



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

LAURIE BETH AUSTIN,

Complainant,

v.

**TOWN OF HUNTINGTON, HIGHWAY
DEPARTMENT, PETER GUNTHER,
SUPERINTENDENT OF HIGHWAYS,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10182917

Federal Charge No. 16GB603706

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 12, 2020, by Margaret A. Jackson, 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.


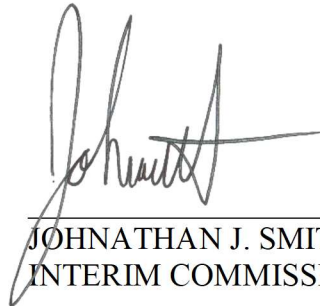
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has 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: **May 4, 2021**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER



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**TOWN OF HUNTINGTON, HIGHWAY
DEPARTMENT, PETER GUNTHER,
SUPERINTENDENT OF HIGHWAYS,**

Respondents.

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

Case No. **10182917**

Federal Charge No. 16GB603706

SUMMARY

Complainant alleged that she was sexually harassed and subjected to a hostile work environment by her supervisor, Superintendent of Highways Respondent Peter Gunther, while working with Respondent Town of Huntington. The claim against the Town of Huntington is dismissed. However, Complainant is entitled to damages from Respondent Gunther based on the harassment she suffered. Civil fines and penalties are also assessed against Respondent Gunther.

PROCEEDINGS IN THE CASE

On July 27, 2016, 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 Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on August 2, 2017 and August 3, 2017.

Complainant was represented by Christopher J. Cassar, Esq. Respondent Town was represented by James P. Clark, Esq. and Michael T. Cornacchia, Esq. represented Respondent Gunther.

On April 13, 2018, ALJ Jackson issued recommended findings of fact, opinion and decision, and order.

On June 15, 2018, the matter was reopened by Matthew Menes, Esq. Adjudication Counsel on behalf of the Commissioner to determine the nature of the employment and the professional relationship between the parties, including but not limited to the relationship between the Superintendent of Highways, Respondent Gunther, and the Town as well as whether the Town is liable for Respondent Gunther’s acts; whether Respondent Gunther is personally liable and whether an affirmative defense is available to Respondents. Respondents were directed to produce evidence regarding the nature of the employment and professional relationship between the parties.

On August 17, 2018, a public hearing session was held pursuant to the reopening order. Complainant and Respondents appeared at the hearing.

Complainant was represented by Christopher J. Cassar, Esq. Respondent Town was represented by James P. Clark, Esq. and Michael T. Cornacchia, Esq. represented Respondent Gunther.

Permission to file post-hearing briefs was granted. Both parties submitted post hearing briefs.

On November 21, 2019, ALJ Jackson issued an Amended Recommended Order but it did not analyze the issues specified in the June 15, Reopening Order.

On January 14, 2020, the matter was again reopened by Adjudication Counsel Matthew Menes, Esq. on behalf of the Commissioner for the issuance of an Amended Recommended Order addressing all matters addressed in the June 15, 2019 Reopening Order and any additional issues relevant to the parties potential liability.

FINDINGS OF FACT

1. Complainant is female. (ALJ Exhibit 1)
2. On September 19, 1990, Respondent Town of Huntington (the Town), hired Complainant as an account clerk to work in its Accounting Department located in Huntington, New York. (Tr. 7-9)
3. Respondent Town maintains policies and complaint procedures for reporting alleged acts of discrimination, harassment, and sexual harassment. (Respondent's Exhibit 4; Tr. 246)
4. Respondent Town's complaint procedures instructs employees who believe they have been subjected to sexual harassment to report the harassment, verbally as a formal complaint or

in writing as a formal complaint, to their supervisor and, at the same time, to the Compliance Officer designated to coordinate compliance with Title VII of the Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).. Should the employee's supervisor be the alleged harasser, the report shall be made to the next higher level of management/Town personnel officer. At the relevant time, Lisa Baisley was Respondent Town's personnel officer. (Respondent's Exhibit 4)

