



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

JAMIE L. COLGROVE and
NATALIE J. THIBEAULT,

Complainants,

v.

WEST TAGHKANIC DINER II, INC.,
L'HOUSSINE SIBA,

Respondents.

NOTICE AND
FINAL ORDER

Case Nos. 10127568, 10127569

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 30, 2010, by Edward Luban, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER") WITH THE FOLLOWING AMENDMENT:

- Considering the severity of the conduct and the degree and duration of Complainants'

suffering, the award for Complainants' emotional distress is hereby increased. A review of relevant case law reveals that \$20,000 is a more appropriate award given the facts in the instant matter. *See State of New York v. N.Y. State Div. of Human Rights*, 284 A.D.2d 882 (3d Dept. 2001); *Town of Lumberland v. New York State Div. of Human Rights*, 229 A.D.2d 631 (3d Dept. 1996); *New York State Office of Mental Health v. New York State Div. of Human Rights*, 75 A.D.3d 1023 (3d Dept. 2010). Therefore, within sixty days of the date of this Final Order, Respondents shall pay to each Complainant the sum of \$20,000, without any withholdings or deductions as compensatory damages for the mental anguish suffered as a result of Respondents' unlawful discrimination. Interest shall accrue on the awards at the rate of nine percent per annum from the date of this Order until payment is actually made.

- All other damages are adopted and approved as recommended.

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

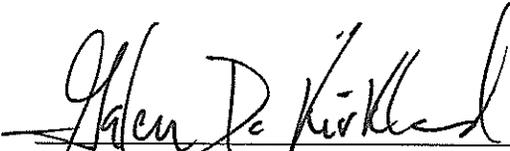
Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original
Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

MAR 01 2011

DATED:

Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



DAVID A. PATERSON
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS

on the Complaints of

JAMIE L. COLGROVE and
NATALIE J. THIBEAULT,

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v.

WEST TAGHKANIC DINER II, INC.,
L'HOUSSINE SIBA,

Respondents.

RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER

Case Nos. 10127568, 10127569

SUMMARY

Respondents subjected Complainants to sexual harassment and terminated their employment in retaliation for complaining about the harassment. Complainants are awarded damages.

PROCEEDINGS IN THE CASE

On July 23, 2008, Complainants filed verified complaints with the New York State Division of Human Rights ("Division"), charging Respondents 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 complaints and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the cases to public hearing.

After due notice, the cases came on for a combined hearing before Michael Groben, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on February 1, 2010.

Complainant and Respondents appeared at the hearing. The Division was represented by Lawrence J. Zyra, Esq. Respondent L'Houssine Siba appeared pro se for Respondents.

In a letter dated November 18, 2009, ALJ Groben recommended that Respondents retain counsel. A copy of ALJ Groben's letter is received in evidence as ALJ's Exhibit 11. At the start of the hearing, Respondent Siba stated that Respondents wanted to proceed without an attorney. (Tr. 4)

At the conclusion of the hearing, ALJ Groben authorized Respondents to submit payroll information for Complainant Thibeault within one week. (Tr. 355-56, 359) On February 3, 2010, Respondent Siba submitted a copy of a Quarterly Wage Detail Report for the third quarter of 2008 and copies of Internal Revenue Service ("IRS") Forms W-2 for 2008 for Complainant Thibeault and another employee. These documents are received in evidence as Respondents' Exhibits 7 and 8, respectively. The information pertaining to employees other than Complainant Thibeault has been redacted from both exhibits.

On March 28, April 7, and June 18, 2010, without prior permission from ALJ Groben, Respondent Siba submitted additional documents to ALJ Groben. The Division objected to the consideration of these documents. Because Respondents are not represented by counsel, a copy of IRS Form W-4 for 2008 for Complainant Thibeault is received in evidence as Respondents'

Exhibit 9. The remainder of Respondent Siba's correspondence and documents has been marked for identification as Respondents' Exhibit 10 but has not been received in evidence because the material is cumulative, argumentative, and beyond the scope of the case. 9 NYCRR § 465.12 (f)(3).

Permission to file post-hearing briefs was granted. The Division filed proposed findings of fact and conclusions of law. Respondents did not file a brief.

After the hearing and receipt of post-hearing submissions, the case was reassigned to Edward Luban, another ALJ of the Division, pursuant to 9 NYCRR § 465.12 (d)(2).

Pursuant to 9 NYCRR § 465.12(f)(14), the complaints are amended to conform to the proof adduced at hearing and add claims that Respondents terminated Complainants' employment in retaliation for their complaints about sexual harassment.

