



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

PAOLO ANDRADE,

Complainant,

v.

**WALL STREET LANGUAGES, LTD. D/B/A
RENNERT INTERNATIONAL, CHAD ORR,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10156653

Federal Charge No. 16GB204206

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 May 5, 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, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENTS:

- In Objections to the Recommended Order, Respondent argues that “the hearing record shows that Orr’s behavior was not motivated in any way by Complainant’s

gender since Orr engaged in identical actions with female workers.” See Respondent’s May 22, 2014, Objections at page 4. Respondent overlooks the ALJ’s findings that Respondent Orr asked Complainant the size of his penis and if Complainant “takes it up the ass.” He asked Complainant if he shaved his ass and if he looked at his buttocks in the mirror. Orr told Complainant, who is Hispanic, that he “loves Latin boys” and he showed Complainant photographs of Hispanic men who resembled Complainant and told Complainant, “I’m gonna fuck him tonight.” He invited Complainant to participate in a “gang bang” and invited him to a naked pool party. See May 5, 2014, Recommended Order at page 3. Thus, the proof indeed demonstrates that Orr targeted Complainant because of his race and sex. See *State Div. of Human Rights v. Dom’s Wholesale and Retail Ctr., Inc.*, 18 A.D.3d 335, 796 N.Y.S.2d 537 (1st Dept. 2005); see also *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 80 (1998)

- Contrary to the findings in the Recommended Order, Complainant has established a causal connection between his write-up and the complaints about Orr’s conduct. Causation may be established by temporal proximity between the protected activity and an adverse action. See *Calhoun v. County of Herkimer*, 114 A.D.3d 1304, 1307, 980 N.Y.S.2d 664, 667 (4th Dept. 2014) (citations omitted) (Causation may be established “by showing that the protected activity was followed closely by [retaliatory] treatment.”); *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 A.D.3d 18, 25, 987 N.Y.S.2d 338, 343 (1st Dept. 2014) (“plaintiff’s termination two months after the second complaint may establish the necessary causal nexus between the protected activity and her

discharge.”); *see also Board of Educ. of New Paltz Central School Dist. v. Donaldson*, 41 A.D.3d 1138, 839 N.Y.S.2d 558 (3rd Dept. 2007) (Only after Complainant made known that he was contemplating a sexual harassment lawsuit against his supervisor was negative documentation prepared concerning his work performance. Due to the lack of negative evaluations prior thereto and the short period of time between his harassment complaint and his denial of tenure, Complainant showed sufficient evidence of a subjective retaliatory motive.) In the instant case, there is nothing in the record, however, to demonstrate that the write-up was unfounded. Thus, the basis for the write-up (i.e., that Complainant twice failed to timely assign work) suffices to articulate Respondent’s legitimate, non-discriminatory reason for the action and Complainant presented nothing to show it was pretextual. Accordingly, the retaliation complaint is dismissed for this reason.

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: **NOV 03 2014**
Bronx, New York



HELEN DIANE FOSTER
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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PAOLO ANDRADE,

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**WALL STREET LANGUAGES, LTD. D/B/A
RENNERT INTERNATIONAL, CHAD ORR,**
Respondents.

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

Case No. **10156653**

SUMMARY

Complainant alleged that Respondents discriminated against him on the bases of race and sex, and that Respondents retaliated against him when he complained of discrimination. He further alleged that he was constructively discharged from his job. Complainant has established that he was subjected to a sexually hostile environment. He is entitled to damages for his emotional distress and Respondents are assessed civil fines and penalties. Complainant has failed to prove the remaining charges, which are dismissed.

PROCEEDINGS IN THE CASE

On August 2, 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. Public hearing sessions were held on December 2, 2013 and December 3, 2013.

