



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**DAVID COLES,**

Complainant,

v.

**TOWN OF SOUTHAMPTON, PARKS AND  
RECREATION,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10167991

Federal Charge No. 16GB402393

**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 29, 2015, 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.

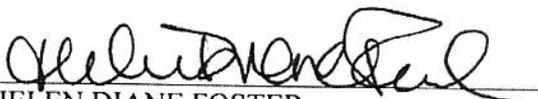
**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).** In accordance with the Division's Rules of Practice, a copy of this Order has been 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: **JUL 10 2015**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**DAVID COLES,**

Complainant,

v.

**TOWN OF SOUTHAMPTON, PARKS AND  
RECREATION,**

Respondent.

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

Case No. **10167991**

**SUMMARY**

Complainant alleged that Respondent unlawfully discriminated against him on the basis of his race and color and retaliated against him because he filed a federal lawsuit in October 2012. Because the record does not support Complainant's allegations, the instant complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On March 27, 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 14-15, 2015.

Complainant and Respondent appeared at the hearing. The Division was represented by Aaron M. Woskoff, Esq. Respondent was represented by Anne C. Leahey, Esq.

The instant complaint includes a claim that Respondent unlawfully discriminated against Complainant by denying him a promotion or an increase in pay. At the public hearing, Mr. Woskoff stated the Division's position that this claim is not part of the instant complaint. Accordingly, the Division did not present evidence at the public hearing to substantiate this claim. (Tr. 7-8; ALJ's Exh. 1)

Permission to file post-hearing briefs was granted. The Division and Respondent filed timely post-hearing briefs.

### **FINDINGS OF FACT**

1. Complainant is a black, African American male. (Tr. 49; ALJ's Exh. 1)
2. On August 15, 2001, Complainant began working for Respondent as a groundskeeper I ("GS I"). (Tr. 19-20)
3. In 2003, Complainant became a groundskeeper II ("GS II"). At the time of the public hearing, Complainant continued to work for Respondent as a GS II. (Tr. 20)

4. During the relevant time period, Complainant was the only African American GS II. (Tr. 185)

5. On October 9, 2012, Complainant filed a complaint of discrimination against Respondent, and other related defendants, in the United States District Court for the Eastern District of New York. (Complainant's Exh. 1)

6. This continuing federal lawsuit represents the basis of Complainant's claim of retaliation in the instant complaint. (Tr. 18; ALJ's Exh. 1)

7. During the relevant time period, Christopher Bean was employed by Respondent as the superintendent of the Parks and Recreations Department. (Tr. 125) John Erwin, Respondent's town parks maintenance supervisor, reported directly to Bean. (Tr. 163) Andrew Kuroski, Respondent's crew leader, reported directly to Erwin. (Tr. 25-26, 163-64)

8. As a GS II, Complainant may have supervisory responsibilities over a small number of other, subordinate employees working in his crew. (Tr. 169-70; Complainant's Exh. 2)

9. In September 2013, Complainant had occasion to work with Stephen Gregory, a then part-time employee of Respondent. Complainant identified Gregory as Caucasian. (Tr. 22, 50-51)

10. During this time period, Complainant also had occasion to work with Dan Keenan, another part-time employee of Respondent. (Tr. 51) Complainant identified Keenan as Spanish and Caucasian. (Tr. 48-49)

11. Complainant was aware that Gregory knew Erwin through a friendship that existed outside of his employment with Respondent. (Tr. 49-50)

