



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**FREDIS A. CAMPOS,**

Complainant,

v.

**SPOT-LESS LANDSCAPING, MATTHEW  
SPOTTECK,**

Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 10179395

**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 July 27, 2017, by Robert M. Vespoli, 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”).** 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: **AUG 30 2017**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



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**SPOT-LESS LANDSCAPING, MATTHEW  
SPOTTECK,**

Respondents.

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

Case No. **10179395**

**SUMMARY**

Complainant alleged that Respondents subjected him to unlawful discrimination in the workplace based on his race and national origin. Respondents defaulted, and an inquest was held. Complainant has proven his claim of discrimination, and he is awarded damages. A civil penalty is also assessed against Respondents.

**PROCEEDINGS IN THE CASE**

On January 21, 2016, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent Spot-Less Landscaping (“Spot-Less”) 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 Respondent Spot-Less 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 Robert M. Vespoli, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on January 19, 2017, and March 22, 2017.

On January 19, 2017, Complainant appeared for the public hearing. The Division appeared by Sandra S. Oneil, Esq., Senior Attorney. Respondent Spot-Less did not appear. (Tr. 5)

The day before the public hearing, Ms. Oneil spoke to Respondent Matthew Spotteck (“Spotteck”), the owner of Respondent Spot-Less, via telephone. (Tr. 6, 29-30; ALJ’s Exhibits 2, 3) During that conversation, Respondent Spotteck acknowledged that he had received the original Notice of Hearing dated January 4, 2017, and that he was aware that the public hearing was scheduled to go forward on January 19, 2017. Respondent Spotteck told Ms. Oneil that he would appear on January 19, 2017, to defend against the complaint. (Tr. 6-7; ALJ’s Exh. 2)

When Respondents did not appear for the public hearing on January 19, 2017, Ms. Oneil called Respondent Spotteck on the telephone to see if he intended to appear at the public hearing. Respondent Spotteck informed Ms. Oneil that he was on his way to the public hearing. (Tr. 5-7)

Respondents did not appear on January 19, 2017. (Tr. 5) The presiding ALJ adjourned the public hearing until March 22-23, 2017, to allow Ms. Oneil time to prepare and serve an amendment to the complaint adding Respondent Spotteck as an individual Respondent. (Tr. 9-11)

On February 27, 2017, Ms. Oneil prepared and served the amendment to the complaint adding Respondent Spotteck as an individual Respondent. (Tr. 21; ALJ's Exh. 3)

On March 7, 2017, the Division duly served a Notice of Hearing on all parties containing the original complaint and the amendment to the complaint. The Notice of Hearing notified the parties of the date, time, and location of the public hearing scheduled for March 22-23, 2017. (Tr. 21; ALJ's Exh. 3)

On March 22, 2017, Complainant and Ms. Oneil appeared for the public hearing. Respondents did not appear. A default was entered, and an inquest was held. (Tr. 19, 25-26)

Respondents had notice of the public hearing as the Notice of Hearing dated March 7, 2017, was duly served on them via the U.S. Postal Service. None of these documents were returned to the Division, and they are presumed to have been delivered. (Tr. 21; ALJ's Exh. 3)

The parties did not submit post-hearing briefs.

### **FINDINGS OF FACT**

1. Complainant is Hispanic; his country of origin is El Salvador. (Tr. 36; ALJ's Exhibits 2, 3)
2. Complainant has roughly nineteen years of experience working as a mechanic. (Tr. 35-36)
3. Respondents operate a landscaping business. (Tr. 29, 32, 34, 36-38)
4. On March 31, 2015, Complainant began working for Respondents as a mechanic servicing Respondents' landscaping equipment. (Tr. 32, 34-35; ALJ's Exhibits 2, 3; Complainant's Exh. 2)

5. Respondent Spotteck, the owner of Respondent Spot-Less, hired Complainant and agreed to pay him \$150.00 per day. (Tr. 29-32; ALJ's Exhibits 2, 3)

6. In addition to his duties as a mechanic, Complainant also performed landscaping duties. (Tr. 37-38)

7. Complainant believed he would be working eight hours per day. (Tr. 39; ALJ's Exhibits 2, 3)

8. On March 31, 2015, Complainant worked for approximately twelve hours. (Tr. 36-37; ALJ's Exhibits 2, 3)

9. On April 1, 2015, Complainant worked for approximately thirteen hours. (Tr. 37-38; ALJ's Exhibits 2, 3)

10. Complainant was not happy about working such long hours. (Tr. 38)

11. After work on April 1, 2015, Complainant complained to Respondent Spotteck that he expected to work eight hours when he agreed to work for \$150.00 per day. (Tr. 38-39; ALJ's Exhibits 2, 3)

12. Complainant told Respondent Spotteck that he "usually work[s] from 8 o'clock in the morning until 5:00 p.m." (Tr. 39; ALJ's Exhibits 2, 3)