Complainant and Respondents appeared at the hearing. Complainant was represented by Daniel R. Bright, Esq., of Lichten & Bright, PC. Respondent Wall Street Languages, Ltd., d/b/a Rennert International was represented by Kim Berg, Esq. of Gould & Berg, LLP. Respondent Chad Orr appeared *pro se*.

FINDINGS OF FACT

1. Complainant is a male of Hispanic descent. (ALJ Exhibit 2)
2. Respondent Wall Street Languages, Ltd, d/b/a Rennert International (“Rennert”) provides translation and educational services. (Tr. 379)
3. Complainant began working for Rennert as a project coordinator in its translations department on May 12, 2011. (Tr. 9)
4. Complainant’s immediate supervisor was Respondent Chad Orr. (Tr. 11)
5. As a project coordinator, Complainant was responsible for seeing that translation projects were handled properly and completed timely and correctly. (Tr. 12)
6. After Complainant began working for Respondent, his work environment became “very, very uncomfortable very fast.” (Tr. 12)

7. Orr often made lewd comments to Complainant. Orr discussed his own sex life in the workplace. He asked the size of Complainant's penis and asked if Complainant "takes it up the ass." Orr stated he liked orgies and that he had a leather harness. Orr asked Complainant if he "shaved his ass" and asked if he looked at his buttocks in the mirror. (Tr. 13, 240)

8. Orr showed Complainant pictures of men who resembled Complainant and who were, like Complainant, of Latin American descent, and told Complainant "I'm gonna fuck him tonight." Orr did this in front of Complainant's co-workers. (Tr. 14)

9. Orr routinely showed Complainant and his co-workers photographs of men on dating sites and pictures of himself he had taken, often topless or in seductive poses, for dating websites. (Tr. 14, 18, 25, 243, 289)

10. Orr often told Complainant he "loves Latin boys." (Tr. 44)

11. Orr told Complainant and other co-workers about having attended naked dances, during which the floor would become slippery because it was covered with semen. (Tr. 13, 242)

12. Orr invited Complainant to participate in a "gang bang" and invited Complainant to a naked pool party. (Tr. 14-16)

13. Orr spoke to a boyfriend over the phone in Spanish and, in Complainant's presence, told the boyfriend, "I wanna (*sic*) suck your cock." Complainant was the only person in the office who spoke Spanish. (Tr. 23)

14. Orr once snuck up behind Complainant and gave Complainant a "wet willie" by licking his finger and caressing Complainant's ear with his moistened finger. (Tr. 16, 242)

15. In June of 2011, Patrick Nysten, a co-worker of Complainant, told Phil Covelli, human resources director, that Orr was harassing Complainant. Covelli told Nysten that he would discuss the matter with Eimear Harrison, vice president. (Tr. 248)

16. In February of 2012, Nylén again mentioned the harassment to Covelli. Covelli asked Nylén if the situation had changed and Nylén indicated it had not. (Tr. 250)

17. Thereafter, Covelli and Harrison met with Nylén to investigate the matter. Nylén reiterated the charges against Orr when he met with Covelli and Harrison. (Tr. 250, 389-90)

18. In response to that meeting, Harrison issued a written warning to Orr. The memo took Orr to task for, among other things, his “inappropriate discussion of sexual topics...” (Tr. 391)

19. After Orr received the warning, he and Complainant engaged in a shouting match because Orr accused Complainant failing to complete a job in a timely fashion. (Tr. 407)

20. On May 31, 2012, Orr issued Complainant a warning for twice failing to timely assign a translation job. (Tr. 40-09)

21. On June 6, 2012, Complainant made a written complaint to Harrison alleging that Orr had created a sexually hostile environment. (Complainant’s Exhibit 1; Tr. 411)

22. In response to that complaint, Harrison investigated Orr’s behavior again. This time, she decided that Orr’s employment should be terminated. (Tr. 415)

23. In August of 2012, Orr was fired. (Tr. 415)

24. After Orr was fired, there was no director to take his place. Barbara Valles, senior project manager, was given the responsibility of delegating work to the members of the translations department. (Tr. 343)

