ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

JOSEPH E. COX,

Complainant,

v.

MONRO MUFFLER BRAKE, INC.,

Respondent.

NOTICE AND FINAL ORDER

Case No. 10134207

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 23, 2012, 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 GALEN D. KIRKLAND, 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: 8/16/2012
Bronx, New York

Galen D. Kirkland
GALEN D. KIRKLAND
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
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JOSEPH E. COX,

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MONRO MUFFLER BRAKE, INC.,

Respondent.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10134207**

SUMMARY

Respondent employed Complainant as an assistant branch manager. Respondent refused to consider Complainant for any branch manager positions because he is an ex-offender. Respondent has an unlawful policy that prohibits the promotion of a broad category of ex-offenders to branch management positions and higher. Complainant is entitled to relief in the form of an award for mental anguish in the amount of $5,000.

However, Complainant did not sustain any lost wages. Respondent established that it would have not promoted Complainant even had it not taken into account his protected class. In addition, Complainant failed to prove that his pay was reduced or that he was fired because he is an ex-offender.

PROCEEDINGS IN THE CASE

On June 2, 2009, 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 Spencer D. Phillips, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on November 17-18, 2010. Complainant and Respondent appeared at the public hearing. Complainant was represented by Peter C. Nelson, Esq. Respondent was represented by Jennifer A. Mereau, Esq.

After ALJ Phillips separated from state service this case was transferred to ALJ Edward Luban on January 14, 2011, and then to ALJ Martin Erazo, Jr., on August 24, 2011. ALJ Erazo held an additional public hearing session on November 15, 2011. Complainant and Respondent appeared at the hearing. Both Mr. Nelson and Ms. Mereau again represented the respective parties.

The parties filed timely post-hearing briefs.

As stipulated at the November 15, 2011 public hearing, the following post-hearing submissions were received as evidence: Complainant's Exhibits 20-28. (Tr. 296-97, 391)

FINDINGS OF FACT

1. In 2001 Complainant was convicted of possession of child pornography. (ALJ Exhibit 1, p. 9; Tr. 26, 28) As a result, Complainant went to prison from 2003 to 2005. (Tr. 361)

2. Respondent is a vehicle repair and service corporation. (Complainant Exhibit 2)

3. On March 21, 2001 Respondent issued an employment policy to "preclude an individual from being hired or promoted to a Manager position" if that individual was convicted of one the enumerated crimes listed in the policy. (ALJ Exhibit 4; Complainant's Exhibit 1, p.2; Complainant's Exhibit 2, Attachment C; Tr. 151, 163-64, 231-32)

4. The enumerated crimes in Respondent's policy were:

> "bad check, bank fraud, breaking and entering, burglary, counterfeiting, credit card fraud, drug dealing. embezzlement, employment security fraud, extortion, felon in possession of firearms, forgery, fugitive of justice, grand larceny, grand theft, hit and run with serious injuries, homicide, incest, manufacturing drugs, murder, pedophile, petty theft, promote/distribute child porn, public assistance fraud, racketeering/RICO, rape, robbery with a dangerous weapon, sex offense, shoplifting, stalking, terroristic violence, theft by receiving stolen goods, theft by taking, threaten death or great bodily injury, trafficking, trafficking in counterfeit devices, unarmed robbery, vehicle theft."

(ALJ Exhibit 4; Complainant's Exhibit 1, p.2; Complainant's Exhibit 2, Attachment C)

5. On November 21, 2003, Respondent added the crimes of arson and larceny to the aforementioned list. (ALJ Exhibit 4; Complainant's Exhibit 1, p.2; Complainant's Exhibit 2, Attachment C)

6. On May 6, 2005 Complainant applied for a service technician position at Respondent's Dansville, N.Y. branch location. (Complainant's Exhibit 2, Attachment A, p.4; Tr. 28)

7. Respondent's employment application asked if, during the past ten years, the applicant had ever been convicted of a traffic violation or a crime. (Complainant's Exhibit 2, Attachment A, p.1)

8. Complainant responded that he had been convicted of "possession of contraband." (Complainant's Exhibit 2, Attachment A, p.1)

9. Steve Gleason ("Gleason") was Respondent's branch manager at the Danville, N.Y. location. (Tr. 27)

10. Complainant explained to Gleason that he had been convicted for possessing an image of child pornography. (Tr. 28)

11. On May 12, 2005 Gleason hired Complainant as a service technician. (Complainant's Exhibit 2, Attachment A, p.4)

12. On October 10, 2005 Gleason promoted Complainant to the position of assistant manager as a result of Complainant's work performance. (ALJ Exhibit 1, p.9; Complainant's Exhibit 2, p.2; Complainant's Exhibit 2, Attachment B; Tr. 29)