5. Complainant took Respondent Town's sexual harassment training and was familiar with its policies and procedures. (Tr. 188, 247)

6. On January 1, 2014, Respondent Peter Gunther was elected as Respondent Town's Highway Superintendent. (Tr. 7, 270, 334)

7. As an elected official, Respondent Gunther's salary was set by the Town board. He received part of Respondent Town's group benefits including dental coverage, health insurance, optical and retirement benefits. He did not have the traditional employer/employee relationship with the Town. Respondent Gunther was not supervised by anyone at the Town, he was not evaluated by anyone at the Town and no one at the Town had the ability to discipline Respondent Gunther. (Tr. 335, 344)

8. As Highway Superintendent, Respondent Gunther could hire, fire or promote employees within the confines of the Town budget. (Tr. 336, 347)

9. Respondent Gunther made the hiring decisions for the Highway Department. He had the authority to carry out personnel decisions such as reassignment of duties. Respondent Gunther was responsible for reviewing contracts from Respondent Town's comptroller's office and visited job sites to ensure that Highway Department projects were performed properly. (Tr. 272-273, 275-76, 334-35)

10. As an elected official, Respondent Gunther set his own work hours in the Highway Department. There was no formal evaluation system in place, written or verbal, for employees, such as Complainant, the Highway Department. (Tr. 351)

11. In 2003, Complainant became a senior account clerk. As a senior account clerk, Complainant was responsible for making appointments, scheduling meetings, attending meetings and answering telephone calls and emails. (Tr. 7-8, 150)

12. In February of 2014, Respondent Gunther requested that Respondent Town move Complainant and three of Complainant's co-workers from Respondent Town's Town Hall office to an office located in its Elwood facility. (Tr. 10)

13. Subject to the agreement of Respondent Town's board, Respondent Gunther requested Complainant be re-assigned to work with him. Respondent Town agreed. (Tr. 341-42)

14. Respondent Gunther became Complainant's direct supervisor. Complainant's other co-workers continued to work for and be supervised by other Deputy Superintendents in the Highway Department. Complainant retained her union benefits and civil service title of Senior Account Clerk Typist and civil service benefits and acted as Respondent Gunther's confidential secretary. Complainant's salary was paid through Respondent Town's budget. Complainant received an additional stipend of \$12,000 annually as long as she retained the title of Respondent Gunther's confidential secretary. (Tr. 62, 194, 337-338)

15. Complainant's duties included directing constituent complaints to appropriate people in the department as well as visiting job sites and accompanying Respondent Gunther to luncheons, meetings and onsite inspections two to three times a week. Respondent Gunther became Complainant's *de facto* employer. He scheduled Complainant's time off and maintained full control over the details of Complainant's work arrangements. He also evaluated her work and

determined the length of time she would be employed in his office. (Tr. 23-24, 150-51, 276, 281, 336-337)

16. During their visits to job sites and other locations, Respondent Gunther tried to kiss Complainant's face without encouragement. (Tr. 55, 57, 59)

17. Complainant complained to her brother about Respondent Gunther's behavior, but did not complain to Respondent Town. (Tr. 47)

18. Sometime in early March of 2015, Complainant fell out of the Respondent Town issued truck that Respondent Gunther was driving. (Tr. 290-91)

19. Complainant did not file an accident report with Respondent Town or the police department. (Tr. 290-91)

20. While Complainant was out of the office recovering from the truck accident, Respondent Gunther left Complainant voice messages stating, "I'm just making sure you are ok," and "Hey, I just want to make sure you're okay and that it's nothing I did to hurt you." (Tr. 32, 44)

21. On March 12, 2015, Respondent Gunther drove Complainant home from work. When they reached Complainant's driveway, Respondent Gunther leaned over into her seat with his body completely pressed against her and his tongue out. He then tried to grab her arm and put his tongue in Complainant's mouth. Complainant pulled away. (Tr. 31, 46)