25. Complainant felt that Valles refused to give him voiceover work and gave him less desirable cases from minor clients on which to work because Orr was her friend. Complainant also felt Valles was trying to have him fired. Valles did not attempt—and had no authority—to fire Complainant and did not give him worse cases to work on. In fact, Valles gave voiceover work to Complainant. (Respondent’s Exhibit 24; Tr. 343-44)

26. In addition, Complainant worked on projects for Walker, Matrix, Coca-Cola, Clinique, Estee Lauder and L'Oreal during 2011 to 2013. These are considered major clients of Rennert, despite Complainant's assertion that he did not receive assignments from major clients. (Tr. 358)

27. In February of 2013, Valles asked to work from home because she and her family had moved to Mendham, New Jersey. Her new home required her to commute four-and-one-half hours per day. Valles was allowed to work from home three days per week. (Tr. 343)

28. Complainant also asked to work from home because of his pharyngitis in April of 2013. Complainant was required to use sick time when he was unable to work, rather than working at home. (Tr. 208-09)

29. Complainant was allowed to take time for doctor's appointments. However, Respondent indicated that any leave taken by staff, including Complainant, should be "approved by your supervisor, with either leave time or with a plan for make-up." (Respondent's Exhibit 1; Tr. 116)

30. Complainant has had psoriasis since he was sixteen years of age. His psoriasis was visible when he was hired; Valles noticed that Complainant suffered from psoriasis when she participated in Complainant's interview before he was hired. (Tr. 93, 359)

31. During the period when Orr was making offensive comments to Complainant, Complainant's psoriasis exacerbated. Complainant felt stress. He asserted that the psoriasis was exacerbated by the stress, but did not provide medical proof of this, other than his own testimony. (Tr. 91-93)

32. On April 26, 2013, Complainant resigned his position. (Tr. 116)

OPINION AND DECISION

It is unlawful discriminatory practice for an employer to deny an employee equal terms, conditions or privileges of employment on the basis of that employee's national origin, race, sex or in retaliation for having complained of discrimination. Human Rights Law § 296.1.

In order to sustain a claim of sexual harassment, Complainant must demonstrate that he was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of his 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). "The law forbids not only opposite-sex sexual harassment in the workplace, but same-sex sexual harassment as well." *State Div. of Human Rights v. Stoute*, 36 A.D.3d 257, 263, 826 N.Y.S.2d 122, 126 (2d Dept. 2006) (citations omitted).

Complainant here has shown that his working conditions were filled with continuous abuse. Orr routinely discussed sex and sexual acts while in the workplace. Orr targeted Complainant with suggestive questions about, among other things, Complainant's sexual desires and grooming habits. Orr talked about his own sexual conquests in the presence of Complainant and others and made it clear that he liked Latino men, like Complainant. The persistent abuse to which Complainant was subjected was clearly harassment under the Human Rights Law.

In order to prevail, Complainant must show that Rennert knew about the harassment. "[A]n employer cannot be held liable for an employee's discriminatory act unless the employer

became a party to it by encouraging, condoning, or approving it.” *Medical Express Ambulance Corp. v. Kirkland*, 79 A.D. 3d 886, 887, 913 N.Y.S. 2d 296, 298 (2d Dept. 2010), *lv. den.*, 17 N.Y. 3d 716, 934 N.Y.S. 2d 374 (2011), quoting *Matter of State Div. of Human Rights v. St. Elizabeth’s Hosp.*, 66 N.Y. 2d 684, 687, 496 N.Y.S. 2d 411, 412 (1985). “Only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct.” *Medical Express Ambulance Corp.* at 887-888, 913 N.Y.S. 2d at 298. Rennert management was made aware of Orr’s abusive conduct in June, 2011, when Nylen told Covelli about the harassment. Rennert did not act until the following February, when Orr was issued a written warning. However, the corrective action taken did not stop the harassment. Rennert failed to stop the harassment until Complainant made a written complaint to Harrison, a year later. Rennert can be held liable for the hostile environment Orr created for Complainant.