13. The duties of an assistant manager include assisting the branch manager in the daily duties of running the store, and assuming those duties in the manager's absence. (Tr. 29-30)

14. An assistant manager also continues to perform service technician work. (Tr. 32)

15. An assistant manager spends approximately 75 percent of the time as a technician and 25 percent running the store. The assistant manager's primary responsibility remains to work on vehicles. (Tr. 451-52, 520)

16. Ed Wojcik ("Wojcik") was Respondent's regional manager and Gleason's supervisor. (Complainant's Exhibit 2, p.2)

17. In October 2005, Wojcik arranged for Complainant to attend management training in Rochester, N.Y. after he had expressed an interest in becoming a manager. (ALJ Exhibit 1, p.9; Complainant's Exhibit 2, p. 2; Tr. 33-34)

18. After the October 2005 training, during a casual conversation, Complainant informed Wojcik that his conviction was for the possession of child pornography. (Complainant's Exhibit 2, p.2; Tr. 35)

19. On numerous occasions, after October 2005, Wojcik did not consider Complainant's specific requests for open branch manager positions because of his prior criminal conviction. (Tr. 37-39, 121-22)

20. Wojcik informed Complainant and Gleason that he would not be eligible for a management position with Respondent because of his conviction. (Complainant's Exhibit 2, p.2; Tr. 35, 37)

21. Wojcik also told Complainant, in the presence of others, that "he was not going to put a sign on the front lawn and take out an ad in the paper," that Complainant "should be happy [that he has] a job with...being a sex offender," and "that [Wojcik] was not going to take an ad in the paper for a convicted sex offender running his store." (Tr. 347-49)

22. Complainant gave contradictory testimony as to when he last asked Wojcik to be considered for an open store manager position. (Tr. 70-72, 319-28)

23. I find that all of Complainant's requests to Wojcik were made prior to June 2, 2008. (Tr. 319-28, 384)

24. At the public hearing the parties stipulated that the only open management positions Complainant would have been willing to accept would have been within the sixty-five mile radius of the Dansville N.Y. store. (Complainant's Exhibit 1; Tr. 100-01, 173)

25. Although Complainant learned of additional open branch manager positions after June 2, 2008, he did not apply for these positions or ask Wojcik about them. (Tr. 385-87)

26. However, after June 2, 2008, Wojcik made it clear to other employees that Complainant could never be promoted "because [Complainant] was an ex-convict and a pedophile." (Tr. 129-32)

27. Wojcik's actions made Complainant feel "horrible." Complainant felt Wojcik had placed "a huge sign on my forehead" and made to feel like "an insect" as it related to his co-workers. Complainant reacted to Wojcik's actions by "excluding myself," not going "out in public," and wanting "to be left alone." (Tr. 349, 371-72)

28. These were feelings which Complainant continued to have as of the November 15, 2011 public hearing, although he was unclear as to the frequency. (Tr. 349-50)

29. Nine out of ten Respondent's branch managers are selected from outside Respondent's employee pool. (Tr. 450, 527, 561-62) A branch manager's primary responsibility is to market a store and generate profit. (Tr. 520) Strong candidates for a branch manager position are existing managers working for Respondent's competitors that have a proven track record with in both sales and running a store. (Tr. 451, 454) A potential candidate for a branch manager is an individual who has a proven track record of being a "rainmaker," i.e., someone who can generate sales. (Tr. 454) In fact, Respondent has branch managers that are not technicians. (Tr. 519-20)

30. Scott Clark ("Clark") was the only assistant manager identified at public hearing who was promoted to store manager prior to June 2, 2008. Clark did not bid for the position as he temporarily filled in when the branch manager walked off the job. (Complainant's Exhibit 1; Tr. 496, 510-11, 560-61)

31. Dave Shepard ("Shepard") was the only assistant manager identified at the public hearing who was promoted to branch manager during the Complainant's employment after June 2, 2008 within the geographical area in question. (Complainant's Exhibit 1; Tr. Tr. 100-01, 173, 496, 551, 556)

