



DAVID A. PATERSON
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

CARMEN BONILLA, CARLOS SOBRADO,
Complainants,

v.

OCELOT PROPERTY MANAGEMENT, INC.,
OCG V, LLC,
Respondents.

NOTICE AND
FINAL ORDER

Case No. 10119296, 10119297

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 January 20, 2010, by Robert J. Tuosto, 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.

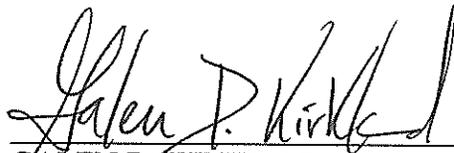
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **MAR 11 2010**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

CARMEN BONILLA, CARLOS SOBRADO,
Complainants,

v.

**OCELOT PROPERTY MANAGEMENT,
INC., OCG V, LLC,**
Respondents.

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

Case Nos. 10119296, 10119297

SUMMARY

Complainant Sobrado alleged that he was exposed to unlawful discrimination when he was terminated from his superintendent position because of his national origin and creed; Complainant Bonilla alleged that she was exposed to unlawful discrimination in housing when, along with her husband Complainant Sobrado, she was evicted from the apartment they received as part of his compensation as superintendent. Complainants have proven their respective cases upon Respondents' default, and are entitled to damages as a result.

PROCEEDINGS IN THE CASE

On July 30, 2007, Complainants each filed verified complaints with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

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

On November 26, 2007, the complaint under case number 10119296 was amended to add Complainant Carmen Bonilla. (ALJ Exh. 2)

On December 4, 2007, the complaint was amended to accurately reflect the spelling of Complainant Carlos Sobrado's last name. (ALJ Exh. 3)

On December 4, 2007, the complaint was amended to add Respondent OCG V, LLC (ALJ Exh. 4)

After due notice, the case came on for hearing before Robert J. Tuosto, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on October 30, 2009.

Complainants appeared at the public hearing. Respondent did not appear at the public hearing despite being served with notice of the aforementioned. (ALJ Exhs. 8, 9) The Division was represented by Jane M. Stack, Esq.

Permission to file post-hearing briefs was granted. Division counsel filed a post-hearing brief.

FINDINGS OF FACT

1. Complainant Sobrado alleged that he was exposed to unlawful discrimination when he was terminated from his superintendent position because of his national origin and creed; Complainant Bonilla alleged that she was exposed to unlawful discrimination in housing when, along with her husband Complainant Sobrado, she was evicted from the apartment they received as part of his compensation as superintendent. (ALJ Exhs. 1, 6)

2. Complainant Sobrado and Complainant Bonilla are both of Puerto Rican ethnicity and members of the Christian Pentecostal faith. (Tr. 22, 37, 68, 70)

3. On November 1, 2006, Complainant Bonilla had signed a two year lease for an apartment (“the apartment”) at \$1,200 per month. The apartment was located in the building in which Complainant Sobrado would become a superintendent. (Complainant’s Exh. 7)

Complainant Sobrado Begins Employment

4. In June, 2007, Complainant Sobrado began employment as a full-time superintendent for Respondent Ocelot Property Management, Inc. (“Ocelot”). Complainant Sobrado was paid a salary of approximately \$400 bi-weekly and was allowed to reside in the apartment without paying rent. (Complainant’s Exhs. 7; Tr. 18-20, 51, 60, 64, 78-79)

5. The name of the employer stated on Complainant Sobrado’s paychecks was Respondent OGC V, LLC (Complainant’s Exh. 5)

6. Complainant Sobrado rendered acceptable work performance while employed as a superintendent. (Complainant’s Exhs. 1, 2, 3)

7. While employed as a superintendent Complainant Sobrado listened to Christian music on the radio but was told to turn it off by his superiors; other workers were allowed to listen to other types of music while working. (Tr. 28, 69)

8. Complainant Sobrado’s superiors made fun of Complainant Bonilla when she would be seen carrying her Bible; they also made references to her religion in a mocking way. (Tr. 67-69, 72-73)

Complainant Sobrado’s Employment is Terminated

9. On July 27, 2007, Complainant Sobrado was terminated from his employment because

Ocelot had a “different system of working” which caused them to conclude that they were no longer in need of his services. (Complainant’s Exh. 6; Tr. 21, 23, 64)

10. As a result of the termination of Complainant Sobrado’s employment, both he and Complainant Bonilla were forced to vacate the apartment on 30 days notice despite the existence of a lease. On or about October 30, 2007, Respondent OCG V, LLC instituted a housing court case against Complainant Bonilla seeking rent arrears in the amount of \$6,175. Complainants Sobrado and Bonilla vacated the apartment in 2007 despite having a lease which expired on October 31, 2008; they incurred moving expenses in the amount of \$2,000, and subsequently moved to a rent-free shelter. (ALJ Exh. 10; Complainant’s Exh. 8; Tr. 63-66)

