

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ROY C. BELL,

Complainant,

v.

NEW PALTZ CENTRAL SCHOOL DISTRICT,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 144012

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Peter G. Buchenholz, Adjudication Counsel, as designated by the Honorable Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”). 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.

DATED: December 14, 2007
Bronx, New York

PETER G. BUCHENHOLZ
Adjudication Counsel

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NEW PALTZ CENTRAL SCHOOL DISTRICT,

Respondent.

ORDER AFTER REMITTAL

Case No. **144012**

In a Memorandum and Judgment dated January 18, 2007, the Supreme Court of the State of New York, Appellate Division, Third Judicial Department issued a determination in *Bell v. New York State Div. of Human Rights*, 36 A.D.3d 1129, 827 N.Y.S.2d 779 (3rd Dept. 2007), that “there was no reasonable basis to conclude that [Complainant] would not have continued coaching had his employment not ended and, as such, we conclude that the back pay award must be recalculated to reflect those additional coaching stipends.” *Id.* at 1131, 781. The court went on to conclude that, “[i]n doing so, we note that, although the original back pay award contained a determination that [Complainant] diligently mitigated his damages through other employment by 1999, . . . the amounts utilized by the Commissioner did not take into account the higher income that he would have received if coaching stipends were included. Accordingly, the calculation of the date when petitioner fully mitigated his damages must be reconsidered on remittal.” *Id.* The court further directed that withholdings for federal, state, and local income taxes should not be made to the back pay award. *See Id.*

The Appellate Division, Third Judicial Department remitted the matter to the Division for further proceedings. On November 29, 2007, the Division issued a letter, setting forth the calculations and award based on the court's instructions.

Parties were given an opportunity to review and comment on the Division's calculations. Only Complainant's counsel responded to that opportunity by letter dated December 7, 2007, in which response he agreed to the calculations with the exception that they did not include calculations for 2001 and 2002.

After a review of the record and in consideration of Complainant's response, the following determinations are made:

BASE SALARY AND STIPENDS

Complainant's salary and coaching stipends with Respondent were controlled by collective bargaining agreements between Respondent and the union. A collective bargaining agreement was in effect for the following periods: 1987 to 1990, 1990 to 1993, 1993 to 1997, 1997 to 2000, and 2000 to 2001. The record establishes the salary and coaching stipends Complainant would have earned under the controlling collective bargaining agreements during the period after his termination. Specifically, each agreement set forth a salary schedule and a schedule for coaching stipends for the years following the commencement of the agreement. (Complainant's Exhibits 51, 52, 54)

Had Complainant's position not been terminated by Respondent, he would have earned the following base salary:

<u>Year</u>	<u>Base Salary</u>
1990-91	\$29,900
1991-92	\$32,235
1992-93	\$34,729
1993-94	\$35,611

1994-95	\$37,893
1995-96	\$40,857
1996-97	\$43,089
1997-98	\$44,853
1998-99	\$47,499
1999-2000	\$49,263
2000-01	\$51,399
 Total	 \$447,328

(Complainant's Exhibits 51, 52; Tr. 624-25, 635-37, 947, 975-87, 979)

Complainant testified that he coached three sports per year for the three years before the termination. (Tr. 102) In the 1989-1990 school year, Complainant was the assistant varsity football coach, the varsity boys volleyball coach, and the modified track coach. (Tr. 979-80; October 4, 2007, Affidavit of Roy C. Bell)

Pursuant to the collective bargaining agreements in effect during the relevant period, a teacher who was assigned to a coaching position had the right of first refusal for the following year, contingent on administrative approval. (Complainant's Exhibit 52) As the Appellate Division determined, there is nothing in the record to suggest that had Complainant continued teaching, he would not have been approved. Thus, had Complainant continued teaching and coaching varsity football, varsity boys volleyball, and the modified track, he would have received the following coaching stipends:

<u>Year</u>	<u>Assistant Var. Football</u>	<u>Var. Boys Volleyball</u>	<u>Modified Track</u>
1990-91	\$2,014	\$1,682	\$1,078
1991-92	\$2,202	\$1,842	\$1,178
1992-93	\$2,315	\$1,931	\$1,240
1993-94	\$2,315	\$1,931	\$1,240
1994-95	\$2,373	\$1,979	\$1,271
1995-96	\$2,432	\$2,028	\$1,303
1996-97	\$2,520.42	\$2,101.87	\$1,350.70
1997-98	\$2,702.91	\$2,239.37	\$1,566.29
1998-99	\$2,721.11	\$2,254.28	\$1,578.93

