ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

DANIELLE ALONZO,
Complainant,

v.

CREOLE RESTAURANT, CATERING AND ENTERTAINMENT COMPLEX INC. D/B/A CREOLE RESTAURANT, KEVIN WALTERS,
Respondents.

NOTICE AND FINAL ORDER

Case No. 10156137

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 February 28, 2014, 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, ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). 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: JUN 23 2014
Bronx, New York

HELEN DIANE FOSTER
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

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RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10156137**

SUMMARY

Complainant worked at Creole Restaurant, where she alleges the owner, Kevin Walters, sexually harassed her. The incidents of alleged harassment Complainant cites are not sufficiently severe or pervasive enough to constitute a sexually harassing work environment. Therefore, the case must be dismissed.

PROCEEDINGS IN THE CASE

On June, 5, 2012, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents 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 Respondents 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 scheduled for October 21, 2013. Respondent failed to appear on that date. It was noted at the time that mail sent to the address listed for Respondent had been returned by the United States Postal Service ("USPS"). Robert Alan Meisels, Senior Attorney for the Division, initiated a call to Respondent Walters and spoke to Walters in the presence of ALJ Protano. Walters indicated that the correct address was 2180 Third Avenue, New York, NY 10035. A new notice was sent out and a new date for hearing was set for January 13, 2014.

Complainant appeared at the hearing. The Division was represented by Meisels. Respondents failed to appear for the hearing. No hearing notices had been returned by the USPS and a hearing was held on the complaint in Respondents' absence in accordance with 9 NYCRR § 465.12(b)(3). Thereafter, on or about January 24, 2014, the notices were returned to the Division by the USPS, including the notice sent to the address given to the Division by Walters on October 21, 2013. In accordance with 9 NYCRR § 465.12(b)(2) the default was entered in spite of the fact that Respondent did not receive the notice of the January 13, 2014 hearing date, because Respondent Walters had asserted, in the presence of the Division Attorney and the ALJ, that the address was correct.

FINDINGS OF FACT

1. Complainant began working for Creole Restaurant as a bartender on April 10, 2012. (Tr. 8)

2. Kevin Walters is the owner of Catering and Entertainment Complex, Inc. d/b/a Creole Restaurant. (Tr. 8)

3. Initially, Complainant enjoyed working at Creole Restaurant. (Tr. 10-11)

4. On May 7, 2012, Complainant was outside the restaurant with Walters' brother, Lenny (last name unknown), handing out flyers to promote the restaurant. (Tr. 12)

5. While they were distributing flyers, Lenny told Complainant that Walters was "love struck" and Complainant could "fix that problem." (Tr. 12)

6. A short time thereafter, Complainant spoke to Walters because she was concerned that another employee might be taking some of the hours she worked. Complainant mentioned to Walters that she was a hard worker and though the other employee might wear tight dresses, Walters should remember that Complainant worked hard. Walters then asked Complainant if she wore tight dresses and Complainant "started to feel like something wasn't right there." (Tr. 13)

7. On May 16, 2012, Walters sent a text message to Complainant that said "two things you should know: that I like you and 2. you are two seconds from kissing creole (*sic*) goodbye…" (Complainant's Exhibit 10; Tr. 24)

8. That same day Walters sent Complainant a text message that said, in part: "Remember as my creole (*sic*) wife you are here to take care of me and make me happy ☺." (Complainant's Exhibit 10)

9. On May 25, 2010, Complainant got into an argument with Lenny. After the DJ made last call, Complainant took an order for a group that wanted one last round of shots. Lenny

became angry at Complainant and started cursing at her telling her to close out the bar. (Tr. 13-14)

10. Complainant went to Walters' office and found him "drunk and half asleep." (Tr. 14)

11. Complainant explained the incident to Walters, who called Lenny to the office. Walters then told Complainant to finish cleaning the bar and go home. (Tr. 14-15)

12. Complainant was never put on the schedule again after that incident. (Tr. 19)

13. Complainant's hours were taken by Latoya (last name unknown). (Tr. 20)

14. While Complainant was still working at Creole Restaurant, "it was known among the restaurant that [Walters and Latoya] were hanging out after work." (Tr.20)

OPINION AND DECISION

It is unlawful for an employer to discriminate against an employee on the basis of sex. Human Rights Law § 296.1(a). Sexual harassment is a form of sex discrimination. In order to sustain a claim of sexual harassment, Complainant must demonstrate that she was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Here, Complainant cannot make out a claim of sexual harassment. Specifically, she has not shown that her work environment was saturated with hostility and pressure that would alter the conditions of her employment. She cites one incident in which Walters is described as "love

struck," and another in which Walters asks her about wearing "tight dresses." Another incident she cites, in which Walters sends her text messages, sounds more like a threat to fire her than an attempt to build a romantic relationship. These incidents, by themselves, did not rise to the level of intimidation and ridicule that is required to sustain a claim of sexual harassment under the Human Rights Law.

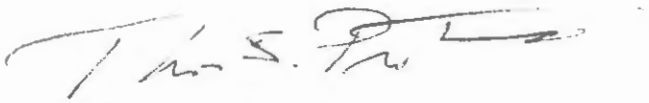
Ultimately, Complainant was fired after getting into a shouting match with Lenny, the brother of the restaurant owner. Even though Complainant stated her belief that her replacement, Latoya, had a romantic relationship with Walters, there is no evidence that Complainant was removed from the schedule for any reason other than her argument with Lenny. And there can be no claim that her continued employment was contingent upon her acquiescing to a relationship with Walters, because Complainant never showed that Walters had propositioned her. Therefore, the case must be dismissed.

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 the case be, and hereby is, dismissed.

DATED: February 28, 2014
Bronx, New York



Thomas S. Protano
Administrative Law Judge