Complainant also alleges that he was retaliated against for having lodged his internal complaint of discrimination and for having filed his Division complaint in 2012. In order to establish a prima facie case of retaliation, a complainant must show that (1) he engaged in activity protected by Human Rights Law § 296; (2) the respondent was aware that he participated in the protected activity; (3) he suffered from an adverse employment action; and, (4) there is a causal connection between the protected activity and the adverse action. *Pace v. Ogden Svcs. Corp.*, 257 A.D.2d 101, 103, 692 N.Y.S.2d 220, 223 (3d Dept. 1999) (citing *Fair v. Guiding Eyes for the Blind*, 742 F Supp 151, 154 (S.D.N.Y. 1990); *Matter of Town of Lumberland v New York State Div. of Human Rights*, 229 AD2d 631, 636 (3d Dept. 1996).

Complainant has not made out a prima facie case of retaliation. Although Orr continued to harass him after the initial complaint by Nylen, there was no change in Complainant’s

working conditions. After the second complaint to Harrison, Complainant got into a shouting match with Orr and was written up. Although this was shortly after Orr was reprimanded, there is no reason to believe that these two events were connected. Thus, Complainant cannot make a causal connection between his complaint and the write-up. After his Division complaint, Complainant alleges that Valles retaliated against him. Complainant did not prove his charge that Valles gave him less desirable work and, in fact, the evidence shows that this was not true. Complainant also complains that he was not allowed to work from home while sick, although Valles was allowed to do so. Complainant is not comparable to Valles. Unlike Complainant, Valles was not out sick when she worked from home. Additionally, Valles was considered senior to Complainant in that she had a superior title and was entrusted with assigning work after Orr's firing. Moreover, Complainant was allowed to alter his schedule in order to accommodate his needs for time off to visit his doctors. Complainant, therefore, cannot prevail on his claim of retaliation.

Since Complainant has not shown that he was retaliated against and considering the fact that Orr was let go in August 2012, nearly eight months before Complainant resigned, Complainant cannot prevail on his claim of constructive discharge. Complainant resigned of his own accord, not because of an intolerable working environment. In order to establish a claim of constructive discharge, Complainant must show that Respondents deliberately made his working conditions so intolerable that a reasonable person in his position would have felt compelled to resign. *Lambert v. Macy's East, Inc.*, 84 A.D.3d 744, 746, 922 N.Y.S.2d 210, 212 (2d Dept. 2011) (citations omitted). By the time Complainant resigned, no such conditions existed.

Complainant filed this claim for discrimination in employment. Orr was not an employer under the Human Rights Law. There is no evidence that he was anything more than an employee

of Rennert, which was Complainant's employer as well. An employee cannot be sued as an employer under the Human Rights Law, even if he is a manager, without some ownership interest or some authority to do more than carry out decisions made by others. *Patrowich v. Chemical Bank*, 62 N.Y. 2d 541, 43 N.Y.S. 2d 659 (1984). Nothing in the record supports a conclusion that Orr has the type of authority that could classify him as an employer under the Human Rights Law. The Human Rights Law does state that it is unlawful discriminatory practice for any person "to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or attempt to do so." Human Rights Law § 296.6. Thus, as the individual who is responsible for the harassment of Complainant, Orr can be considered an aider and abettor under the Human Rights Law and held liable for damages.

