



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

DEIRDRE CHESSON,

Complainant,

v.

BLIND FAITH W-C, INC., WILLIAM I. MILLER,
Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10192393

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 May 7, 2020, by Martin Erazo, Jr., 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.


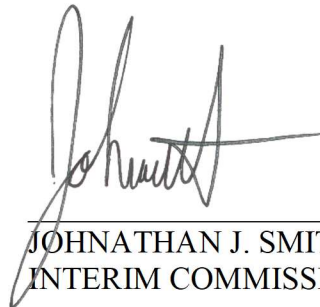
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has 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: **March 29, 2021**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER



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v.

**BLIND FAITH W-C, INC., WILLIAM I.
MILLER,**

Respondents.

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

Case No. **10192393**

SUMMARY

Complainant alleged that Respondents denied her services because of her race. The evidence supports a finding of unlawful discrimination. Accordingly, Complainant is entitled to relief in the form of compensatory damages. Respondents are also assessed a civil fine.

PROCEEDINGS IN THE CASE

On January 19, 2018, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents with unlawful discriminatory practices relating to public accommodation 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 Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on February 12, 2020.

Complainant and Respondents appeared at the hearing. The Division was represented by Neil L. Zions, Esq., Senior Attorney. Respondents were represented by the law offices of Kloss, Stenger & LoTempio, Joseph J. Marusak, Esq., of counsel.

FINDINGS OF FACT

1. Complainant is African American. (ALJ’s Exhibit 1)
2. Respondent William I. Miller is the president of Respondent Blind Faith W-C, Inc.
(ALJ’s Exhibits 1, 2)
3. I observed Respondent William I. Miller to be Caucasian.
4. Respondents are in the business of selling and installing window blinds. (Tr. 32-33)
5. Complainant has done business with Respondents on two occasions during the past twelve years. (Tr. 31-32)
6. On another occasion, Complainant referred Respondents to her family members. (Tr. 32-33, 48-49)
7. Complainant was satisfied with the services she received from Respondents.
Complainant received quality service at a fair price. (Tr. 33, 48)
8. Complainant and Respondent Miller scheduled a meeting for January 4, 2018, at her home, to obtain an estimate for the purchase and installation of blinds. (Tr. 34; Joint Exhibit 1)

9. When Respondent Miller arrived, he fixed the hook on a blind he had installed years earlier and did not charge for the service. (Tr. 35-36, 54)

10. Respondent Miller and Complainant discussed the kind of window blinds she wanted. (Tr. 34-35)

11. Complainant believed that Respondent Miller's estimate of \$204 for the installation of four window blinds was a fair price. However, Complainant told Respondent Miller that she wanted to first obtain matching valances from J.C. Penney. (Tr. 41, 45, 50-51, 53-55)

12. After Respondent Miller left Complainant's home, Complainant drove away with her with her daughter to run an errand. (Tr. 38-39)

13. While Complainant was driving, her daughter picked up Complainant's phone to read an incoming text message from Respondent Miller. (Tr. 37-38; Joint Exhibit 1)

14. Complainant's daughter read the text message out loud and began to cry. (Tr. 39)

15. The text message stated, "Another niger [*sic*] lying to me. No sale. Now she wants to look at a valance at JCPenney's." (Tr. 37-38, 56, 67; Joint Exhibit 1)

16. The text message was not meant for Complainant as it was written in the third person. (Tr. 68)

17. Complainant's daughter was 14 years old at the time. Complainant was hurt to see her daughter crying and upset and because her daughter was not used to hearing that kind of language. Complainant's daughter never "had to come up against anyone being racist." (Tr. 32, 39, 42)

18. Complainant was also upset because she did not know how Respondent Miller had really felt about African Americans while having allowed him to enter her home and provide services for her and her family. (Tr. 39-41, 43, 71)

19. On January 5, 2018, Respondent Miller tried to apologize to Complainant by text message. (Tr. 42-43; Joint Exhibit 1)

20. In the text message, Respondent Miller said that his brother, who he claimed had been in the vehicle with him, was responsible for the offensive message. (Tr. 40, 42, 56-57; ALJ's Exhibit 2, Joint Exhibit 1)

21. However, Respondent Miller had been alone in the vehicle. (Tr. 40)

22. Respondent Miller wrote the offensive text. (Tr. 40)

23. Because of Respondent Miller's offensive text, Complainant chose to have another contractor install blinds on her windows. (Tr. 60)

OPINION AND DECISION

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.2 states that "It shall be an unlawful discriminatory practice for any person, being the owner ... proprietor, manager ... agent or employee of any place of public accommodation ... because of the race ... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof ... or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race ... or that the patronage or custom thereof of any person of or purporting to be of any particular race ... is unwelcome, objectionable or not acceptable, desired or solicited."

Respondents' window blinds service qualifies as a place of public accommodation under Human Rights Law § 292.9

Complainant established that Respondents denied her service because she is African American. On January 4, 2018, Respondent Miller visited Complainant's home and gave her an estimate for the installation of window blinds. Although Complainant believed that Respondent Miller's estimate was a fair price, she wanted to first secure matching valances from J.C. Penney. When Respondent Miller left Complainant's home, he sent a text message that stated, "Another niger [*sic*] lying to me. No sale. Now she wants to look at a valance at JCPenney's."