13. Respondent Spotteck told Complainant that he works from the "very beginning of the day until it gets dark." Respondent Spotteck then told Complainant to find an "office job" if he wanted to work eight hours per day. (Tr. 39; ALJ's Exhibits 2, 3)

14. Complainant told Respondent Spotteck that he would not work such long hours, that he quit his job, and that he wanted to receive his wages for the two days he worked. (Tr. 39, 43)

15. Respondent Spotteck replied, "all Hispanic [*sic*] are like that." (Tr. 41)

16. Respondent Spotteck then told Complainant, "I will call you when I get your money."

(Tr. 39)

17. Respondent Spotteck did not call Complainant to give him his wages. (Tr. 39; ALJ's Exhibits 2, 3)

18. On or about April 15, 2015, Complainant called Respondent Spotteck on the telephone, but Respondent Spotteck did not answer. (Tr. 39, 41; ALJ's Exhibits 2, 3)

19. Complainant then went to Respondents' place of business (the "yard") to procure his wages. (Tr. 39-42; ALJ's Exhibits 2, 3)

20. When Complainant went to the yard, he spoke to other Hispanic workers who also were not paid their wages by Respondents. (Tr. 39-40; ALJ's Exhibits 2, 3)

21. On one occasion, Complainant went to the yard and saw Respondent Spotteck. Respondent Spotteck refused to talk to Complainant and left in his vehicle. (Tr. 41)

22. Respondents did not pay Complainant his wages. (Tr. 42-43; ALJ's Exhibits 2, 3)

23. Complainant acknowledged that he stopped working for Respondents because he did not want to work the long hours required by Respondents. Complainant is seeking lost wages in the amount of \$300.00, the amount he earned for the two days he worked for Respondents. (Tr. 39-40, 42-43)

24. Because of Respondents' actions toward him, Complainant initially "felt very bad" and "uncomfortable with [himself]." Complainant also acknowledged that these hurtful feelings

have abated and that he no longer “hold[s] any grudges” against Respondents. (Tr. 42)

### **OPINION AND DECISION**

Respondents had notice of the public hearing as the Notice of Hearing dated March 7, 2017, was duly served on them via the U.S. Postal Service. These documents were not returned to the Division, and they are presumed to have been delivered.

Respondent Spotteck, the owner of Respondent Spot-Less, acknowledged that he had received the original Notice of Hearing dated January 4, 2017, and that he was aware that the public hearing was scheduled to go forward on January 19, 2017.

Respondents failed to appear before the Division to defend against the complaint. Respondents defaulted pursuant to 9 N.Y.C.R.R. § 465.11(e). The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. § 465.12(b)(3).

It is unlawful for an employer to discriminate against an employee based on race or national origin. N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.1(a). Complainant has the burden of establishing a prima facie case by showing that he is a member of a protected group, that he was qualified for the position he held, that he suffered an adverse employment action, and that Respondents’ actions occurred under circumstances giving rise to an inference of unlawful discrimination. Once a prima facie case is established, the burden of production shifts to Respondents to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for their employment decision. The burden then shifts to Complainant to show that Respondents’ proffered explanations are a pretext for unlawful discrimination. *See Ferrante v. Am. Lung Ass’n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

Complainant has established a prima facie case of discrimination based on race and national origin. Complainant is a member of protected classes because he is Hispanic. The fact that Complainant is Hispanic encompasses the protected classes of both race and national origin. *See Vill. of Freeport v. Barrella*, 814 F.3d 594, 607 (2d Cir. 2016).

Complainant has roughly nineteen years of experience working as a mechanic and was qualified to work as a mechanic for Respondents.

Complainant suffered an adverse employment action when Respondents refused to pay him his wages.

Finally, Complainant has shown that Respondents' actions occurred under circumstances giving rise to an inference of unlawful discrimination. After Complainant told Respondent Spotteck that he quit his job and asked for his wages, Respondent Spotteck told him that "all Hispanic [*sic*] are like that." Moreover, the record shows that Respondents hired other Hispanic workers and refused to pay them.

Accordingly, Complainant has met the "de minimis" burden of establishing a prima facie case of discrimination based on race and national origin. *See Schwaller v. Squire Sanders & Dempsey*, 249 A.D.2d 195, 196, 671 N.Y.S.2d 759, 761 (1st Dept. 1998).

Respondents defaulted and did not rebut a prima facie showing that they discriminated against Complainant based on his race and national origin. *See State Div. of Human Rights v. Arc XVI Inwood, Inc.*, 17 A.D.3d 239, 796 N.Y.S.2d 238 (1st Dept. 2005). Therefore, there is no need to proceed with an analysis of pretext.

Accordingly, Complainant's claim of unlawful discrimination must be sustained.

Respondent Spotteck, who hired Complainant and is the owner of Respondent Spot-Less, was the perpetrator of the unlawful discrimination and is individually liable along with

Respondent Spot-Less. *See Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 543-44, 483 N.Y.S.2d 659, 661 (1984); *State Div. of Human Rights v. Koch*, 60 A.D.3d 777, 777-78, 875 N.Y.S.2d 180, 181 (2d Dept. 2009).