11. Complainant Sobrado, as well as two other superintendents who were also Puerto Rican, were replaced by individuals of Dominican national origin. Complainant Sobrado’s superiors were of Dominican national origin. (Tr. 30-31, 70-71)

12. Complainant Sobrado felt “badly” upon having his employment terminated. Complainant Bonilla also felt “bad” when this happened. (Tr. 55-56, 76-77)

13. Complainant Sobrado, after subsequently being unsuccessful in two or three attempts to secure a similar position, gave up his job search. In the fall of 2007 Complainant Sobrado began receiving Social Security disability payments. (Tr. 26-27, 53, 82)

OPINION AND DECISION

Respondent’s Default

After due notice, Respondents failed to appear before the Division to defend against the complaints. Pursuant to 9 NYCRR § 465.12 (b)(3), the public hearing proceeded on the evidence in support of the complaints. It is also noted that Respondents defaulted because they

failed to answer the complaints as per the Division's Rules of Practice. 9 NYCRR § 465.11 (e).

Unlawful Discrimination

The Human Rights Law makes it an unlawful discriminatory practice for an employer, "...because of an individual's creed [or] national origin...to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment." Human Rights Law § 296.1.

In addition, the Human Rights Law, in pertinent part, makes it an unlawful discriminatory practice for the "owner...or managing agent...[of] a housing accommodation...to discriminate against any person...because of...creed [or] national origin..." Human Rights Law § 296.5 (a)(2).

Complainants' former apartment in Respondents' building qualifies as a housing accommodation under the Human Rights Law. Human Rights Law § 292.10.

In discrimination cases a complainant has the burden of proof and must initially establish a prima facie case of unlawful discrimination. Once a complainant establishes a prima facie case of unlawful discrimination, a respondent must articulate that its action was legitimate and nondiscriminatory. Should a respondent articulate a legitimate and nondiscriminatory reason for its action, a complainant must then show that the proffered reason is pretextual. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). The burden of proof always remains with a complainant and conclusory allegations of discrimination are insufficient to meet this burden. *Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3d Dep't., 1999).

To make out a prima facie case of unlawful employment discrimination under the Human Rights Law a complainant must show: 1) he is a member of a protected class; 2) he was qualified for the position; 3) he suffered an adverse employment action; and 4) the adverse employment

action occurred under circumstances giving rise to an inference of unlawful discrimination.

Ferrante v. American Lung Ass'n., 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997); *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004).

To make out a prima facie case of unlawful discrimination in the housing context, a complainant must show: 1) membership in a protected class; 2) that she was qualified to rent the housing; 3) that she was rejected or the leasehold was prematurely terminated; and 4) that the housing remained available to others. *See Mitchell v. Shane*, 350 F.3d 39 (2d Cir. 2003); *see also, Hughes v. Lillian Goldman Family, L.L.C.*, 153 F. Supp.2d 435, 452 (S.D.N.Y. 2001); *Broome v. Biondi*, 17 F.Supp.2d 211 (S.D.N.Y. 1997).¹

As to unlawful employment discrimination, the credible and un rebutted proof showed that Complainant Sobrado was a member of several protected classes, was qualified for the job which he had been performing for Respondents, and had his employment terminated only to be replaced by those outside of his protected classes, *i.e.*, someone not sharing his Puerto Rican ethnicity or his religious beliefs.

Respondents' failure to defend and produce a legitimate, nondiscriminatory reason for its employment decision leads to the conclusion that they have violated the Human Rights Law.

As to housing discrimination, the record also showed that Complainant Bonilla established a prima facie insofar as she was a member of several protected classes, was qualified to rent the apartment given her preexisting lease, was denied the opportunity to remain in the apartment as per the terms of the lease after both had suffered religious discrimination and her husband's employment was terminated, and the apartment was afterwards presumably made available to others.

Once again, Respondents' failure to defend leads to the conclusion that they have violated the Human Rights Law.

