



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

BRITTANY FRAGALE,

Complainant,

v.

**AMG MANAGING PARTNERS LLC, MICHAEL
ARONICA, MICHAEL GIANGRECO, JOHN
SUPPA,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10167844

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 December 1, 2015, 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 HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:

- In the Recommended Order, the ALJ sets out to analyze the sexual harassment component of this case pursuant to the burden-shifting standard articulated in *Vitale v.*

Rosina Food Prods. Inc., 283 A.D.2d 141 (4th Dept. 2001). The Recommended Order mentions the requirement that the behavior in question must be both objectively and subjectively perceived as hostile or abusive, but it omits the standard adopted by the courts for reviewing hostile work environment claims under the Human Rights Law. To be clear, “[a] hostile work environment exists when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment.” *Father Belle Community Ctr. v. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739 (4th Dept. 1996) (internal quotations and citations omitted), *reargument denied*, 647 N.Y.S.2d 652 (4th Dept. 1996), *leave to appeal denied*, 89 N.Y.2d 809 (1997). “Whether a workplace may be viewed as hostile or abusive – from both a reasonable person’s standpoint as well as from the victim’s subjective perspective – can be determined only by considering the totality of the circumstances.” *Id.* at 51. “In determining whether a plaintiff was subjected to a hostile work environment a court may consider the frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating or a mere offensive utterance and whether it unreasonably interfered with the plaintiff’s work performance.” *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 175 Misc.2d 795, 803, 669 N.Y.S.2d 122 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D.2d 269 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919 (1999), *leave to appeal denied*, 94 N.Y.2d 753 (1999).

In the instant matter, Complainant has established through credible evidence that Respondent subjected her to a hostile work environment. As the ALJ found, Respondents’ behavior was both severe and pervasive. It involved a number of employees and Respondent AMG’s owners not only sanctioned the behavior but acted to further exacerbate Complainant’s humiliation when she sought redress. On a weekly, sometimes daily basis, over a period of months,

Complainant's colleagues directed vulgar and offensive comments to her, including calling her a "Polish porn princess," a "fucking bitch," a "fucking dyke," and a "fucking cunt." They made comments about her appearance, took photographs of her and shared them around the office and one of her colleagues regularly propositioned her for sex. Another colleague sent her a text message that read "come sit on my dick now." Complainant objected to the behavior, yet it continued. She complained to Respondent AMG's owners, but was told to "put up with it." They laughed in response to her complaints. Complainant often went home in tears and eventually felt she had no other choice but to quit her employment. No reasonable person could view this conduct and the circumstances surrounding it as anything but hostile and abusive. Accordingly, on this basis, Complainant's hostile work environment claim is sustained. The Recommended Order is otherwise adopted.

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: **FEB 05 2016**
Bronx, New York



HELEN DIANE FOSTER
COMMISSIONER



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**AMG MANAGING PARTNERS LLC,
MICHAEL ARONICA, MICHAEL
GIANGRECO, JOHN SUPPA,**

Respondents.

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

Case No. **10167844**

SUMMARY

Respondents sexually harassed and constructively discharged Complainant. Respondents are liable to Complainant for \$5,720 in lost wages and \$65,000 for pain and suffering. Respondents are assessed civil fines and penalties in the amount of \$15,000.

PROCEEDINGS IN THE CASE

On March 27, 2014, Complainant filed a verified complaint 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 complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division.

On March 16, 2015, Complainant appeared at the public hearing and was represented by Christopher D. Galasso, Esq. Respondents Michael Aronica, Michael Giangreco, and John Suppa, appeared at the hearing *pro se*. Respondent AMG Managing Partners LLC (“AMG”) was represented by Aronica and Suppa. (Tr. 6-7, 49) ALJ Erazo granted Respondents’ motion to adjourn the hearing to June 15, 2015, in order to obtain counsel. (Tr. 9, 14, 17, 28-30)