FINDINGS OF FACT

1. Complainant Colgrove ("Colgrove") began working at the West Taghkanic Diner ("the Diner") as a bus girl in 2001. Complainant Thibeault ("Thibeault") began working at the Diner as a dishwasher in 2001. After approximately two years, both Complainants became waitresses. (Tr. 15, 33, 50, 73-74, 90)

2. In May 2008, Respondent L'Houssine Siba ("Siba"), through his corporation, Respondent West Taghkanic Diner II, Inc., became the Diner's owner. (Tr. 6, 17, 75, 157; Respondents' Exh. 8)

3. Nikolla Leshaj, chef/manager, and Darlene Eisner, assistant manager, who is Colgrove's mother, supervised the wait staff before Siba became the Diner's owner. Leshaj

continued to perform the same duties after Siba acquired the Diner, while Eisner became a prep cook and dishwasher. (Tr. 41, 76, 95, 131-33, 156-58)

4. On two or three occasions soon after Siba took over the Diner, he told Complainants and Ashley Aragola, another waitress, how beautiful they were. (Tr. 76-77)

5. Approximately one week after Siba bought the Diner, he sat on Colgrove's lap while she was on the back porch of the Diner smoking a cigarette. Colgrove quickly stood up and went back inside. (Tr. 82-83, 138-41, 149, 161-62)

6. Around the same time, Siba told Thibeault that he had cheated on his wife with another woman and that he had to leave because the woman "was screaming too loud" and he got scared. (Tr. 19)

7. On at least two occasions, Siba brushed against Colgrove as he walked past her in the Diner. Colgrove believed Siba's conduct was intentional, because there was sufficient room for him to pass her without touching. (Tr. 83-84)

8. One night about three weeks after Siba acquired the Diner, Colgrove was caring for Thibeault's nine-month old daughter while Thibeault was at work. Colgrove was in the Diner's parking lot and bent over to put the baby into her car seat. Siba came up behind Colgrove, "tugged on" her pants, and said, "Ooh, I like that." Colgrove believed that Siba was referring to a tattoo on her lower back that became visible when he pulled her pants. (Tr. 80-82)

9. Several weeks after Siba bought the Diner, he sat on Thibeault's lap, facing her, and straddled her while she was sitting on the back porch. Thibeault asked Siba to get off her, and he did. (Tr. 20-22, 24-25, 138-39, 161-62)

10. When Siba sat on Thibeault's lap, he talked "about what he would do to us if he wasn't married." Thibeault took Siba's statement to mean "he would try more than just talking" if he

were not married. Siba made such comments on several occasions to Thibeault and to other waitresses. (Tr. 20-22, 24)

11. Several days later, Thibeault was in the kitchen cutting potatoes. When Thibeault bent over to put the potatoes in a bucket, Siba came through the back door and stuck his finger down the back of her pants. (Tr. 26-27, 161, 165-66; ALJ's Exh. 6)

12. On another occasion, Thibeault was going downstairs to the basement when Siba, who was coming up the stairs, tugged on the leg of her sweatpants. Leshaj and Eisner were standing at the top of the stairs and witnessed this incident. (Tr. 29-30, 135, 138-39, 161-62, 165-66, 174)

13. Several weeks after he took over the Diner, Siba ordered new uniform shirts for the wait staff. The waitresses' shirts had V necks without buttons, while the shirt for David Novak, the only waiter on staff, had a button neck. Colgrove felt the shirt Siba gave her, which was a size small, was too revealing, and she asked Siba for a larger size. Siba said the waitresses should not complain because they would "be able to get bigger tips that way." Siba did not give Colgrove a bigger shirt. (Tr. 87-89, 114-15)

14. Siba's comments made Colgrove uncomfortable. Colgrove was "disgusted" and "embarrassed" when Siba touched her. (Tr. 93-94, 96)

15. Siba's comments "shocked" Thibeault and made her uncomfortable. Thibeault felt "disgusted" and "overwhelmed" when Siba touched her. She considered quitting her job, but she had a nine-month old daughter to support. (Tr. 42-43)

16. Joanne Fosby, a waitress who had worked at the Diner for approximately 20 years, told Complainants that Siba told Joey Simmons, another waitress who was Fosby's daughter, that he wanted a picture of her when she was 13 years old because that is when a woman is "at" her prime. (Tr. 22-23, 79-80)

17. On occasion, Siba told Colgrove and Eisner that he had to “put the brakes on” after he made inappropriate sexual remarks. (Tr. 116-17, 135-36)

18. Siba repeatedly told Leshaj about his sexual exploits in Morocco. On one occasion, Siba told Leshaj that he thought a girl was in her sexual prime at 13. (Tr. 167-68)