22. Following the March 12, 2015, incident Complainant sent Respondent Gunther an email stating that she was taking the following week off. Complainant did not provide a reason. (Tr. 32)

23. On March 16, 2015, Respondent Gunther apologized to Complainant stating that he never wanted to hurt her and there would be "no more kissing." (Tr. 51-53)

24. In the fall of 2015, Respondent Gunther moved Complainant's desk into his office without an explanation. (Tr. 10)

25. Shortly thereafter, Complainant received a card from Respondent Gunther in which he invited Complainant "to take a long walk with him" and said he "hope[d] that there would be a day when [she] could look into his eyes." (Tr. 100)

26. Periodically, Respondent Gunther gave gifts and cash to all the men and women of his senior staff, including Complainant. (Tr. 145, 284-85)

27. After receiving gifts from Respondent Gunther, Complainant sometimes reciprocated by giving Respondent Gunther liquor and lottery tickets. (Tr. 144)

28. At various times, between 2014 and 2016, Complainant asked Respondent Gunther to stop making her feel uncomfortable. (Tr. 303-304)

29. Although Complainant felt uncomfortable around Respondent Gunther, she did not complain to anyone at Respondent Town. (Tr. 258)

30. In February 2016, Respondent Gunther asked Complainant's daughter, a part-time employee for Respondent Town, to pick up and deliver Valentine's Day gifts to Complainant's home. The gifts were delivered, and Complainant kept them. (Complainant's Exhibit 8; Tr. 90, 95-96)

31. On June 3, 2016, Complainant continued feeling uncomfortable working with Respondent Gunther, became upset and sent Respondent Gunther an email asking him to stop harassing her. (Complainant's Exhibit 17)

32. On June 18, 2016, Complainant contacted her union representative, Rich Popkin, seeking assistance with handling Respondent Gunther's behavior. Pursuant to Respondent

Town's sexual harassment complaint procedure, Popkin set up a meeting with Respondent Town's representatives. (Respondent's Exhibit 4; Tr. 113-15)

33. On three occasions in June 2016, Complainant met with Popkin, Lisa Baisley, Respondent Town's Personnel Officer and James P. Clark, Esq., the Town Attorney, to discuss her sexual harassment complaint against Respondent Gunther. (Tr. 121)

34. After the first meeting, Complainant was told by Respondent Town's representatives that, because Respondent Gunther was an elected official, Respondent Town did not have the authority to fire him if it determined that he had acted inappropriately, however, it would investigate her concerns. (Tr. 121, 193)

35. A few days later, after the second meeting, Complainant was told by Respondent Town's representatives that her desk was going to be moved and she had the option of taking a confidential secretary position in another department, remaining in the Highway Department and relocating her desk to the basement of the main office at the Elwood yard, or remaining in the Highway Department and moving her office to any other requested location. (Tr. 121, 194)

36. Complainant was also told by Respondent Town that she no longer had to serve as the confidential secretary to Respondent Gunther, but Respondent Town would allow her to retain the \$12,000 stipend for the confidential secretary position through the end of Respondent Gunther's term of office. (Tr. 195)

37. On June 24, 2016, Popkin advised Complainant that Respondent Town approved her decision to move out of Respondent Gunther's office. (Tr. 194)

38. Complainant wanted to remain in the Highway Department and notified Respondent Town that she chose to move to the mechanics' garage at the Elwood facility. (Tr. 122-24, 195-197)

39. Within two days, Complainant was transferred to the mechanics' shop. (Tr.195)

40. Subsequently, Respondent Gunther was denied re-nomination to run for another term of office. (Tr. 182-83)

41. During Complainant's employment with Respondent Town, Complainant took used over 100 days vacation and sick leave. After the investigation, Complainant acknowledged that many of the days that she took off from work had nothing to do with the alleged conduct of Respondent Gunther. (Tr. 135-137)