Damages

The "make whole" provisions of the Human Rights Law provides various remedies to restore victims of unlawful discrimination to the economic position that they would have held had their employers not subjected them to unlawful conduct. *See* Human Rights Law § 297.4.c (i)-(iv); *Ford Motor Co. v. E.E.O.C.*, 458 U.S. 210 (1982). Awards of back pay compensate a complainant for any loss of earnings and benefits sustained from the date of the adverse employment action until the date of the verdict. *Iannnone v. Frederic R. Harris, Inc.*, 941 F. Supp. 403 (S.D.N.Y. 1996). An award of pre-determination interest of nine percent per annum, accruing from a reasonable intermediate date, complements the back pay award and is appropriate. *Aurecchione v. New York State Division of Human Rights*, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002). However, a complainant has an affirmative duty to mitigate his or her back pay damages. *New York City Board of Education v. Simley*. 96 A.D.2d 947, 466 N.Y.S.2d 401 (2d Dept. 1983).

Besides back pay, "an award of...damages to a person aggrieved by an illegal discriminatory practice may include compensation for mental anguish." *Cosmos Forms, Ltd. v. New York State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dep't. 1989). That award may be based solely on a complainant's testimony. *Id.* In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record and comparable to awards for similar injuries. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575

¹ Note that these cases, which construe the federal Fair Housing Act, specifically state that the prima facie case analysis is identical for a

N.Y.S.2d 957, 960 (3d Dept. 1991). Because of the “strong antidiscrimination policy” of the Human Rights Law, a complainant seeking an award for pain and suffering “need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous provision.” *Batavia Lodge v. New York State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). Indeed, “[m]ental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct.” *New York City Transit Auth. V. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *New York State Dep't of Corr. Services v. New York State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996).

As to an award of back pay for Complainant Sobrado, the record shows that he essentially failed to mitigate his damages as required before giving up his job search. Therefore, a back pay award would act as a windfall and, as such, would be inappropriate. *Ante*, at ¶ 13.

An additional element of damages relates to the apartment shared by Complainants. The record showed that Complainant Bonilla, as leaseholder, was evicted from the apartment after her husband's employment was terminated and Respondents refused to revert back to the terms of her original lease. Therefore, Complainant Bonilla is entitled to reasonable moving expenses (\$2,000). However, Complainant Bonilla is not entitled to any difference in the value of the remainder of the lease given that she and her husband subsequently moved to a rent-free shelter. *Ante*, at ¶ 10.

As to an award of mental anguish for Complainant Sobrado and Complainant Bonilla, the record shows that each felt “bad” or “badly” that the former had lost his job. Therefore, each is

claim under the Human Rights Law.

awarded \$5,000 for emotional pain and suffering. Such an award will effectuate the goals and objectives of the Human Rights Law and is consistent with prior awards of the Commissioner. *Trans World Airlines, Inc. v. New York Executive Dep't., State Division of Human Rights*, 147 A.D.2d 575, 537 N.Y.S.2d 868 (2d Dep't 1989)(award of \$5,000 for mental anguish and humiliation upheld by Appellate Division in case involving a complainant who described himself as "depressed").

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, and its agents, representatives, employees, successors, and assigns, shall cease and desist from unlawful discriminatory practices in employment and housing; and

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

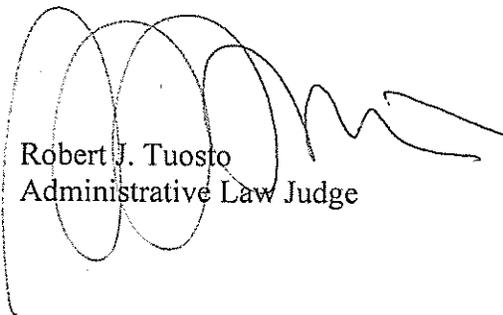
1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant, Carmen Bonilla, an award of compensatory damages in the amount of \$2,000;
2. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant, Carlos Sobrado, an award for pain and suffering in the amount of \$5,000. Said award shall bear interest from the date of the Commissioner's Order;
3. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant, Carmen Bonilla, an award for pain and suffering in the amount of \$5,000. Said award shall bear interest from the date of the Commissioner's Order;

4. The aforesaid payments shall be made by Respondents in the form of a certified check made payable to the order of Complainant, Carlos Sobrado, and delivered by certified mail, return receipt requested, to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Respondents shall furnish written proof to the N.Y.S. Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Fl., Bronx, New York 10458, of their compliance with the directives contained in this Order;

5. Within sixty days of the date of the Final Order of the Commissioner, Respondents shall prominently post a copy of the Division's poster (available at the Division's website at www.dhr.state.ny.us under the homepage heading, "NYS Division of Human Rights Is...") in their building in a location in which both residents and employees are likely to view it. Respondents shall also establish in its workplace both anti-discrimination training and procedures. Respondent shall provide proof of the aforementioned to the Division upon written demand; and

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

DATED: January 20, 2010
Bronx, New York


Robert J. Tuosto
Administrative Law Judge