19. Eisner observed Siba tug on Thibeault’s pant leg, sit on Thibeault’s lap and straddle her, and sit on Colgrove’s lap. (Tr. 135, 138-41, 149)

20. Leshaj observed Siba sit on Thibeault’s lap, sit on Colgrove’s lap, put his finger down the back of Thibeault’s pants while she bent over to pick up the bucket of potatoes, and tug on Thibeault’s sweatpants as she walked up the stairs from the basement. Leshaj also observed Siba sit on the lap of a dishwasher named Brittany (last name unknown). (Tr. 161-63, 165-66, 174)

21. Complainants complained about Siba’s comments and behavior to Leshaj, Eisner, and Fosby. (Tr. 36-37, 94-96, 134-37)

22. In or around the second week of June 2008, Eisner told Siba that Complainants were uncomfortable with the things he said to them and that he did not have the right to touch them. Siba laughed and said he was joking around and being friendly, not sexual. (Tr. 137-38, 149)

23. I take official notice that Father’s Day was observed on June 15, 2008. Several days before Father’s Day, Complainants complained to Leshaj that Siba was being inappropriate with them, touching them, and talking about his sexual exploits with women. Leshaj told Siba about the complaints, and he said that Siba would “get himself in trouble” if he did not stop. Siba “brushed it off” and said he did the same thing with his mother-in-law. (Tr. 160, 166-67, 169)

24. On June 15, 2008, Siba fired Leshaj after they argued about staffing at the Diner. Leshaj and Eisner later opened a restaurant called Nick and Darlene’s Country Kitchen (“Country Kitchen”). (Tr. 48, 143, 169-70, 172, 268)

25. Complainants worked at the Diner as waitresses on the evening of June 17, 2008. (Tr. 34)

26. Siba testified that on June 18, 2008, an unidentified woman called the Diner and said that she had been in the Diner the previous day, that one waitress stood up in the middle of the Diner and waved her hair, and that the caller smelled alcohol on the breath of the other waitress. (Tr. 258-60)

27. Siba did not ask the caller her name, but on cross-examination, he claimed that he recognized her voice as that of a customer he had seen "a few times at the Diner." Siba then claimed he saw the customer "maybe two, three times a week." Siba acknowledged that his conversations with the customer consisted only of saying "hi" to each other and that he never knew the customer's name. For these reasons, I do not credit Siba's testimony that he knew the identity of the alleged caller. (Tr. 296-99)

28. Siba further testified that after he spoke with the unidentified caller, he asked "Louie the cook" what happened the previous night and that "Louie" said, "Yeah. They were smoking pot and drinking alcohol at the job." (Tr. 260-62)

29. I do not credit Siba's testimony about "Louie." Siba could not provide "Louie's" last name, although he had worked for Respondents for eight to twelve months. Siba further claimed that "Louie" was an "illegal alien" who he paid "under the table." Siba did not produce "Louie" to testify, and he offered no explanation for his failure to do so. (Tr. 299-303)

30. On June 18, 2008, Siba told Thibeault that a customer had complained that Complainants were drinking on the job the previous night. Thibeault denied the accusation, but Siba said that she was lying. Siba then fired both Complainants. (Tr. 33-34, 36, 40, 108, 263)

31. Colgrove was not in the Diner when Siba spoke with Thibeault. Siba never asked Colgrove whether she had been drinking or using drugs on the job, and he never told her that her employment was terminated. (Tr. 40, 90, 107, 312)

32. Siba admitted that he fired Complainants based solely on information provided by a customer he could not identify and a cook whose last name he does not know. (Tr. 304-05)

33. Before Siba terminated Complainants' employment, he questioned Novak about allegations that Novak was drinking on the job. Novak denied the allegations. Siba did not fire or discipline Novak. (Tr. 208-10, 212-13, 305-06, 311, 331-32)

34. Colgrove was "shocked," "angry," and "in disbelief" when Siba terminated her employment. At the time, Colgrove had no money in the bank, she had just five dollars in her wallet, and her car payment was already a month late. The situation was "very stressful." Colgrove experienced sleepless nights and stomach aches. (Tr. 96-97)

35. Thibeault felt "awful," "stressed out," and "depressed" when Siba terminated her employment. Thibeault had to ask friends and family for help caring for her baby daughter, with food, and with transportation. She could not pay her car insurance and was without a vehicle for four months. She experienced loss of sleep and headaches. (Tr. 43-46)

36. In 2008, Colgrove earned \$4,113.20 from the Diner's previous owner and \$1,445.30 from Respondents, a total of \$5,558.50. (Complainants' Exh. 1)