The Division is granted broad discretionary powers to redress an injury by way of an award of reasonable compensatory damages. *Imperial Diner, Inc. v. State Human Rights Appeal Bd.*, 52 N.Y.2d 72, 79, 436 N.Y.S.2d 231, 235 (1980). However, the award must bear a reasonable relationship to the wrongdoing, be supported by substantial evidence, and be comparable to awards for similar injuries. *State of New York v. New York State Div. of Human Rights*, 284 A.D.2d 882, 884, 727 N.Y.S.2d 499, 501 (3d Dept. 2001).

Complainant is entitled to compensation for back pay. Complainant acknowledged that he stopped working for Respondents because he did not want to work the long hours required by Respondents. Complainant is entitled to lost wages in the amount of \$300.00, the amount he earned for the two days he worked for Respondents. Complainant is entitled to interest on this back pay amount from April 1, 2015. *See Aurecchione v. New York State Div. of Human Rights*, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002); CPLR § 5001(b).

Complainant is also entitled to recover compensatory damages for mental anguish caused by Respondents' unlawful conduct. 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 N.Y.S.2d 957, 960 (3d Dept. 1991). Because of the "strong anti-discrimination 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 No. 196 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*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991).

Because of Respondents’ actions toward him, Complainant initially “felt very bad” and “uncomfortable with [himself].” Complainant also acknowledged that these hurtful feelings have abated and that he no longer “hold[s] any grudges” against Respondents. The record contains no proof of the duration, severity, or consequences of Complainant’s condition. Accordingly, an award of \$2,500.00 for mental anguish is comparable to awards in similar cases and will effectuate the remedial purposes of the Human Rights Law. *See, e.g., County of Erie v. New York State Div. of Human Rights*, 121 A.D.3d 1564, 1566, 993 N.Y.S.2d 849, 851 (4th Dept. 2014) (\$2,500.00 award based on Complainant’s testimony that she was “surprised,” “angry,” and “depressed”); *Niagara Falls v. New York State Div. of Human Rights*, 94 A.D.3d 1442, 1444, 943 N.Y.S.2d 321, 323 (4th Dept. 2012) (“Absent any further evidence of mental anguish and humiliation, and absent testimony or evidence concerning the depth thereof experienced by complainant, we conclude that the maximum amount that may be awarded for mental anguish and humiliation is \$4,000.”).

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 Respondents’ culpability, any relevant history of

Respondents' actions, Respondents' financial resources, and other matters as justice may require. *See Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff'd*, *Sherwood Terrace Apartments v. New York State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

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

A civil penalty is appropriate in this matter. The record shows that Respondents intentionally withheld wages from Complainant because of his race and national origin. Respondents' actions were deliberate and caused economic and emotional harm to Complainant.

It is also noted that Respondents have demonstrated no remorse and have deliberately chosen not to participate in Division proceedings.

There is nothing in the record showing that Respondents were adjudged to have committed any previous, similar violation of the Human Rights Law or that they are incapable of paying a penalty.

To vindicate the public interest and deter future violations of the Human Rights Law, a civil penalty of \$10,000.00 is appropriate in this case.

## 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 their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and

IT IS FURTHER ORDERED, that Respondents 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 (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant an award of lost wages in the amount of \$300.00. Interest shall accrue on the award at the rate of nine (9) percent per annum from April 1, 2015, until the date payment is actually made by Respondents;
2. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant an award of compensatory damages for mental anguish and humiliation in the amount of \$2,500.00. Interest shall accrue on the award at the rate of nine (9) percent per annum from the date of the Commissioner's Order until payment is actually made by Respondents;
3. The aforesaid payments to Complainant shall be made by Respondents in the form of a certified check made payable to the order of Complainant, Fredis A. Campos, and delivered by certified mail, return receipt requested, to Sandra S. Oneil, Esq., Senior Attorney, New York State Division of Human Rights, 50 Clinton Street, Room 301, Hempstead, New York 11550. Respondents shall furnish written proof to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of their compliance with the directives contained within this Order;

4. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay a civil penalty to the State of New York in the amount of \$10,000.00 for having violated the Human Rights Law. Payment of the civil penalty shall be made in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Interest shall accrue on this award at the rate of nine (9) percent per annum from the date of the Commissioner's Order until payment is actually made by Respondents;

5. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall prominently post a copy of the Division's poster (available at the Division's website at [www.dhr.ny.gov](http://www.dhr.ny.gov)) in their place of business where employees are likely to view it. Respondents shall also promulgate policies and procedures for the prevention of unlawful discrimination in accordance with the Human Rights Law. Respondents shall provide proof of the aforementioned to the Division upon written demand; and

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

DATED: July 27, 2017  
Hauppauge, New York



Robert M. Vespoli  
Administrative Law Judge