



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**WILLIE E. CHAPLIN,**

Complainant,

v.

**COPIAGUE UNION FREE SCHOOL DISTRICT,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10172175

Federal Charge No. 16GB500588

**PLEASE TAKE NOTICE** that the attached is a true copy of the Alternative Proposed Order, issued on May 24, 2017, by Matthew Menes, Adjudication Counsel, after a hearing held before 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 Alternative Proposed Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE ALTERNATIVE PROPOSED 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: **JUN 29 2017**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



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**ALTERNATIVE  
PROPOSED ORDER**

Case No. **10172175**

**SUMMARY**

Respondent unlawfully discriminated against Complainant by providing a negative employment reference to a prospective employer in retaliation for Complainant having previously filed a discrimination complaint against Respondent. As such, the Complaint is sustained and Complainant is awarded damages in the amount of \$5,000 for the emotional distress he suffered. A civil fine and penalty in the amount of \$10,000 is also assessed.

**PROCEEDINGS IN THE CASE**

On November 10, 2014, Complainant filed a verified Complaint with the New York State Division of Human Rights ("Division"), charging Respondent 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 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 13, 14, and 20, 2016.

Complainant and Respondent appeared at the hearing. Complainant was represented by Gary P. Field, Esq. Respondent was represented by John M. Shields, Esq.

On June 9, 2016, the presiding ALJ issued a Recommended Findings of Fact, Opinion and Decision, and Order recommending dismissal of the instant case.

By letter dated August 2, 2016, the Commissioner reopened the hearing record and returned this matter to the presiding ALJ.

On December 28, 2016, an Amended Recommended Findings of Fact, Decision and Opinion, and Order (“Amended Recommended Order”) was issued. Complainant filed Objections with the Commissioner’s Order Preparation Unit.

### **FINDINGS OF FACT**

1. In 1999, Complainant began working for Respondent as a technology education teacher at the Copiague Middle School. (Tr. 34, 36)
2. In 2010, Andrew Lagnado (“Lagnado”) became the principal at Copiague Middle School. (Tr. 37)
3. On March 6, 2014, Complainant filed a Complaint (Division Case No. 10167521) against Respondent claiming unlawful discrimination. (Tr. 9, 14-15, 37-38)

4. Sometime thereafter, Respondent filed disciplinary charges against Complainant pursuant to New York Education Law § 3020-a. (Tr. 39)

5. On May 12, 2014, Complainant and Respondent entered into a Settlement Agreement and General Release (“Agreement”) resolving both the § 3020-a charges and Division Case No. 10167521. (Tr. 39-42; Complainant’s Exhibit 1)

6. Pursuant to the terms of the Agreement, Complainant resigned his position with Respondent effective June 30, 2014. (Tr. 43; Complainant’s Exhibit 1)

7. The Agreement also provided that Respondent “shall provide to [Complainant] a letter confirming [Complainant’s] position and dates of employment with [Respondent] . . . and shall respond to inquiries made by prospective employers by providing same.” (Complainant’s Exhibit 1)

8. From July 2014 until the date of the public hearing, Complainant applied for several teaching positions. Complainant received approximately five interviews. (Tr. 43-45, 142-43)

9. In the summer of 2014, Complainant interviewed with Lindenhurst Public Schools (“Lindenhurst”) and the Board of Cooperative Educational Services of Western Suffolk County (“Western Suffolk BOCES”) for open teacher positions. Complainant was not hired for either position. (Tr. 53-58; Complainant’s Exhibits 5, 6)

10. On September 15, 2014, Complainant presented a “demo lesson” at the Roosevelt Union Free School District (“Roosevelt”) for a technology education teacher position. In October 2014, Complainant performed another demo lesson at Roosevelt, interviewed with administrators at the Roosevelt Middle School, and received fingerprint clearance for employment. In November 2014, Complainant interviewed with the assistant superintendent for human resources and professional development at Roosevelt, Dr. Robert Brisbane (“Brisbane”).

