



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

ALICIA FABRE,

Complainant,

v.

ME FEIN INC. DBA MOLLY MAID OF NEW  
HYDE PARK AND GARDEN CITY, AND  
CHRISTINE MCGOWAN, INDIVIDUALLY,

Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 10152270

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, 2013, by Margaret A. Jackson, 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, ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).**

- This proceeding as against Respondent Christine McGowan, Individually, is

dismissed. The complaint is otherwise sustained. On June 24, 2013, the caption and complaint were amended to name Respondent McGowan in her individual capacity and the matter was returned to hearing to afford Respondent McGowan an opportunity to present evidence in defense of the complaint. Thereafter, Respondent McGowan, through counsel, advised the Division that she had, on April 2, 2012, filed a petition for bankruptcy with the United States Bankruptcy Court, Eastern District of New York. On July 26, 2013, the Bankruptcy Court issued an order discharging the debtor. Because she petitioned for bankruptcy prior to the amendment to name her individually and her debts have since been discharged, this proceeding as against Respondent McGowan is hereby dismissed.

The Recommended Order is otherwise adopted as the Final Order of the Division.

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: **OCT 28 2013**  
Bronx, New York



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HELEN DIANE FOSTER  
ACTING COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**ALICIA FABRE,**

Complainant,

v.

**ME FEIN INC. DBA MOLLY MAID OF NEW  
HYDE PARK AND GARDEN CITY,**

Respondent.

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

Case No. **10152270**

**SUMMARY**

Respondent unlawfully discriminated against Complainant by failing to hire her after she revealed that she had an arrest and conviction record. Complainant is entitled to an award for mental anguish and Respondent is liable to the State of New York for fines and penalties.

**PROCEEDINGS IN THE CASE**

On November 28, 2011, 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 Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on December 12, 2012.

Complainant and Respondent appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondent was represented by Thomas A. Connolly, Esq.

#### **FINDINGS OF FACT**

1. Respondent is a franchise doing business as Molly Maids Corporation. The business is owned by Christine McGowan. (Tr. 30)
2. McGowan placed an advertisement for house cleaners and acknowledged receiving 30-40 daily telephone responses. (Tr. 24, 31)
3. Generally, whenever McGowan receives a telephone call she screens the caller by asking whether they have a driver’s license, if they are of a certain age and, if they have a felony or misdemeanor conviction whether they have issues that would affect their bonding status. (Tr. 27)
4. Respondent’s hiring decisions are made subsequent to the completion of an application form, a personal interview and proof of whether the applicant can be bonded. (Tr. 28)
5. On November 15, 2011, Complainant responded to an advertisement in the Pennysaver newspaper and inquired, via telephone, about a position working for Respondent as a house

cleaner. Complainant credibly testified that she spoke to someone who identified themselves as Christina. (Tr. 6, 7)

6. Christina asked if she had a criminal record and Complainant responded, “Yes, I have two misdemeanors.” The response was, “We don’t hire people with records.” There was no discussion about whether Complainant could be bonded. (Tr. 7, 11)

7. Complainant hung up the telephone and told her boyfriend about the conversation. Complainant called a second time and the conversation between her and Christina was repeated. Complainant ended the telephone call discouraged from completing an application. (Tr. 7, 12-13)

8. Respondent did not recall what she said to Complainant. (Tr. 27)

9. McGowan alleged that Respondent is no longer doing business. However, the New York Department of State website indicates that Respondent is still active. (Tr. 32, ALJ 2)

### **OPINION AND DECISION**

The Human Rights Law provides that, “it shall be an unlawful discriminatory practice . . . for any person, agency, bureau, corporation or association . . . to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, in connection with the . . . employment . . . [of] such individual.” Human Rights Law §296.16.

Pursuant to Article 23-A of the Correction Law, an employer may not deny employment based on a prior criminal offense unless, inter alia, there is a direct relationship between the

offense and the employment sought or held, or the granting or continuation of the employment would involve "an unreasonable risk to property or to the safety or welfare of specific individuals or the general public." N.Y. Corr. Law § 752.

In making that determination, an employer is obligated to consider the factors enumerated in § 753 of the Correction Law before denying employment based on an individual's criminal conviction record. Respondent must consider factors including the specific duties and responsibilities necessarily related to the employment; the bearing, if any, the criminal offense for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities; the time which has elapsed since the occurrence of a criminal offense; the age of the person at the time of occurrence of the criminal offense; the seriousness of the offense; any information produced by the person in regard his rehabilitation and good conduct; and the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public. N.Y. Corr. Law § 753.1. A failure to take into consideration said factors results in a failure to comply with the Correction Law's mandatory directive. *See, Acosta v. New York City Department of Educ.*, 16 N.Y.3d 309, 921 N.Y.S.2d 633 (2011).

Complainant established a prima facie case of unlawful discrimination. In the instant case, the record demonstrates that Respondent denied Complainant an opportunity to apply for employment without considering the factors set forth in the Correction Law.

Respondent was unable to articulate business reasons for its actions because McGowan could not remember the telephone conversation with Complainant. McGowan's general conversation with applicants does not take into consideration the criteria set forth in the Correction Law.

Complainant is entitled to an award for mental anguish and humiliation. A complainant is entitled to recover compensatory damages for mental anguish caused by a respondent's unlawful conduct. 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. *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).

In the instant case, Complainant was visibly shaken as she credibly testified that Christine told her "we do not hire people with criminal records."

Given Respondent's conduct, an award of \$1,500 for emotional distress is appropriate and would effectuate the purposes of the Human Rights Law.

Respondent made adverse statements against Complainant based on her criminal record when she stated "we do not hire people with criminal records." In fact, Respondent hires applicants with criminal records if they can be bonded. Respondent could not recall what she

said to Complainant when she spoke to her. Complainant ended the telephone conversation, discouraged from submitting an application.

### **ORDER**

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

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

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

1. Within sixty days of the date of the Commissioner's Final Order, Respondent, Me Fein, shall pay to Complainant, Alicia Fabre, the sum of \$1,500 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondent's unlawful discrimination against her. 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 Respondent.
2. The payment shall be made by Respondent, Me Fein, in the form of a certified check, made payable to the order of Alicia Fabre and delivered by certified mail, return receipt requested, to her address 10 Crown Avenue, Huntington, New York 11743. 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 sixty days of the date of the Commissioner's Final Order, Respondent, Me Fein, shall pay to the State of New York the sum of \$5,000 as a civil fine and penalty for his violation of the Human Rights Law. 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 Respondent.
4. The payment of the civil fine and penalty shall be made by Respondent, Me Fein, 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 of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.
5. Within sixty days of the Final Order, Respondent, Me Fein, shall establish a policy regarding the prevention of unlawful discrimination for all applicants. In addition, Respondent, Me Fein, shall attend a training program in the prevention of unlawful discrimination in accordance with the Human Rights Law. A copy of the policy and proof of attendance at an anti-discrimination program 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. Respondent, Me Fein, shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: May 21, 2013  
Hempstead, New York



Margaret A. Jackson  
Administrative Law Judge