42. Nonetheless, Respondent Town restored Complainant's sick time for the days that she was out while her sexual harassment complaint was being investigated by Respondent Town. (Respondent's Exhibit 3; Tr. 196)

43. Baisley also offered Complainant the use of Respondent Town's employment program to seek no-cost therapy through its Employee Assistance Program (EAP). (Tr. 126, 220)

44. Instead, Complainant chose an on-line spiritual healing meditation group and chose to see a social worker. (Tr. 133-35)

45. Complainant did not make any further complaint to Baisley after she returned to work in June 2016, and she continued to work in the mechanics' garage. (Tr. 197-99)

OPINION AND DECISION

It is an unlawful discriminatory practice for an employer to discriminate against an employee in the terms and conditions of employment on the basis of sex. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). Sexual harassment is a form of sex discrimination. *Father Belle Cmty. Ctr. v. N. Y. State Div. of Human Rights*, 221 A.D.2d 44, 642 N.Y.S.2d 739 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant alleged that Respondents subjected her to a hostile work environment and quid pro quo sexual harassment.

To sustain a claim of hostile work environment, Complainant must show that the workplace was permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment. *Johnson v. North Shore Long Island Jewish Health System, Inc.*, 137 A.D.3d 977, 27 N.Y.S.3d 598 (2d Dept. 2016) (quoting *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382, 390 (2004)). Whether an environment is hostile or abusive can be determined only by looking at all 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.” *Ellison v. Chartis Claims, Inc.*, 53 Misc.3d 1203(A), 46 N.Y.S.3d 474 (Sup. Ct. Kings Co. 2016) (quoting *Forrest*, at 310-311, 786 N.Y.S.2d at 394). 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.* (quoting *Forrest*, at 311, 786 N.Y.S.2d at 394). Complainant must also demonstrate that the discriminatory conduct occurred because of her sex. *Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Complainant belongs to a protected group as she is a female. Complainant has shown that she was subjected to sexual harassment based upon a hostile work environment. Respondent Gunther subjected her to unwelcomed touching and kisses physically touching her repeatedly during Complainant’s term of employment. Respondent Gunther also gave Complainant gifts

and cash. He also sent her a card inviting her “to take a long walk with him” and he “hope[d] that there would be a day when [she] could look into his eyes.” Although Respondent Gunther apologized to Complainant for his behavior, he asked Complainant’s daughter to bring her Valentine’s Day gifts. Such behavior had the effect of altering Complainant’s work environment.

Complainant made it clear to Respondent Gunther that she was uncomfortable and not interested in his advances. The continued unwelcome behavior by Respondent Gunther created an objective and subjective hostile work environment. Complainant has, thus, established that she was the victim of a sexually hostile work environment.

Complainant also alleged that Respondent Gunther subjected her to quid pro quo sexual harassment after she refused his advances and told him that she felt uncomfortable. After complaining about his behavior she no longer worked in Respondent Gunther’s office as his confidential secretary.

To establish quid pro quo sexual harassment, Complainant must show that she was “subjected to unwelcome sexual conduct and that the reaction to that conduct was then used as a basis for decisions, either actual or threatened, affecting compensation, terms, conditions or privileges of employment.” *Bracci v. N.Y. State Div. of Human Rights*, 62 A.D.3d 1146, 878 N.Y.S.2d 830 (3d Dept. 2009) (citing *Mauro v. Orville*, 259 A.D.2d 89, 91, 697 N.Y.S.2d 704 (3d Dept. 1999), *lv. denied*, 94 N.Y.2d 759, 705 N.Y.S.2d 6 (2000)). “The relevant inquiry in a quid pro quo case is whether the employer has linked tangible job benefits to the acceptance or rejection of sexual advances.” *Mauro v. Orville*, 259 A.D.2d at 91, (quoting *Karibian v. Columbia Univ.*, 14 F.3d 773, 777 (2d Cir. 1994) *cert. denied*, 512 U.S. 1213 (1994)).