As a result of the Respondents' discriminatory actions, Complainant is entitled to recover damages from Respondents owing to his emotional distress. He suffered stress and anxiety from the harassment he received. Although he asserts his psoriasis was exacerbated, he has not provided medical testimony that this was caused by the harassment he received. Nevertheless, Complainant was harassed and humiliated by Orr and the Court of Appeals has stated that "distress follows such bias and exclusion as night follows day." *300 Gramatan Avenue Associates v. New York State Division of Human Rights*, 45 N.Y.2d 176, 408 N.Y.S.2d 54, 59 (1978). Complainant is therefore entitled to \$25,000.00, which is reasonably related to the harm he suffered and will effectuate the purpose of the Human Rights Law. *Kowalewski v. New York State Division of Human Rights*, 26 A.D.3d 888, 809 N.Y.S. 2d 347 (4th Dept. 2006); *Bayport-Blue Point School District v. State Division of Human Rights*, 131 A.D. 2d 849, 517 N.Y.S. 2d 209 (2d Dept. 1987).

Pursuant to § 297 of the Human Rights Law, the Division may assess civil fines and

penalties. In this case, a civil fine will be appropriate to deter Respondents from future discriminatory behavior. Orr's discriminatory words and actions were deliberate, and resulted in humiliation to Complainant. Evidence adduced at the hearing indicated that Rennert provides translation services for numerous multi-national corporate clients, such as Coca-Cola, Clinique, Estee Lauder, etc. Given the circumstances, considering the goal of deterrence, the nature and circumstances of the violation, the degree of Respondents' culpability, and Respondents' size and financial resources, \$20,000 is an appropriate civil fine and penalty. *See Noe v. Kirkland*, 101 A.D.3d 1756, 1758, 957 N.Y.S. 2d 797 (4th Dept. 2012) (\$20,000 civil fine and penalty confirmed); *Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 514, 949 N.Y.S. 2d 459 (2d Dept. 2012) (\$25,000 civil fine and penalty confirmed).

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 Respondents Wall Street Languages, Ltd., d/b/a Rennert International and Chad Orr, and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and

IT IS FURTHER ORDERED that Respondents Wall Street Languages, Ltd., d/b/a Rennert International and Chad Orr shall take the following actions to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this order:

1. Within sixty days of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$25,000, without any withholdings or deductions, as compensatory damages for mental anguish and humiliation he suffered as a result of their harassment. Interest

shall accrue on this award at the rate nine percent per year, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

2. The aforementioned payments shall be made in the form of a certified check, made payable to the order of Complainant, Paolo Andrade, and delivered by certified mail, return receipt requested, to his attorney, Daniel R. Bright, Esq., Lichten & Bright, 475 Park Avenue South, 17th Floor, New York, NY, 10016. Respondents shall simultaneously furnish written proof of their compliance with the directives contained in this Order by certified mail, return receipt requested to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4th floor, Bronx, NY 10458.

3. Within sixty days of the date of the Commissioner's Order, Respondents shall pay the sum of \$20,000 as a civil fine and penalty, by certified check made out to the "State of New York" and delivered by certified mail, return receipt requested, to the offices of the New York State Division of Human Rights at One Fordham Plaza, 4th floor, Bronx, New York 10458, attention: Caroline Downey, Esq., General Counsel. Interest shall accrue on this assessment at a rate of nine per cent per year from the date of this Order until payment is made.

4. Within sixty days of the date of the Commissioner's Order, Respondent Rennert shall establish policies and procedures for the prevention of unlawful discrimination and harassment in accordance with the Human Rights Law. These policies and procedures shall include an official anti-discrimination and harassment policy and a formalized reporting mechanism for employees who believe they have been discriminated against. The policies shall also contain the development and implementation of a training program relating to the prevention of unlawful discrimination in accordance with the Human Rights Law. Training and a copy of the policies shall be provided to all employees. A copy of the policies and procedures shall be provided,

within sixty days of the date of the Commissioner's Final Order, to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4th floor, Bronx, NY 10458.

5. Respondents shall cooperate with the representatives of the Division during any investigation into their compliance with the directives of this Order.

DATED: May 2, 2014
Bronx, New York



Thomas S. Protano
Administrative Law Judge