37. After Siba terminated Colgrove's employment, she was out of work until late August 2008, when she began working as a waitress at the Country Kitchen. Colgrove's only income during this period was \$465.00 in unemployment insurance benefits ("UIB"). (Tr. 72-73, 97; Complainants' Exh. 1)

38. Thibeault was paid in cash, off the books, during most of the time she was employed at the Diner. In early June 2008, Thibeault completed IRS tax withholding forms. Thibeault was paid on the books for the period June 10-18, 2008. (Tr. 349-50, 354; Respondents' Exhs. 7-9)

39. I do not credit Siba's testimony that Thibeault was not employed at the Diner until the end of May 2008, that he put her on the books "as soon as she started," and that she was "never a waitress" while he owned the Diner. Respondents presented no other witnesses to support these claims or to rebut the testimony of Eisner and Leshaj, who worked with Thibeault at the Diner for several years. Novak, who testified for Respondents, also testified that he worked with both Complainants as waitresses. (Tr. 132, 158-59, 202, 269, 306, 308-09)

40. Thibeault earned from \$200.00 to \$400.00 per week at the Diner. From June 10 to 18, 2008, she earned \$564.89. (Tr. 16; Respondents' Exhs. 7-8)

41. After Siba terminated Thibeault's employment, she was out of work for two to three months, until she also began working as a waitress at the Country Kitchen. Thibeault applied for UIB, but she did not receive any benefits. (Tr. 16, 49)

OPINION AND DECISION

Hostile Work Environment

It is an unlawful discriminatory practice for an employer to discriminate against an employee in the terms and conditions of employment on the basis of sex. Human Rights Law §296.1(a). Complainants allege that Respondents unlawfully discriminated against them by subjecting them to sexual harassment that created a hostile work environment. In order to sustain this claim, Complainants must demonstrate that they were subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that was sufficiently

severe or pervasive to alter the conditions of their employment and create an abusive working environment. Whether an environment is hostile or abusive can be determined only by looking at all of the circumstances, including the “frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 23, 114 S. Ct. 367, 371 (1993). 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 Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainants have shown that Siba subjected them to conduct that was sufficiently severe and pervasive to create a hostile work environment. This conduct began soon after Siba acquired the Diner. It included both sexual comments and unwanted touching, including sitting on Complainants’ laps, pulling on their pants, placing a finger down the back of Thibeault’s pants, and brushing up against Colgrove on two occasions. All of these incidents occurred between early May and mid-June 2008, a relatively short period of time. Whether or not any single incident was sufficiently severe on its own, a reasonable person would find that Siba’s conduct was inappropriate, offensive, humiliating, and sufficiently pervasive to alter the conditions of Complainants’ employment and create an abusive working environment. Because the harassment was perpetrated by Siba, the Diner’s owner, both Siba and the corporate respondent are liable for the hostile work environment he created. *Eastport Associates, Inc. v. New York State Div. of Human Rights*, 71 A.D. 3d 890, 891, 897 N.Y.S. 2d 177, 179-80 (2nd Dept. 2010); *Father Belle*, 221 A.D. 2d at 52, 642 N.Y.S. 2d at 745-46.

Retaliation

It is an unlawful discriminatory practice for an employer to retaliate against an employee because she has complained about discrimination. Human Rights Law §296.1(e). To prove a prima facie case of retaliation, Complainants must establish that they engaged in protected activity, that Respondents were aware they engaged in such activity, that they suffered an adverse employment action based on such activity, and that there was a causal connection between the protected activity and the adverse employment action. *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295, 312-13, 786 N.Y.S. 2d 382, 396 (2004). If Complainants meet this burden, Respondents must present legitimate, non-discriminatory reasons for their action. *Pace v. Ogden Services Corp.*, 257 A.D. 2d 101, 104, 692 N.Y.S. 2d 220, 223-24 (3d Dept. 1999). If Respondents do so, Complainants must show that the reasons Respondents have presented were merely a pretext for discrimination. *Id.*

Complainants engaged in protected activity when they complained about Siba's behavior to Leshaj, their supervisor, and Eisner, who had previously been their supervisor. Respondents were aware of this activity because both Leshaj and Eisner reported the complaints to Siba. Complainants suffered an adverse employment action when Siba terminated their employment. The terminations occurred just a few days after Leshaj and Eisner reported their complaints to Siba. This was sufficiently close in time to permit an inference of causation between Complainant's complaints and their termination. Therefore, Complainants established a prima facie case of retaliation.