1999-2000	\$2,739.56	\$2,268.94	\$1,591.57	
2000-01	\$3,048.17	\$2,471.90	\$2,142.31	
Totals	\$27,382.99	\$22,729.36	\$16,779.80	= \$66,892.15

(Respondent's Exhibit A; Tr. 996-1000)

In his December 7, 2007, letter, Complainant's counsel submitted calculations through 2002. For 2001 and 2002, Complainant claims wages only for the base salary listed in the 2000-01 collective bargaining agreement because no collective bargaining agreement beyond 2001 was submitted into evidence. Specifically, Complainant claims that he would have earned at least a base salary of \$51,399 and coaching stipends of \$7,662 in both 2001 and 2002.

(Complainant's Exhibits 51, 52) This position is supported by the record and is undisputed.

Accordingly, Complainant is entitled to the total base salary set forth above through the 2000-01 school year (i.e., \$447,328), plus the salary Complainant is claiming through 2002 (i.e., \$102,798), making the total base salary Complainant would have earned \$550,126. Complainant is also entitled to the coaching stipends Complainant set forth above through the 2000-01 school year (i.e., \$66,892.15), plus the stipends Complainant is claiming through 2002 (i.e., \$15,324), making the total stipends Complainant would have earned \$82,216.15.

Accordingly, had Respondent not unlawfully terminated Complainant's employment, Complainant would have received \$550,126 for his base salary, plus \$82,216.15 in coaching stipends, for a total of \$632,342.15.

MITIGATION

Complainant produced a Social Security statement as proof of his earnings through 2000. He credibly testified that the statement accurately reflected his income between 1990 and 2000, except for approximately \$50 of undeclared income from refereeing basketball games at \$5 per game:

<u>Year</u>	<u>Income</u>
1990	\$10,551 (\$21,102) ¹
1991	\$17,025
1992	\$19,389
1993	\$3,307
1994	\$0 ²
1995	\$11,695
1996	\$15,937
1997	\$18,113
1998	\$31,609
1999	\$50,419
2000	\$53,612
Total	\$231,707

(Complainant's Exhibit 53; Tr. 637, 1537, 1540-41)

This evidence establishes that Complainant's total earnings after the termination through 2000 were \$231,707 (including undeclared income). In addition, Complainant credibly testified that his actual earnings in 2001 were \$42,000 and, in 2002, \$43,680. (Tr. 1537-38) Thus, his total earnings through 2002 were \$317,387.

TOTAL AWARD

In light of the foregoing, Complainant's lost income through 2002 (\$632,342.15), minus his earnings through (\$317,387) results in Complainant's total lost wages through 2002 equaling \$314,955.15.

¹ Of the \$21,102 listed as income on Complainant's Social Security statement, half of this income represents pay Complainant received from Respondent before his unlawful termination. Therefore only the remaining \$10,551 was from other work he performed during that year and counts toward mitigation.

² Complainant did not work in 1994; thus, he had no income for that year. In this regard, Complainant credibly testified that he lived with a roommate during that time, who supported his expenses. (Tr. 1540-41)

ORDER

Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Peter G. Buchenholz has been designated by the Commissioner of the Division, Kumiki Gibson, to issue this Final Order After Remittal.

On the basis of the forgoing, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED that Respondents, and its agents, representative, employees, successors, and assigns, shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions set forth in this Order:

1. Within sixty days of the date of this Order, Respondent shall pay to Complainant \$314,955.15 in lost wages. Respondent shall pay interest on this amount at the rate of nine percent per annum from June 30, 1990 until the date payment is actually made by Respondent.
2. The aforesaid payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant Roy C. Bell, and delivered by certified mail, return receipt requested to his attorney Christopher P. Kennan, Esq. at Westermann Hamilton Sheehy Aydelott & Keenan, LLP, 222 Bloomingdale Road, Suite 305, White Plains, New York 10605.
3. Respondent shall comply with the additional directives contained in the Division's May 25, 2005, Order as confirmed by the Appellate Division.
4. Respondent shall simultaneously furnish proof of its compliance with the directives contained in this Order to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

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

DATED:
Bronx, New York

NYS DIVISION OF HUMAN RIGHTS

PETER G. BUCHENHOLZ
Adjudication Counsel