Complainant’s allegations regarding quid pro quo harassment are without merit. Complainant made it clear to Respondent Gunther that his sexually based behavior was

unwelcome, and she complained to Respondent Town. In response, Respondent Town acted promptly by investigating her complaint and offering her a change of work locations.

Complainant continued working outside of Respondent Gunther's office in the title of confidential secretary and continued receiving the \$12,000 stipend until the end of Respondent Gunther's elected term. Therefore, Complainant did not establish a case of *quid pro quo* sexual harassment.

The Town is Complainant's employer. To establish an affirmative defense, Respondent must meet two elements: (a) that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior and (b) that complainant unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise. The employer will not be liable unless "the employer either provided no reasonable avenue for complaint or knew of the harassment but did nothing about it." *Faragher v. City of Boca Raton*, 524 U.S.775 (1998).

Complainant was fully aware of Respondent Town's sexual harassment policy, but she did not notify Respondent Town that she was experiencing unwelcome sexual advances from Respondent Gunther until June 2016. Therefore, there is no evidence that Respondent Town condoned the behavior. Once Respondent Town learned about the alleged harassment, it acted promptly to remedy the situation. It is clear from the record, and Complainant's own testimony that Respondent Town had a sexual harassment policy that included a reasonable avenue of complaint. The record also indicates that Respondent Town conducted training regarding this policy and that said training had been attended by Complainant. Respondent Town's liability is determined by whether it took reasonable steps to eliminate the hostile work environment once it was made aware of its existence. *State University of New York at Albany v. State Human Rights*

Appeals Board, 81 A.D.2d 688, 438 N.Y.S.2d 643 (3d Dept. 1981), *aff'd*, 55 N.Y.2d 896, 449 N.Y.2d 29 (1982)

Respondent Town initially hired Complainant and assigned her to work in the Highway Department. There is no evidence that Respondent Town unlawfully discriminated against Complainant. Upon learning about the alleged harassment by Respondent Gunther, Respondent Town took prompt remedial action and offered Complainant several options to remedy the situation. She chose to relocate her office, after which Complainant did not complain about Respondent Gunther's behavior toward her. Therefore, the claim against Respondent Town is dismissed.

In order to determine whether an employer-employee relationship exists, four factors must be considered: (1) selection and engagement of the servant; (2) the payment of salary or wages; (3) the power of dismissal; and, (4) the power of control of the servant's conduct. The key factor is the power of control of the servant's conduct. *See State Div. of Human Rights (Emrich) v. GTE Corp.*, 109 A.D.2d 1082, 1083, 487 N.Y.S.2d 234, 235 (4th Dept. 1985).

Although Respondent Town paid Complainant's salary through its budget, Respondent Gunther became Complainant's *de facto* employer based on her work arrangement. Respondent Gunther requested her to be hired as his confidential secretary. Respondent Gunther could choose anyone at any time to act as his confidential secretary. He chose to retain Complainant. He exercised full control over the details of Complainant's work assignments, he determined the length of time she would be employed in his office, evaluated her work and directed her to accompany him to various work sites. *See, Bynog v. Ciprini Group*, 1 N.Y.3d 193 (2003).

The Human Rights Law provides various remedies to victims of unlawful discrimination, including compensatory damages for mental anguish to a complainant who has been aggrieved.

Human Rights Law § 297.4(c)(iii); *Batavia Lodge v. New York State Division of Human Rights*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974). An award of compensatory damages for mental anguish may be proved by complainant's own testimony. *Cosmos Forms, Ltd. v. N.Y. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989). The award must bear a reasonable relationship to the wrongdoing, be supported by substantial evidence, and be comparable to awards for similar injuries. *State v. N.Y. State Div. of Human Rights*, 284 A.D.2d 882, 884, 727 N.Y.S.2d 499, 501 (3d Dept. 2001). The severity, frequency, and duration of the conduct may be considered in determining an appropriate award for compensatory damages. *State Dep't of Corr. Servs. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996).