Respondents argued that the text was not meant for Complainant, that they wanted Complainant's business, that they did not deny Complainant service, and that Complainant chose to take her business elsewhere. Nonetheless, Respondent Miller sent a text message that referred to African Americans through use of a racial epithet and described African Americans as liars. Regardless of whether the text message was intended for Complainant, Respondent Miller sent the text message to her, and in doing so, let her know how he felt about doing business with African Americans. After the receipt of that text message, Complainant was not obliged to do business with Respondents, and the fact that she did not, does not absolve them of liability. *See generally, Eddy v. Waffle House, Inc.*, 335 F. Supp. 2d 693 (D.S.C. 2004), *aff'd on other grounds*, 482 F.3d 674 (4th Cir. 2007), *cert. granted, judgment vacated*, 554 U.S. 911, 128 S. Ct. 2957, 171 L. Ed. 2d 879 (2008) (The racial epithet "nigger," when uttered in the service context, can amount to an actual denial of service when uttered under certain circumstances because of its inherent hostility and objectively discriminatory meaning.) When Respondent Miller sent that text message, which showed Complainant how he really felt about African Americans, it amounted to an actual denial of services. As a result, Complainant's claim must be sustained.

Complainant is entitled to recover compensatory damages caused by the unlawful discriminatory conduct of Respondents. *See Human Rights Law § 297.4(c)(iii)*. It is well-settled

that an award of compensatory damages to a person aggrieved by an illegal discriminatory act may include compensation for mental anguish and humiliation, which may be based solely on the complainant's testimony. *See Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981).

Complainant felt hurt as a result of Respondents' discriminatory behavior.

Complainant's daughter read Respondent Miller's text message before Complainant saw it. Complainant suffered when she saw her 14-year old daughter's painful reaction to the racist text. Complainant was particularly upset because she did not know how Respondent Miller had really felt about African Americans while having allowed him to enter her home and provide services for her and her family.

In consideration of the degree of her suffering and the severity of Respondents' conduct, an award of \$7,000 for emotional pain and suffering will effectuate the goals and objectives of the Human Rights Law and is consistent with prior awards of the Commissioner. *See Jackie D. Scipio a/k/a Jacqueline D. Scipio v. Wal-Mart Stores E., L.P.*, SDHR Case No. 10114171 (March 22, 2009) (Respondent's discriminatory conduct caused Scipio to cry, feel upset, humiliated and embarrassed.), *aff'd, Wal-Mart Stores E., L.P. (Scipio) v. New York State Div. of Human Rights*, 71 A.D.3d 1452, 897 N.Y.S.2d 348 (2010).

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."

Pursuant to Human Rights Law § 297.4(e), "[a]ny 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 fine and 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 any other matters as justice may require. *See Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009); *119-121 East 97th Street Corp. v. New York City Comm’n on Human Rights*, 220 A.D.2d 79, 88-89, 642 N.Y.S.2d 638, 644 (1st Dept. 1996). In this case, the nature and circumstances of the violation and the goal of deterrence warrant a civil fine and penalty. Complainant is African American. Respondents discouraged Complainant from doing business with them when Respondent Miller sent her a text message that contained a racial epithet and described African Americans as liars. There was no proof that Respondents were adjudged to have committed any previous, similar violation of the Human Rights Law or that Respondents are incapable of paying any penalty.

In the interest of deterring Respondents from further engaging in discriminatory practices, and taking the above factors into consideration, a penalty of a \$3,000 civil fine is appropriate. The amount of \$3,000 may act as an inducement for Respondents to comply with the Human Rights Law in the future, deter others from future discriminatory action, and present an example to the public that the Division vigorously enforces the Human Rights Law. *See Matter of Li v. New York State Div. of Human Rights*, 147 A.D.3d 1321, 1322, 46 N.Y.S.3d 345, 346 (4th Dept. 2017); *Christian Central Academy v. N.Y. State Div. of Human Rights (Lysek)*, 172 A.D.3d 1911, 97 N.Y.S.3d 913 (4th Dept. 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 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 action to effectuate the purposes of the Human Rights Law and the findings and conclusions of this Order:

1. Within 60 days of the date of the Commissioner's Order, Respondents shall pay to Complainant the sum of \$7,000 without any withholdings or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of Respondents' unlawful discrimination against her. Interest shall accrue on the award at the rate of nine percent per year from the date of the Commissioner's Order until payment is actually made by Respondents.

2. The aforesaid payment shall be made by Respondents in the form of a certified check made payable to the order of Complainant, Deidre Chesson, 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.

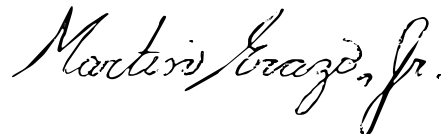
3. Within 60 days of the date of the Commissioner's Order, Respondent shall pay a civil fine and penalty to the State of New York in the amount of \$3,000. This payment shall be made in the form of a certified check made payable to the order of the State of New York and delivered by certified mail, return 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 on this award shall accrue at a rate of nine percent per year from the date of the Commissioner's Order until payment is actually made by Respondents.

4. Within 60 days of the date of the Commissioner's Order, Respondents shall furnish written proof to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of its compliance with the directives contained within this Order.

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

DATED: May 7, 2020
Buffalo, New York



Martin Erazo, Jr.
Administrative Law Judge