12. On September 12, 2013, Complainant was cutting grass at a town park. (Tr. 44; ALJ's Exh. 1)

13. That day, Gregory and Keenan were cutting grass at the same town park as Complainant. (Tr. 44-45)
14. Complainant acknowledged that Gregory was not working with him that day. (Tr. 44) Gregory was working with a different crew under the supervision of Kuroski. (Tr. 134)
15. While Complainant was cutting grass, he noticed that Keenan's mower had become caught in some netting behind a baseball batting cage. (Tr. 44-45)
16. Complainant then went to assist Keenan in untangling the net from the mower blade. (Tr. 45)
17. When Complainant saw Gregory mowing nearby, he asked Gregory to help them untangle Keenan's mower. (Tr. 46)
18. Gregory responded by telling Complainant, "you [*sic*] not my mother fucking boss." (Tr. 46) Keenan told Complainant that "this is how [Gregory] is sometimes." (Tr. 48)
19. At that time, Complainant did not confront Gregory or report this incident to anyone because he believed that Gregory was friendly with Erwin. (Tr. 47-50)
20. On September 19, 2013, Kuroski told Complainant to "take [Gregory] and go and do my route." Complainant then told Kuroski about the September 12 incident and stated that he did not want to work with Gregory. Kuroski told Complainant to work with Gregory and Keenan that day. (Tr. 51-52)
21. When Complainant returned from his assignment that day, Bean spoke to Complainant and asked him if he was happy at work. Complainant told Bean about the September 12 incident. (Tr. 54-55, 126-27)
22. Complainant did not tell Bean that his interactions with Gregory were related to his race. (Tr. 54-55, 126-27, 223)

23. Bean told Complainant to report any similar future incidents to a supervisor or to Bean directly. (Tr. 127-28)

24. Respondent provided frequent training to all of its employees regarding issues such as sexual harassment, cultural diversity, and workplace violence prevention. On October 18, 2013, Complainant and his coworkers received a “refresher course” on these subjects. (Tr. 71-73; ALJ’s Exh. 1)

25. On November 15, 2013, Complainant worked with Phil Tocci, a Groundskeeper III (“GS III”). (Tr. 74, 76)

26. Complainant identified Tocci as Caucasian. (Tr. 87)

27. That day, Complainant rode with Tocci in Respondent’s truck number 437, the truck used by Tocci on a regular basis. (Tr. 74, 76, 78-79, 142-43)

28. At the end of the day, Complainant left Tocci’s truck and went into the main office to fill out an accident report. When Complainant returned to the truck to retrieve his belongings, he saw what he described to be a black “decorations cat” in the truck on top of his lunch box and thermos (“the black cat incident”). (Tr. 74-76, 83-84)

29. Complainant described the black cat as a “real-looking,” “Halloween decoration” that frightened him when he first saw it. The cat was not in the truck when Complainant left the vehicle to fill out the accident report. (Tr. 82-84; ALJ’s Exh. 1)

30. When Complainant was a child growing up in the South, he recalled that a black cat was sometimes placed on the porch of a black person’s home. At that time in the South, this meant that the family living in the home was going to “get lynched and they’ll set the house on fire.” (Tr. 84-85)

31. Complainant acknowledged that the significance of a black cat in his community in Long Island, New York, is quite different. Complainant stated, “[n]ow, if you here talkin’ ‘bout a black cat, a black cat is bad luck.” Complainant related this meaning to a superstition, which he believes is “nonsense, so I don’t pay attention, but you hear it.” (Tr. 230)

32. On November 18, 2013, Complainant and Tocci showed Kuroski the black cat found in Tocci’s truck. Kuroski was upset, and he called Erwin and Bean. Complainant believed that Kuroski was upset because Respondent just had an anti-bias meeting on October 18, 2013. (Tr. 88-89, 231)

33. Complainant did not tell Kuroski that the black cat was directed at him. (Tr. 232)

34. Bean was not told that the black cat found in Tocci’s truck was a racial incident. (Tr. 141)

35. Complainant did not complain to Bean or tell him that the black cat was directed at him. (Tr. 141-42)

36. Complainant did not tell Kuroski, Erwin, or Bean about the subjective meaning that a black cat had to him having been raised in the South. (Tr. 230-31)

37. On November 18, 2013, Bean called a meeting of his crew at the end of the work day. Bean began the meeting by congratulating the entire crew for the good work they did during the season. (Tr. 138) Bean then became more serious and annoyed when he informed the crew that “somebody put a black cat on the seat of Phil Tocci’s car.” He said that this “would’ve scared anybody, whether it was directed at Phil or anyone else.” He also told the crew that “nobody’s going to get in trouble for this, but if it happens again, that there – there’s going to be problems with it” including “suspension and termination.” (Tr. 138-39)