Siba claimed that he terminated Complainants' employment because they were drinking and smoking marijuana on the job. Respondents produced no witnesses to the alleged misconduct and no credible evidence that it occurred. Instead, Respondents offered an

unsubstantiated hearsay telephone statement from an unidentified customer of the Diner and a hearsay statement from a cook Siba identified only as "Louie." Siba admitted that these statements were the only bases for his decision to terminate Complainants' employment. Siba also admitted that he did not even speak with Colgrove about the allegation against her but simply terminated her employment along with that of Thibeault. At the same time, he admitted that he did not discipline Novak, who was also the subject of allegations of drinking on the job.

Respondents failed to offer credible evidence that Complainants engaged in the misconduct which Siba claimed was the reason he terminated their employment. Accordingly, the Division finds that Respondents' explanation for their discharge of Complainants is a pretext for unlawful discrimination.

Damages

Complainants are entitled to damages for back pay. In 2008, Colgrove earned \$5,558.50 at the Diner. Her average weekly wage for the 24 weeks that ended on June 18, 2008 was \$231.60. Colgrove was out of work until late August 2008, when she began working at the Country Kitchen. Based on her average weekly earnings of \$231.60, Colgrove would have earned \$2,084.40 for this nine-week period. However, Colgrove received \$465.00 in UIB. Subtracting this amount from Colegrove's lost wages yields a loss of \$1,619.40. Colgrove is entitled to interest on this sum from July 18, 2008, a "reasonable intermediate date." CPLR § 5001(b).

At the time Respondents terminated Thibeault's employment, she earned \$200.00 to \$400.00 per week. Because Thibeault did not provide more detailed information about her earnings, it is reasonable to limit her recovery to the lower end of the range to which she testified, \$200.00. Thibeault was out of work from June 18, 2008 until she began working at the

Country Kitchen two or three months later. Because Thibeault did not identify the date she began work at the Country Kitchen, she is awarded back pay for nine weeks. Thibeault had no income during this time. Therefore, Thibeault is entitled to \$1,800.00, with interest from July 18, 2008, a “reasonable intermediate date.”

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

Colgrove testified that Siba’s comments made her uncomfortable and that she felt “disgusted” and “embarrassed” when he touched her. Colgrove was “shocked,” “angry,” and “in disbelief” when Respondents terminated her employment. The loss of employment was “very stressful,” and she experienced sleeplessness and stomach aches.

Thibeault testified that she was “shocked” at Siba’s comments and “disgusted” and “overwhelmed” when he touched her. Thibeault felt “awful,” “stressed out,” and “depressed” when Respondents terminated her employment. She worried about how she would take care of her daughter, she lost sleep, and she had headaches.

In these circumstances, and in view of the limited duration of Complainants’ employment with Respondents, the Division finds that an award of \$5,000.00 to each Complainant for mental anguish is consistent with recent cases and will effectuate the remedial purposes of the Human Rights Law. *KT’s Junction v. New York State Div. of Human Rights*, 2010 WL 2432825 (4th Dept. 2010); *Suffolk County Community College v. New York State Div. of Human Rights*, 2010 WL 2674412 (2nd Dept. 2010); *Palmblad v. Gibson*, 63 A.D. 3d 844, 845, 881 N.Y.S. 2d 139, 140 (2nd Dept. 2009).

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 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 <http://www.dhr.state.ny.us/doc/poster.pdf>, in the Diner where employees are likely to view it.

2. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to Complainant Colgrove the sum of \$1,619.40, as damages for back pay between June 18, 2008 and August 20, 2008. Interest shall accrue on the award at the rate of nine percent (9%) per annum from July 18, 2008, a reasonable intermediate date, until the date payment is actually made by Respondents.

3. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to Complainant Thibeault the sum of \$1,800.00, as damages for back pay between June 18, 2008 and August 20, 2008. Interest shall accrue on the award at the rate of nine percent (9%) per annum from July 18, 2008, a reasonable intermediate date, until the date payment is actually made by Respondents.

4. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to each Complainant the sum of \$5,000.00, without any withholdings or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainants as a result of Respondent's unlawful discrimination against them. Interest shall accrue on the award at the rate of nine percent (9%) per annum from the date of the Commissioner's Order until payment is actually made by Respondents.

5. The aforesaid payments shall be made by Respondents in the form of certified checks made payable to the order of each Complainant, Jamie Colgrove and Natalie Thibeault, and delivered by certified mail, return receipt requested, to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Respondents shall furnish written proof to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of their compliance with the directives contained within this order.

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

DATED: July 30, 2010
Syracuse, New York



Edward Luban
Administrative Law Judge