worked. Complainant typically saw Respondent for about half an hour at the beginning of her shift and about fifteen minutes at the end of her shift. (Tr. 10-11)

6. Respondent set Complainant's schedule, assigned her duties and paid her. (Tr. 10-12)
7. Soon after Complainant began working for Respondent, Respondent began making derogatory comments to Complainant. (Tr. 11)
8. Respondent repeatedly called Complainant "stupid" and a "fucking immigrant." Respondent told Complainant that because she was an "ignorant Mexican" she had to do the cleaning. (Tr. 11-12)
9. Respondent's comments frightened Complainant. Complainant felt anxious and upset and cried while at work several times per month, throughout her tenure of employment with Respondent. (Tr. 14)
10. Respondent told Complainant she could not use the bathroom because Complainant might "contaminate her with an infection." (Tr. 13)
11. Respondent would not allow Complainant to eat in the kitchen and accused Complainant of stealing food. (Tr. 13)
12. Although Complainant was upset by Respondent's comments, Complainant continued to work for Respondent because she needed the money to help support her family. (Tr. 14)
13. In May of 2015, Complainant's employment was terminated without explanation. Respondent never told Complainant she was fired, but security officers in Respondent's building indicated that Respondent had directed them not to allow Complainant in Respondent's apartment. (Tr. 15)
14. Complainant attempted to contact Respondent via text message after that, but received no response from Respondent. (Tr. 15)

OPINION AND DECISION

It is an unlawful discriminatory practice to deny an employee equal terms, conditions and privileges of employment based upon that employee's race and/or national origin. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1. However, the general provisions of the Human Rights Law do not protect any employee "in the domestic service of any person." Human Rights Law § 292.6. In 2010, limited protections for domestic workers were added to Human Rights Law § 296-b. A domestic worker may file a claim based upon hostile environment harassment on the basis of race or national origin pursuant to Human Rights Law § 296-b.2(b). The Human Rights Law provides no protection against discrimination for domestic workers with regard to hiring, firing or terms, conditions or privileges of employment other than those specifically mentioned in § 296-b.2(b).

In order to establish a claim of hostile work environment under Human Rights Law §296.1(a), a complainant must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382 (2004), quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). Whether an environment is hostile or abusive can be determined only by looking at all of the circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect of the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive." *Forrest*, at 311, quoting *Harris*, at 23. Moreover, the

conduct must both have altered the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff, and have created an objectively hostile or abusive environment--one that a reasonable person would find to be so. *Id.*

Complainant in this case has shown that she was subjected to a hostile work environment. Respondent made reference to Complainant's national origin and status as an immigrant in order to insult and humiliate Complainant in the workplace. Respondent's behavior was severe and pervasive enough to cause Complainant to repeatedly cry while at work and it continued until Complainant's employment was terminated. Respondent has, therefore, violated the Human Rights Law.

As a result of Respondent's unlawfully discriminatory actions, Complainant suffered emotional distress. Complainant became anxious, upset and frightened and she cried at work repeatedly. She is entitled to be compensated for the emotional distress she suffered because of Respondent's actions. It must be noted, however, that Complainant's job hours were limited, which would, in turn, limit her distress. As a result, Complainant is entitled to receive \$5,000.00 from Respondent as compensatory damages owing to Complainant's emotional distress. See, *New York State Division of Human Rights v. SUV Production, Inc.*, --- N.Y.S.3d ---, 149 A.D.3d 523 (1st Dept. 2017), 2017 WL 1348227, 2017 N.Y. Slip Op. 02910. Because the Human Rights Law § 296-b.2(b) protects domestic workers against harassment only and not discriminatory actions in hiring or firing, no back wages can be awarded to Complainant.

The Division has the authority to assess civil fines and penalties against Respondents that violate the Human Rights Law. Human Rights Law § 297.4(e) requires that "any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this

article.” The additional factors that determine the appropriate amount of a civil penalty are the goal of deterrence, the nature and circumstances of the violation, the degree of Respondent’s culpability, any relevant history of Respondent’s actions, Respondent’s financial resources, and other matters as justice may require. *See Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. New York State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

Human Rights Law § 297.4(c)(vi) directs the Division to assess civil fines and penalties, “in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.”

A civil penalty is appropriate in this matter. The record shows that Respondent intentionally harassed and demeaned Complainant because of her national origin and race. Respondents’ actions were deliberate and caused emotional harm to Complainant.

It is also noted that Respondent has demonstrated no remorse and chose not to participate in Division proceedings. There is nothing in the record showing that Respondent was adjudged to have committed any previous, similar violation of the Human Rights Law or she is incapable of paying a penalty.

To vindicate the public interest and deter future violations of the Human Rights Law, a civil penalty of \$10,000.00 is appropriate in this case.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that Respondent, and her agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and

IT IS FURTHER ORDERED, that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant an award of compensatory damages for mental anguish and humiliation in the amount of \$5,000.00. Interest shall accrue on the award at the rate of nine (9) percent per year from the date of the Commissioner's Order until payment is actually made by Respondents;

2. The payment to Complainant shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Guadalupe Paleta, and delivered by certified mail, return receipt requested, to Elizabeth Sprotzer, Esq., Make the Road New York, 92-10 Roosevelt Avenue, Jackson Heights, New York, 11372. Respondent shall furnish written proof to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of their compliance with the directives contained within this Order;

3. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay

a civil penalty to the State of New York in the amount of \$10,000.00 for having violated the Human Rights Law. Payment of the civil penalty shall be made in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458. Interest shall accrue on this award at the rate of nine (9) percent per year from the date of the Commissioner's Order until payment is actually made by Respondents;

4. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED:

Bronx, New York

A handwritten signature in black ink, appearing to read 'Thomas S. Protano', written in a cursive style.

Thomas S. Protano
Administrative Law Judge