38. Complainant alleged that, when he came to work on November 19, 2013, he went into the office and saw “a loop, a rope, tied in a choking loop, like a hanging loop” on one of the office tables (“the rope incident”). (Tr. 113-14, 175-76)

39. Complainant testified that he now had to “make it official” by filing a formal complaint. (Tr. 114)

40. On December 6, 2013, Complainant went to see Thelma Harris, an African American woman who worked for Respondent as a senior clerk typist at the time. Among her other duties, Harris provided administrative support to Respondent’s Affirmative Action Task Force. (Tr. 102-04, 108, 114, 383, 386-92, 420-21)

41. Complainant incorrectly believed that Harris was Respondent’s affirmative action officer. Harris could not hold that position because she did not have the requisite qualifications. Harris could not prepare, receive, or investigate complaints of discrimination; she could only provide support and refer other employees to Respondent’s Human Resources (“HR”) Department to file complaints of discrimination. (Tr. 98-99, 392, 433)

42. During the relevant time period, Sandra Cirincione, an attorney in Respondent’s HR Department, was Respondent’s acting affirmative action officer. (Tr. 419-23)

43. Respondent has an Anti-Harassment Policy and Complaint Procedure (“Policy and Procedure”) which is available to all employees on Respondent’s intranet. Complainant was aware of the Policy and Procedure because he has utilized it in the past. Moreover, Respondent reviewed the Policy and Procedure with its employees at its regular sexual harassment, cultural diversity, and workplace violence prevention training sessions, including the October 18, 2013, refresher course. (Tr. 296-98, 423-24, 434-35; Respondent’s Exh. 3)

44. The Policy and Procedure allows employees to submit an informal, verbal complaint to their department head or to the town services administrator. However, “[i]f a resolution cannot be reached informally, the complainant must then file a written complaint, and the formal complaint procedure will be followed.” (Respondent’s Exh. 3)

45. During the relevant time period, Russell Kratoville was the town services administrator. Kratoville had designated Cirincione to act on his behalf to resolve complaints brought pursuant to the Policy and Procedure. (Tr. 432-33)

46. On December 6, 2013, Complainant did not tell Harris about the rope incident or any other incidents subsequent to the black cat incident. Harris told Complainant to “put everything down in writing and bring it to her.” (Tr. 110, 262-64, 397; Respondent’s Exh. 2)

47. At that time, Complainant asked Harris to keep his complaint confidential. (Tr. 247-48, 398; Respondent’s Exh. 2)

48. Complainant then prepared a letter dated December 16, 2013, addressed to Harris. Complainant wrote this letter to memorialize any problematic incidents that happened to him at work. (Tr. 265, 267; ALJ’s Exh. 1)

49. In the December 16 letter, Complainant acknowledged that he was aware that “management should be notified of any kind of incident and it should be noted and reported.” (ALJ’s Exh. 1)

50. Notably, Complainant did not mention the rope incident in his December 16 letter to Harris. (Tr. 266-69; ALJ’s Exh. 1)

51. On December 19, 2013, Complainant spoke with Harris. At that time, Complainant told Harris that he wanted to consult with his attorney before deciding on a course of action; he again asked Harris to keep the conversation confidential. (Tr. 400-01; Respondent’s Exh. 2)

52. Complainant did not submit his December 16 letter to Harris, Cirincione, or Kratoville. (Tr. 112, 255, 400)

53. A snowstorm was predicted to begin in the Long Island area on January 3, 2014. On January 2, 2014, Respondent allowed employees who regularly operated snowplow equipment and employees who drove two-wheel drive vehicles to take home some of Respondent's four-wheel drive vehicles. (Tr. 353-54)

54. Complainant was not a regular snowplow driver. (Tr. 149, 183-84)

55. During the relevant time period, Complainant owned a four-wheel drive vehicle that he drove to work. (Tr. 310-11) Respondent did not give Complainant a four-wheel drive vehicle to take home that night. (Tr. 185, 197; ALJ's Exh. 1)