At this meeting, salary was discussed. Complainant also gave Roosevelt five references, including a letter from Respondent verifying the dates of his employment. At the end of the meeting with Brisbane, Complainant received an employment eligibility verification packet and a direct deposit authorization agreement. Brisbane told Complainant that the Roosevelt Board of Education must pass on any hiring decisions. Ultimately, Complainant was not hired by Roosevelt. (Tr. 60, 67-82; Complainant's Exhibits 7, 8, 9, 10)

11. In September 2014, Complainant applied for a temporary leave replacement position with the Oceanside Union Free School District ("Oceanside"). The full-time teacher who held this position was out on maternity leave and was scheduled to return in December 2014. On or about September 6, 2014, Complainant interviewed with an assistant principal, and then Dr. Jill DeRosa ("DeRosa"), the assistant superintendent for human resources at Oceanside. (Tr. 90-94, 157-61, 167-68)

12. At this interview, DeRosa questioned Complainant about his background, his experience, and the reason he left his employment with Respondent after fourteen years. When explaining why he left his employment with Respondent, Complainant told DeRosa that "it was time . . . to leave." Complainant provided Oceanside with employment references. Complainant also identified the principal at the Copiague Middle School when he worked there. DeRosa told Complainant that she knew Lagnado. (Tr. 94-95, 169-71, 176-77)

13. At the conclusion of the interview, DeRosa had not yet made a hiring decision. DeRosa had some interest in hiring Complainant but also had some reservations because Complainant had abruptly left his previous position as a tenured teacher. (Tr. 173, 190, 194)

14. After the interview, DeRosa called Lagnado. DeRosa testified that Lagnado told her that he did not feel that Complainant would be "a good fit or a good match." When questioned

during the hearing, Lagnado testified that he did not recall using the term “good fit” and that he only verified Complainant’s employment. The ALJ, in his Amended Recommended Order, found that “Lagnado told DeRosa that Complainant . . . might not be the right fit for the position.” Given the ALJ’s credibility determination, the fact that Lagnado is currently employed by Respondent and that DeRosa is an independent, disinterested, third party, I credit DeRosa’s testimony. (Tr. 96, 183-86, 190-94, 221-29; Amended Recommended Order, Finding of Fact 37)

15. Ultimately, DeRosa did not give Complainant further consideration for the position because he did not adequately explain why he abruptly left his tenured teaching position with Respondent. Two or three days after Complainant interviewed with DeRosa, she told him that Oceanside decided to select a different candidate. (Tr. 96, 183-86, 190-94, 221-22)

16. In or about February 2015, Complainant interviewed for a substitute technology education teaching position at the Lawrence Middle School (“Lawrence”). Complainant was not hired for this position. (Tr. 106-08, 110)

17. On April 27, 2015, Complainant interviewed for two open technology education teacher positions with the Elmont School District (“Elmont”). Although Complainant felt the interview went very well, he did not get either position. (Tr. 105-08)

18. Complainant has not worked since he stopped working for Respondent. (Tr. 111)

19. As a result of Respondent’s actions, Complainant suffered depression, anxiety, sleeplessness and stress which necessitated a visit to his cardiologist. However, Complainant failed to testify with specificity as to the symptoms, nature or severity of the ailments described and provided no documentary or witness corroboration. No expert testimony was offered. Complainant claimed he was prescribed medication for his depression, but he could not

remember the name of the medication and is not currently taking it. Complainant also claimed damage to his character and reputation. (Tr. 126-27; Complainant's Exhibit 14)

20. Complainant presented no support for any claims regarding the selection processes for the Lindenhurst, Western Suffolk BOCES, Roosevelt, Lawrence or Elmont positions. Complainant provided no evidence that negative references were given in those instances or that any retaliation by Respondent impacted the decisions not to hire him for those positions.

21. At the public hearing, Respondent chose not to cross-examine Lagnado to explore his reasons for giving a negative reference, did not offer any exhibits, called none of its own witnesses and put on no defense. (Tr. 229-30).

### **OPINION AND DECISION**

The Human Rights Law makes it an unlawful discriminatory practice for any person to “retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.” N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.7. Complainant can establish a prima facie retaliation claim by showing that he engaged in protected activity, Respondent was aware that he participated in this activity, he suffered an adverse employment action, and a causal relationship between the protected activity and the adverse employment action. *See Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 312-13 (2004). Respondent then has the burden of coming forward with legitimate, nondiscriminatory reasons in support of its actions. If Respondent meets this burden, Complainant must show that the reasons presented are a pretext for unlawful retaliation. *See Murphy v. Kirkland*, 88 A.D.3d 795 (2d Dept. 2011).

In a retaliation case, an adverse employment action is one which might have dissuaded a

reasonable worker from making or supporting a charge of discrimination. *See Mejia v. Roosevelt Island Med. Assoc.*, 31 Misc.3d 1206(A) (Sup. Ct. N.Y. 2011). A negative employment reference meets that definition. *See Noni v. County of Chautauqua*, 511 F. Supp. 2d 355, 364 (W.D.N.Y. 2007) (“It is well-settled that a negative employment reference given to a potential employer seeking to hire [a] . . . former employee qualifies as an adverse employment action.”)