32. Shepard was promoted from an underperforming store in Corning. (Tr. 550-51)

33. However, Shepard has an outstanding performance record as he was Respondent's most qualified assistant manager in the particular market containing 18 of Respondent's stores. Shepard is an automotive service excellence ("ASE") certified master technician, and has a track record of producing the best sales days when given a branch store location to which he is assigned. (Tr. 211-13, 556-57)

34. The proof established that Respondent would not have promoted Complainant if it had properly considered him after June 2, 2008. First, the Dansville N.Y. store had been losing money for the years 2006-2008. (Tr. 530-32) Second, when Complainant worked in the Dansville store in 2008, the store continued to have a loss of profit. In 2008, the store had a loss of $4,000 over the previous year, gross profit was down two percent, the store had flat sales, and the cost of goods ran higher than the previous year. Complainant's own sales performance during the days he ran the Dansville N.Y. store in 2008, in the absence of the store manager, was at or below the store's performance. (Respondent's Exhibit 5; Tr. 379-80, 458-59, 489-90, 492-93, 523, 533-34)

35. In August 2008, Michael Stanton ("Stanton") was Respondent's Danville N.Y. branch manager. (ALJ Exhibit 1, p.12; Complainant's Exhibit 2, p. 2)

36. In August 2008, Complainant informed Stanton that he wanted to be demoted from assistant branch manager to technician in order to have the flexibility to take care of his father

who was ill. (ALJ Exhibit 1, p.12; Complainant's Exhibit 2, pp. 2-3; Complainant's Exhibit 2, Attachment D)

37. On August 15, 2008, Stanton informed Complainant that Respondent had a technician position available at another store but not at Complainant's location. (Complainant's Exhibit 2, Attachment D)

38. The Respondent's August 15, 2008 employee report states that Complainant "walked off the job" on that date when Stanton informed him that a technician position would only be available at another store. (Complainant's Exhibit 2, Attachments D, E)

39. The New York State Department of Labor denied Complainant's claim for unemployment benefits and determined, in part, that:

> "no unemployment insurance benefits will be paid to you for the period beginning 08/15/2008..." "Although you state you were let go due to lack of work, there is no evidence to substantiate your statement..." "Continuing work was available when you left, and there is no evidence that you had good cause for leaving employment when you did."

(Complainant's Exhibit 2, Attachment D)

40. In August 2008 Gleason was Respondent's branch manager at the Hornell N.Y. location. (ALJ Exhibit 1, p.12; Complainant's Exhibit 2, p. 3; Tr. 54-56)

41. On September 8, 2008, Gleason hired Complainant as a shop foreman at the Hornell N.Y. location at a rate of pay of $12 dollars per hour. (ALJ Exhibit 1, p.12; Complainant's Exhibit 2, p. 3; Tr. 54-56)

42. In 2009 the Hornell N.Y. location lost its contract with one of its largest clients. (Tr. 55-56)

43. As a result, on January 22, 2009, Complainant's pay was cut to $8.50 per hour. (ALJ Exhibit 1, p.12; Complainant's Exhibit 2, p. 3; Tr. 55)

44. Two other technicians at the Hornell N.Y. also had their salaries reduced. (Tr. 55)

45. On February 14, 2009, Gleason terminated Complainant's employment due to poor work performance. (Complainant's Exhibit 2, p. 3; Complainant's Exhibit 2, Attachment F)

OPINION AND DECISION

Timeliness

The Human Rights Law provides that, "[a]ny complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice." N.Y. Exec. Law, art. 15 (Human Rights Law) § 297.5. This provision acts as a mandatory statute of limitations in these proceedings. *Queensborough Cmty. College v. State Human Rights App. Bd.*, 41 N.Y.2d 926, 394 N.Y.S.2d 625 (1977).

Complainant was hired on May 12, 2005 as a service technician and promoted to assistant branch manager in October, 2005. All of Complainant's actual requests for a promotion to branch manager were made prior to June 2, 2008, to Respondent's manager Wojcik. Complainant filed a verified complaint with the Division on June 2, 2009. Complainant's allegations that Respondent unlawfully refused to promote him, prior to June 2, 2008, because of his conviction, are time barred.

However, Complainant's allegations that Respondent would have never considered him for a store manager position after June 2, 2008 because of his protected class status are timely. It would have been futile to continue asking Respondent's manager, Wojcik, about open store manager positions. Wojcik told Complainant that he would never be considered because of Respondent's standing policy. After June 2, 2008, Wojcik told others that Complainant would not be considered because he is an ex-offender. Respondent's policy was not to hire or promote into

management a broad category of ex-offenders. Complainant last worked for Respondent on February 19, 2009.