56. On January 21, 2014, Respondent again sent employees home with some of its four-wheel drive vehicles because of an impending snowstorm. Once again, Respondent did not give Complainant a four-wheel drive vehicle to take home. (Tr. 186; ALJ's Exh. 1)

57. On January 2, 2014, and January 21, 2014, Respondent only allowed employees who regularly operated snowplows and employees who drove two-wheel drive vehicles to take home four-wheel drive vehicles owned by Respondent. (Tr. 353-54)

58. During this time period, Complainant did not ask to take home one of Respondent's four-wheel drive vehicles, and he did not complain to his supervisors about the assignment of four-wheel drive vehicles. (Tr. 150, 311, 365-66)

59. On January 2, 2014, and January 21, 2014, Respondent did not assign four-wheel drive vehicles to three of Complainant's white coworkers who held a higher civil service title than Complainant. (Tr. 152-53, 313-15, 363-64, 368-69)

60. Complainant believed that he was not assigned a four-wheel drive vehicle for reasons related to unlawful discrimination and retaliation. (Tr. 191; ALJ's Exh. 1)

61. In late January or early February 2014, Complainant went to speak to his union leader, Laura Smith, to file a formal grievance regarding the assignment of four-wheel drive vehicles on January 2, 2014, and January 21, 2014. Smith referred Complainant to Respondent's affirmative action officer. (Tr. 188-91; ALJ's Exh. 1)

62. On February 10, 2014, Complainant called Harris on the telephone and stated that he wanted to meet with her to report these latest incidents of alleged discrimination. Complainant and Harris did not discuss the incidents at that time, and they set up a meeting on February 14, 2014. (Tr. 195, 267, 402; ALJ's Exh. 1; Respondent's Exh. 2)

63. When Kratoville became aware that Complainant was consulting with an attorney, he instructed Harris not to meet with Complainant because of Complainant's pending lawsuit against Respondent. (Tr. 403-05)

64. Kratoville instructed Harris to give any written complaints from Complainant directly to him or Cirincione. (Tr. 406)

65. On February 21, 2014, Harris left a voicemail message for Complainant informing him that she could not meet with him because of the pending litigation and referred him to the Division. (Tr. 193-96, 405-06; Respondent's Exh. 2)

66. I do not credit Complainant's allegations regarding the rope incident. Complainant testified that he did not want to include the rope incident in his letter dated December 16, 2013, because Respondent "didn't take the black cat serious," and he was afraid that Respondent would retaliate against him. Complainant stated that he did not want to bring any more pressure on himself by complaining about another incident of alleged discrimination. Nevertheless,

Complainant was willing to file a formal complaint of discrimination approximately one month later when Respondent did not assign him a four-wheel drive vehicle on January 2, 2014, and January 21, 2014. At that time, Complainant did not also seek to complain about the rope incident. When questioned about this apparent inconsistency, Complainant provided contradictory, nonsensical responses, and his demeanor was evasive, uneasy, and insincere. (Tr. 266-69; ALJ's Exh. 1)

67. Notably, Complainant did not mention the rope incident in the instant complaint. (ALJ's Exh. 1)

### **OPINION AND DECISION**

It is unlawful for an employer to discriminate against an employee on the basis of race or color. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). Complainant alleged that Respondent subjected him to a hostile work environment because of these protected characteristics. In order to sustain a claim of discrimination based on a hostile work environment, a complainant must demonstrate that he or she was subjected to conduct that produced a work environment permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of his or her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Cmty. Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 50-51, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997). Moreover, "[a] hostile work environment requires more than a few isolated incidents of racial enmity." *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 311, 786 N.Y.S.2d 382, 395

(2004) (citations and internal quotation marks omitted).

The incidents of harassment alleged by Complainant were not objectively severe or pervasive enough to establish a hostile work environment claim. *See id.* Complainant's interactions with Gregory do not constitute evidence of discriminatory bias. Gregory, who had a personal relationship with Erwin, did not direct any comments toward Complainant that evinced racial animus. Furthermore, Complainant did not tell his supervisors that his interactions with Gregory were related to his race.