By filing Division Case No. 10167521, Complainant engaged in protected activity. Respondent was aware of the filing. As discussed above, Lagnado’s negative reference can be considered an adverse employment action. As such, Complainant has met the first three requirements of the prima facie case. The issue then becomes whether Complainant has established a causal connection between the protected activity and the adverse employment action.

A causal connection may be established directly through evidence of retaliatory animus directed against a complainant by the respondent or indirectly by showing that the protected activity was followed closely by retaliatory treatment. *See Calhoun v. County of Herkimer*, 114 A.D.3d 1304, 1307 (4th Dept. 2014).

Generally speaking, where temporal proximity establishes causation, the temporal relationship must be “very close.” *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001). However, courts “have not drawn a bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship . . . .” *Espinal v. Goord*, 558 F.3d 119, 129 (2d Cir. 2009). This has allowed a court “to exercise its judgment about the permissible inferences that can be drawn from temporal proximity in the context of particular cases.” *Espinal* at 129.

Where there is a significant time gap between the protected activity and the adverse action, additional evidence must be offered to demonstrate a causal connection, such as a pattern of antagonism or that the adverse action was the first opportunity for the employer to retaliate. *See Ward v. United Parcel Serv.*, 580 Fed.Appx. 735 (11<sup>th</sup> Cir. 2014); *see also Setelius v. Nat'l Grid Elec. Servs. LLC*, 2014 WL 4773975, endnote 19 (E.D.N.Y. 2014) (collecting cases) (“courts have found that a causal connection between an employee’s protected activity and the employer’s adverse action can be established when the employer acts at its ‘first opportunity’ to take an adverse action”). Additionally, it is noted that the passage of time is less probative in situations where, as here, the employee does not remain at the same job with the same supervisors during the time between the protected activity and the alleged adverse employment action. *See Corbett v. Napolitano*, 897 F.Supp.2d 96 (E.D.N.Y. 2012).

Here, the retaliation in the instant matter came approximately six months after Complainant filed his Division complaint. It was Lagnado’s first opportunity to retaliate after Complainant left Respondent’s employ. Periods as long as nine months have been found sufficient to establish temporal proximity in comparable situations. *See Quinby v. WestLB AG*, 2007 WL 1153994 (S.D.N.Y. 2007) (Approximately nine months elapsed between Complainant’s filing of her EEOC charge and the denial of her bonus. The court held that was sufficient to establish a causal connection “as bonus determinations happened annually at a fixed point in time and, therefore, Quinby was denied her bonus at the first available opportunity.”)

Two further facts establish causation: (1) Lagnado chose not to provide the prospective employer a letter confirming Complainant’s position and dates of employment with Respondent as required by the settlement agreement, and (2) Lagnado’s testimony during the hearing was not credible when he said he only verified Complainant’s employment during a phone call with

DeRosa. These two details, combined with the temporal proximity discussed above, establish a causal connection between the protected activity and the adverse employment action.

Accordingly, Complainant has established his prima facie case. The burden to establish the prima facie case is “de minimis.” *Schwaller v. Squire Sanders & Dempsey*, 249 A.D.2d 195 (1st Dept. 1998).

Because Complainant has met this burden, Respondent has the burden of coming forward with a legitimate, nondiscriminatory reason in support of its actions. Respondent, however, chose not to cross-examine Lagnado to explore his reasons for giving a negative reference. Respondent chose not to offer or submit any exhibits. Respondent called none of its own witnesses and put on no defense case.

As Complainant has proven the prima facie case, and Respondent failed to meet its burden of production to articulate a legitimate, nondiscriminatory reason for its actions, Complainant’s retaliation claim is sustained. *See Ferrante v. Am. Lung Ass’n*, 90 N.Y.2d 623 (1997) (“If the trier of fact believes the plaintiff’s evidence, and if the defendant is silent in the face of the presumption of discrimination, judgment must be entered for plaintiff because no issue of fact remains in the case”); *see also Abbott v. Crown Motor Co., Inc.*, 348 F.3d 537 (6th Cir. 2003) (Plaintiff had no duty to show pretext to defeat summary judgment motion because “[r]egarding plaintiff’s claim of unlawful retaliation based upon a negative employment reference, defendant did not proffer a legitimate, non-discriminatory reason for this adverse employment action so as to meet its burden of production.”); *Marom v. H Shiff Israel Leading Hotels, Inc.*, 1984 WL 274063 (N.Y.C.Com.Hum.Rts. 1984) (damages awarded to Complainant where Respondent gave negative job references to Complainant’s potential employers. It was determined “[h]aving met her burden of proof as outlined above, Complainant established a prima facie case of

retaliation. In light of the fact that Respondents offered no evidence to refute Complainant's testimony, we find that Complainant's prima facie case stands un rebutted.")