Complainant is awarded compensatory damages for the mental anguish she suffered as a result of Respondent Gunther's actions against her. Respondent Gunther subjected Complainant to continuous sexual harassment during her term of employment. Respondent Gunther kissed and touched Complainant. He made offensive comments and sent offensive cards and messages. As a result, Complainant became uncomfortable and upset when she worked with Respondent Gunther. She also used over 100 days sick and annual leave while working with Respondent Gunther. Accordingly, an award of \$10,000 will compensate Complainant for her mental anguish due to unlawful discrimination and will effectuate the remedial purposes of the Human Rights Law. *See HP Ronkonkoma, Inc. v. Kirkland*, 122 A.D.3d 737, 996 N.Y.S.2d 343 (2d Dept. 2014); *State Div. of Human Rights v. Ben Rottenstein Assoc., Inc.*, 89 A.D.3d 852, 932 N.Y.S.2d 519 (2d Dept. 2011).

Respondent Town is not liable to Complainant for unlawful sex discrimination. However, Respondent Gunther is personally liable for his own unlawful discriminatory conduct.

Patrowich v. Chemical Bank, 63 N.Y.2d 541, 493 N.Y.S. 659 (1984); *State Div. of Human Rights v. Koch*, 60 A.D.3d 777, 777-778, 875 N.Y.S.2d 180, 181 (2d Dept. 2009); *Gallegos v. Elite Model Mgmt. Corp.*, 28 A.D.3d 50, 60, 807 N.Y.S.2d 44, 51 (1st Dept. 2005).

Human Rights Law § 297.4(c)(vi) permits 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.”

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 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. *Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

The evidence produced at hearing does not support a finding that Respondent Gunther committed any previous similar violation of the Human Rights Law or is incapable of paying any penalty. Therefore, a civil penalty of \$10,000.00 is appropriate in this matter due to the nature and circumstances of the violation. Respondent Gunther unlawfully discriminated against Complainant on the basis of sex. Respondent Gunther repeatedly subjected Complainant to a hostile work environment. Respondent Gunther’s actions were intentional, deliberate and

unlawful. *See Andrade v. Wall Street Languages, Ltd. d/b/a Rennert International, Chad Orr*, DHR Case No. 10156653 (November 3, 2014).; *See Melendez v. M & M Molding Corp.*, SDHR Case No. 10185611 (March 6, 2019).

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 claim against Respondent Town shall be dismissed, and it is further

ORDERED, that Respondent Gunther, his agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee in the terms and conditions of employment; and it is further

ORDERED, that Respondent Gunther, his agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondent Gunther shall pay to Complainant the sum of \$10,000.00 as compensatory damages for the mental anguish Complainant suffered as a result of Respondent Gunther's unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Order until payment is made by Respondent Gunther,
2. The aforesaid payment shall be made by Respondent Gunther in the form of a certified check, made payable to the order of Complainant, Laurie Beth Austin, and delivered by certified mail, return receipt requested, to her attorney, Christopher J. Cassar, Esq. at 13 East Carver Street, Huntington, New York 11743. Proof of payment shall be sent to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

3. Within sixty (60) days of the date of the Commissioner's Order, Respondent Gunther shall pay to the State of New York the sum of \$10,000.00 as a civil fine and penalty for his violations of the Human Rights Law. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Order until payment is made by Respondent Gunther.
4. The payment of the civil fine and penalty shall be made by Respondent Gunther in the form of a certified check, made to the order of the State of New York and delivered by certified mail, return receipt requested, to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.
5. Respondent Gunther shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: June 12, 2020
Hempstead, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Margaret A. Jackson
Administrative Law Judge