On January 2, 2014, and January 21, 2014, Respondent did not provide Complainant with one of its four-wheel drive vehicles to take home from work. Respondent only allowed employees who regularly operated snowplows and employees who drove two-wheel drive vehicles to take home four-wheel drive vehicles owned by Respondent. During the relevant time period, Complainant drove his own four-wheel drive vehicle to work, and he was not a regular snowplow driver. Complainant did not ask to take home one of Respondent's four-wheel drive vehicles, and he did not complain to his supervisors about the assignment of four-wheel drive vehicles. The record also shows that Respondent did not assign four-wheel drive vehicles to three of Complainant's white coworkers who held a higher civil service title than Complainant.

Under the circumstances of this case, the black cat incident cannot sustain an actionable hostile work environment claim. Complainant described the black cat as a "real-looking," "Halloween decoration." The record does not establish that the black cat was directed at Complainant in a racially offensive manner. The black cat was placed in Tocci's truck, but it was on top of Complainant's lunch box and thermos. Complainant subjectively believed that the black cat was directed at him as an ugly symbol of racial discrimination he came to know during his childhood growing up in the South. However, Complainant acknowledged that a black cat

has a very different objective meaning to most people living on Long Island in the present day. Further, Complainant did not alert his supervisors that the black cat was directed at him, and he did not tell his supervisors about the subjective, racially offensive meaning that a black cat had to him having been raised in the South.

Complainant's credibility was impugned during his testimony regarding the alleged rope incident. On this issue, Complainant gave testimony that was implausible, and his demeanor was evasive, uneasy, and insincere. After he allegedly found the rope, Complainant testified that he had to "make it official" by filing a formal complaint, so he met with Harris on December 6, 2013. That day, he spoke with Harris about the black cat incident, but he did not mention the rope incident. Complainant purportedly went to Harris because he was unsatisfied with Respondent's response to the black cat incident, and he wanted to make a complaint of discrimination. His testimony at the public hearing that he did not want to complain about the rope incident because he was unsatisfied with Respondent's handling of the black cat incident is patently contradictory.

Complainant's testimony that he did not bring up the rope incident in his complaint because he was afraid of retaliation is incredible. Complainant was fully aware that it was his responsibility to address any and all matters of concern to him when making a complaint of discrimination. Yet he never mentioned the rope incident to Harris, and he did not memorialize this incident in his letter dated December 16, 2013. In this letter, Complainant acknowledged that he was aware that "management should be notified of any kind of incident and it should be noted and reported." Complainant stated that he did not want to bring any more pressure on himself by complaining about another incident of alleged discrimination. Notably, Complainant was not afraid of retaliation when he complained about the assignment of Respondent's four-

wheel drive vehicles the following month. At that time, he went to his union representative prepared to file a formal grievance about that matter, but he did not complain about the rope incident.

Finally, Complainant did not mention the rope incident in the instant complaint.

Therefore, Complainant's hostile work environment claim must be dismissed.

Complainant also alleged that Respondent discriminated against him based on his race and color. Complainant has the burden of establishing a prima facie case of discrimination 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 Respondent's 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 Respondent to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its employment decision. The burden then shifts to Complainant to show that Respondent's proffered explanations are a pretext for unlawful discrimination. *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

Complainant has established the first two elements of his prima facie case: he is a member of a protected group, and he possessed the bare qualifications for his GS II position. However, the alleged incidents of discriminatory treatment in the instant complaint cannot be considered to be adverse employment actions because they did not result in any materially adverse change in the terms or conditions of Complainant's employment. An adverse employment action requires "a materially adverse change in the terms and conditions of employment." *Forrest* at 306, 786 N.Y.S.2d at 391. This may be shown by "a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a

material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation.” *Id.* (citations and internal quotation marks omitted).