Respondent's Failure to Consider Complainant

It is a violation of the Human Rights Law for an employer to fail to consider an employment application of any individual only because of their membership in a protected class. An individual that has been convicted of one or more criminal offenses "in violation of the provisions of article twenty-three-A of the correction law" cannot have his employment application disregarded merely because he is an ex-offender. Human Rights Law § 296.15. Article twenty-three-A of the N.Y.S. Correction Law, § 752, specifically states, in relevant part, that

> "no application for any ...employment, and no employment...shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of 'good moral character' when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses..."

After June 2, 2008 Respondent would have never considered Complainant for any open branch manager position because he is an ex-offender convicted of possession of child pornography. Respondent's blanket policy to automatically not consider a broad category of ex-offenders for the position of branch manager is a violation of the Human Rights Law. When Complainant previously asked Wojcik to be considered, Wojcik belittled and ridiculed Complainant's request. It was futile for Complainant to continue asking Wojcik every time a branch manager position became available because Wojcik's comments show that Complainant would not have been considered. Wojcik told others that Complainant would never be promoted because he is an ex-offender.

Respondent's Failure to Weigh Factors

Two exceptions contained in the statute permit a respondent to consider prior criminal offenses: where there is a direct relationship between the offense and the employment sought or where the employment sought would involve "an unreasonable risk to property or to the safety or welfare of specific individuals or the general public." N.Y.S. Corr. Law § 752. While making a determination regarding the two exceptions, a respondent must consider the following factors in Article 23-A of the N.Y.S. Correction Law: the public policy of NYS to encourage the employment of persons previously convicted; the specific duties and responsibilities necessarily related to the employment sought; the bearing, if any, the criminal offense will have on his fitness or ability to perform his duties or responsibilities; the time elapsed since the commission of the offense; the age of the person at the time of the criminal offense; the seriousness of the offense; any information produced by the person or on his behalf regarding rehabilitation and good conduct; the respondent's legitimate interest in protecting property, the safety and welfare of specific individuals, or the general public. N.Y.S. Corr. Law § 753.1.

If Respondent had a concern about Complainant's conviction, Respondent failed to make an individualized assessment of Complainant's circumstance. "All factors enumerated in Correction Law § 753" must be "properly addressed and considered." *Black v. N.Y. Off. of Mental Ret. & Dev. Disabilities,* 20 Misc.3d 581, 858 N.Y.S.2d 859 (Sup. Ct. Monroe Co. 2008) The weighing of the aforementioned factors cannot merely be an artificial exercise in order to seemingly meet statutory requirements while actually seeking a predetermined conclusion. *Boatwright v. N.Y. Off. of Mental Ret. & Dev. Disabilities,* 2007 N.Y. Misc. LEXIS 3399, 237 N.Y.L.J. 85 (Sup. Ct. N.Y. 2007)

Successful Candidates Were More Qualified

Respondent clearly violated the Human Rights Law when it failed to consider Complainant for a branch manager position. However, it is a separate claim altogether whether Respondent would have selected Complainant if he had been properly considered.

A mixed motive case is one in which an employer has illegally taken into account the protected class of the individual, but in which an employer has also established that it would have made the same employment decision even had it not taken the protected class into account. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 258, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989); *New York City Board of Education, Community School District No 1 v. Batista,* 54 N.Y.2d 379, 33384 n.1, 446 N.Y.S.2d 1, 430 N.E. 2d 877 (1981).

Complainant met his initial burden of showing that an illegitimate factor played a motivating or substantial role in a respondent's employment decision. The proof established that Complainant was minimally qualified for the position of store manager. Complainant competently performed the duties of assistant manager and, at times, was called upon to perform store manager duties. Respondent has an employment policy against hiring a very broad category of ex-offenders as a store manager. Respondent's manager, Wojcik, told Complainant that he would not be hired as a store manager because of his conviction.

After Complainant established his prima facie case, the burden shifted to Respondent to show that the employment decision would have been reached in the absence of the impermissible motive. *Allen v. Domus Development Corp.*, 273 AD2d 891, 709 NYS2d 776, 777 (4th Dep't, 2000), quoting *Michealis v. State of New York*, 258 AD2d 693, 694, 685 NYS2d 325, 326 (3d Dep't., 1999), *lv denied* 93 NY2d 806.

Here, Respondent met its burden of showing that Complainant would not have been hired

as branch manager if had it properly considered him for the position after June 2, 2008.