It is noted, at the public hearing, Complainant only secured the testimony of DeRosa and Lagnado, witnesses who could only testify about the Oceanside hiring process. Complainant did not present any documents or witnesses from other school districts that would support his claims. For instance, Complainant did not call Brisbane, who was essential in the decision-making process at Roosevelt, as a witness. Accordingly, Complainant did not prove any instances of retaliation other than the negative reference given to Oceanside.

In regards to the Oceanside position, DeRosa credibly testified that she did not ultimately hire Complainant because he did not adequately explain why he abruptly left his tenured teaching position with Respondent and not due to the negative job reference. As Complainant has not proven that absent Respondent's discriminatory conduct, he would have been hired for the position, no lost wages are awarded.

An award of compensatory damages to a person aggrieved by an unlawful discriminatory practice may include compensation for mental anguish, which may be based solely on the complainant's testimony. *See Cosmos Forms, Ltd. v. State Div. of Human Rights*, 150 A.D.2d 442 (2d Dept. 1989). Here, Complainant credibly testified that as a result of Respondent's actions, he suffered depression, anxiety, sleeplessness and stress which necessitated a visit to his cardiologist. Complainant also claimed damage to his character and reputation. However, Complainant failed to testify with specificity as to the symptoms, nature or severity of the ailments described and provided no documentary corroboration. No expert testimony was offered. Complainant claims he was prescribed medication for his depression, but he could not remember the name of the medication and is not currently taking it. Considering this, and that

Complainant did not seek psychological or psychiatric help, \$5,000 is appropriate for the mental anguish Complainant suffered as a result of Respondent's discriminatory actions. *See Mohawk Valley Orthopedics, LLP v. Carcone*, 66 A.D.3d 1350 (4th Dept. 2009) (\$7,500 award supported by Complainant's testimony she felt humiliated and attacked); *see also State Div. of Human Rights v. Caprarella*, 82 A.D.3d 773 (2d Dept. 2011) (\$7,500 supported by Complainant's testimony she was upset, hurt, disappointed and felt violated).

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."

Here, Complainant asserted his civil rights in filing a Division complaint. Respondent violated a binding settlement agreement in retaliating against Complainant for asserting those rights. Respondent's acts were shameful and intended to deprive Complainant of future employment. Complainant was discredited in the teaching community and his standing and reputation were damaged. Respondent did not provide evidence of its financial resources. Given the circumstances in this case and considering the goal of deterrence, the nature and circumstances of the violation and the degree of Respondent's culpability, \$10,000 is an appropriate civil fine and penalty. *See Noe v. Kirkland*, 101 A.D.3d 1756 (4th Dept. 2012) (\$20,000 civil fine and penalty confirmed); *Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 514 (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 Respondent, its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee or prospective employee in the terms and conditions of employment; and it is further

ORDERED, that Respondent shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty days of the date of this Order, Respondent shall pay to Complainant the sum of \$5,000 as compensatory damages for the mental anguish Complainant suffered as a result of Respondent's unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per annum, from the date of this Order until payment is actually made.

2. Within sixty days of the date of this Order, Respondent shall pay to the State of New York the sum of \$10,000 as a civil fine and penalty as a result of Respondent's unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per annum, from the date of this Order until payment is actually made.

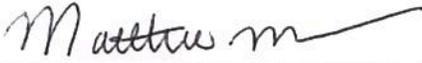
3. Payment of the compensatory damages shall be made by Respondent in the form of a certified check, made payable to Complainant and delivered by certified mail, return receipt requested, to Complainant's attorney at his office address. A copy of the certified check shall be simultaneously provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Payment of the civil fine and penalty shall be made by Respondent in the form of a certified check, made payable to the State of New York and delivered by certified mail, return

receipt requested, to Caroline Downey, Esq., General Counsel of the Division, at 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: May 24, 2017  
Bronx, New York

  
\_\_\_\_\_  
Matthew Menes  
Adjudication Counsel