Complainant continues to be employed by Respondent as a GS II. The record contains no evidence supporting a claim that Complainant was assigned job duties which were worse than similarly situated coworkers, that he was denied a promotion or pay raise, or that he was assigned duties outside of his job title. Complainant did not suffer any material adverse change in the terms or conditions of his employment as a result of his interactions with Gregory or his discussions with Bean on this issue. Similarly, Complainant did not suffer an adverse employment action when Respondent did not provide him with a four-wheel drive vehicle on January 2, 2014, and January 21, 2014. Moreover, these incidents did not occur under circumstances giving rise to an inference of unlawful discrimination.

Accordingly, Complainant’s claim of discrimination based on his race and color must also be dismissed.

Finally, Complainant alleged that Respondent subjected him to unlawful retaliation. It is unlawful for an employer to retaliate against an employee for having filed a complaint of discrimination or opposed discriminatory practices. Human Rights Law § 296.7.

Complainant bears the burden of establishing 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 there is a causal relationship between the protected activity and the adverse employment action. Once Complainant has met this burden, Respondent has the burden of coming forward with legitimate, nondiscriminatory reasons in support of its actions. Complainant then must show that the reasons presented are a pretext for

unlawful retaliation. *Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3d Dept. 1999).

On October 9, 2012, Complainant filed a complaint of discrimination against Respondent in federal court. This federal lawsuit represents the basis of Complainant's claim of retaliation in the instant complaint. Complainant has satisfied the first two elements of his prima facie case, but he has not established the third or fourth elements.

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.'" *Mejia v. Roosevelt Island Med. Assoc.*, 31 Misc.3d 1206(A), 927 N.Y.S. 2d 817 (Table) (Sup. Ct. N.Y. Co. 2011) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)), *aff'd*, 95 A.D.3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed*, 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013). Even under this more expansive definition, not every objectionable interaction rises to the level of an adverse employment action. *Mabry v. Neighborhood Defender Serv.*, 769 F. Supp. 2d 381, 398 (S.D.N.Y. 2011). The Division must examine the context of any given act in order to determine whether it would discourage a reasonable employee from making a complaint about unlawful discrimination. *See id.* Respondent did not subject Complainant to a hostile work environment, and Complainant did not incur any reduction in salary, benefits, title, duties, or standing. Under the circumstances in this case, Complainant did not suffer an adverse employment action.

Furthermore, there is no causal connection between the filing of Complainant's federal lawsuit on October 9, 2012, and any of the alleged adverse actions, which are alleged to have begun in September 2013.

Complainant has offered no direct evidence of retaliatory animus on the part of Respondent's decision makers or anyone else associated with Respondent. However, causation can be presumed in the absence of retaliatory animus if there is sufficient temporal proximity between the protected activity and the adverse employment action. *Treglia v. Town of Manlius*, 313 F.3d 713, 720 (2d Cir. 2002). Without any additional evidence of causation, the passage of approximately eleven months between the filing of the federal lawsuit and the first alleged adverse action is too remote to establish causation. *See Abram v. New York State Div. of Human Rights*, 71 A.D.3d 1471, 1475, 896 N.Y.S.2d 764, 768 (4th Dept. 2010) (passage of six months too long to establish causal connection between complaint and denial of application).

The ultimate burden of persuasion lies at all times with Complainant to show that Respondent intentionally discriminated against him. *Bailey v. New York Westchester Square Med. Ctr.*, 38 A.D.3d 119, 123, 829 N.Y.S.2d 30, 34 (1st Dept. 2007). Complainant cannot rely on supposition and conclusory allegations to satisfy this burden. *Kelderhouse v. St. Cabrini Home*, 259 A.D.2d 938, 939, 686 N.Y.S.2d 914, 915 (3d Dept. 1999).

Complainant has failed to meet his burden. Accordingly, the instant complaint must be dismissed.

**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 the instant complaint be, and the same hereby is, dismissed.

DATED: May 29, 2015  
Hauppauge, New York

A handwritten signature in black ink that reads "Robert M. Vespoli". The signature is written in a cursive, flowing style.

Robert M. Vespoli  
Administrative Law Judge