The proof established that over ninety percent of the successful candidates chosen for branch manager positions after June 2, 2008 were taken from Respondent's competitors. Those successful candidates possessed records of both strong sales and marketing abilities. After June 2, 2008 Respondent promoted only one assistant manager. However, that assistant manager possessed a combination of technician and sales abilities clearly superior to those possessed by Complainant.

August 15, 2008 Separation

The proof established that on August 15, 2008 Complainant was not dismissed. Complainant voluntarily left the job because the Dansville N.Y. branch manager did not demote him to a technician position which he wanted in order to have a more flexible work schedule. Complainant's separation from employment was unrelated to his prior conviction.

February 14, 2009 Dismissal

On September 8, 2008, Gleason hired Complainant at Respondent's Hornell N.Y. store at the pay rate of $12 dollars per hour. On January 22, 2009, Complainant's pay was reduced to $8.50 per hour based because the Hornell N.Y. location lost its contract with one of its largest clients. Two other technicians at the Hornell N.Y. also had their salaries reduced.

On February 14, 2009, Gleason terminated Complainant's employment due to poor work performance. Complainant cannot credibly claim that Gleason reduced his pay or dismissed him because of his prior conviction. Gleason was the branch manager who initially hired Complainant in 2005 and who did so while fully aware of his prior conviction. Subsequently, in October of 2005, Gleason promoted Complainant to assistant branch manager. In September 2008 Gleason also rehired Complainant at the Hornell N.Y. store.

Lost Wage Damages

Complainant did not sustain lost wage damages. Respondent established that it would have not promoted Complainant even had it not taken into account his protected class. Complainant also did not prove that his separation from Respondent's employment on August 15, 2008 and February 14, 2009 occurred as a result of unlawful discrimination. Complainant did not prove that the reduction of pay on January 22, 2009 resulted from unlawful discrimination.

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondent's violation of the Human Rights Law when it refused to consider Complainant for a branch manager position. Human Rights Law § 297.4(c)(iii) The award of compensatory damages may be based solely on a complainant's testimony. 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. N.Y. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991); *Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981). 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. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996). In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record and comparable to awards for similar injuries. *N.Y. State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Respondent's violation of the Human Rights Law had a negative effect on Complainant. Respondent's actions made Complainant feel "horrible" and like "an insect." Complainant reacted to the Respondent's actions by "excluding myself," not going "out in public," and wanting "to be left alone." At the November 15, 2011 public hearing Complainant continued to feel those emotions, although he was unclear as to the frequency.

An award of $5,000 for emotional distress is appropriate and would effectuate the purposes of the Human Rights Law of making Complainant whole, given the Respondent's conduct, the degree of Complainant's suffering and the duration of the same.. *Quality Care, Inc. v. Rosa*, 194 A.D.2d 610, 599 N.Y.S.2d 65 (2d Dep't. 1993) (award could not exceed $5,000 in absence of, among other things, any medical treatment); *Port Washington Police Dist. v. State Div. of Human Rights*, 221 A.D.2d 639, 634 N.Y.S.2d 195 (2d Dep't. 1995) (award of $5,000 after "brief" discussion by complainant as to her mental anguish).

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, its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee in the terms and conditions of employment; and it is further

ORDERED, that Respondents, its agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within 60 days of the date of the Commissioner's Final Order, Respondents shall pay

to Complainant the sum of $5,000 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondent's unlawful discrimination against him. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

2. The payment shall be made by Respondent in the form of a certified check, made payable to the order of Joseph E. Cox and delivered by certified mail, return receipt requested, to Complainant's attorney, Peter C. Nelson, Esq., 12 Glendower Circle, Pittsford, New York 1453402. A copy of the certified check shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

3. Within 60 days of the Final Order, Respondent shall revise its current policy, regarding ex-offenders in management positions, to conform with the Human Rights Law. A copy of the revised policy shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Within 60 days of the Final Order, Respondent shall provide training to all its New York State employees regarding the prevention of unlawful discrimination in accordance with the Human Rights Law. Proof of training shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

5. Within 60 days of the Final Order, Respondent shall establish a written policy that includes a formal reporting mechanism for all its New York State employees in the event of discriminatory behavior or treatment. A copy of the policy shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

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

DATED: May 23, 2012
Buffalo, New York

Martin Erazo, Jr.

Martin Erazo, Jr.
Administrative Law Judge