On June 15, 2015, Complainant, Complainant’s Counsel, and Respondents appeared at the public hearing. Respondents chose not to retain counsel and proceeded *pro se*. (Tr. 50-51) Pursuant to New York Code of Rules and Regulations (“NYCRR”) § 465.11(c)(2)e, ALJ Erazo received Respondents’ oral answers to the verified complaint. (Tr. 56, 62-68)

Respondent Suppa made a motion to dismiss the case against him because he was not individually listed on page three of the Division complaint form. (Tr. 55; ALJ Exh. 1) The motion is denied. Suppa was clearly placed on notice as to charges against him on page eight of the Division complaint and is individually named in the caption of the Division complaint. (ALJ Exh. 1) Respondent Suppa also made a second motion to dismiss on the ground that he never participated during the Division’s investigatory process. (Tr. 58-59) Respondent Suppa’s second motion is denied. Respondent Suppa participated during the course of the Division’s investigation through his attorney at the time. (Tr. 57)

FINDINGS OF FACT

1. Respondent AMG Managing Partners LLC (“AMG”) is a collection agency. (Tr. 12, 99)
2. Respondents Michael Aronica and Michael Giangreco are co-owners of AMG. (Tr. 8, 62)
3. Complainant is female. (ALJ’s Exh. 1)
4. On or about April 1, 2013, Respondent AMG hired Complainant as an administrative assistant and payment processor. (Tr. 82, 98, 100)
5. Complainant’s job duties were to record the monies collected by the debt collectors in AMG’s computer system, send payment schedules to debtors, and to manage payroll. (Tr. 82, 98-99)
6. Respondent John Suppa worked for AMG as a consultant. (Tr.87)
7. On a daily to weekly basis, from the start of Complainant’s employment, Respondent Suppa yelled at Complainant and used vulgar language that included the words “Polish porn princess,” “fucking bitch,” “fucking dyke,” and “fucking cunt.” (Tr. 88-89, 101-02)
8. Complainant immediately informed Respondents Aronica and Giangreco about Respondent Suppa’s offensive language. (89-90)
9. Respondents Aronica and Giangreco replied by stating that Respondent Suppa was their consultant and Complainant would simply have to “put up with it because they weren’t going to get rid of the consultant.” (Tr. 90, 103-04)
10. On May 16, 2013, Respondent Suppa took a cell phone picture of Complainant and sent her a text that stated “you look hot today.” (Tr. 87; Complainant’s Exh. 1)

11. Respondent Suppa shared the picture with Respondents Aronica and Giangreco. (Tr. 105, 166; Complainant's Exhs.3, 4)

12. Respondent Aronica responded by text that Complainant's white dress was nice and that it looked great on her. (Tr. 105; Complainant's Exh.3)

13. Respondent Giangreco also responded by text and told Complainant that the dress looked pretty on her. (Tr. 106; Complainant's Exh. 4)

14. Respondents Aronica and Giangreco never took any action to stop Respondent Suppa's behavior. (Tr. 104-05, 161)

15. Nate (last name unknown) worked in the AMG office in information technology. (Tr. 86, 96, 148-49)

16. Nate's office stood alone, across a hallway, apart from Complainant's station. (Tr. 97)

17. Nate was in his office three times a week. (Tr. 96)

18. Complainant's job duties included regularly going to Nate's office to seek his computer assistance. (Tr. 91-94, 139-40, 153)

19. Kelley (last name unknown) was the AMG office manager. (Tr. 86)

20. In June 2013, Kelley separated from employment. (Tr. 94)

21. As soon as Kelley left, Nate began to make sexual comments to Complainant such as "get your sexy ass over here" and "don't I get a kiss" when she went to have a computer problem addressed. (Tr. 93-94, 151)

22. Nate regularly propositioned Complainant requesting sexual acts in exchange for fixing computer problems. Nate told Complainant that the speed with which he responded to a problem would depend how she responded to his advances. (Tr. 91, 94)

23. Complainant told Nate to stop but he continued with his offensive behavior. (Tr. 120, 130, 136)

24. In June 2013, on more than one occasion, Complainant informed Respondents Aronica and Giangreco of Nate's behavior because she wanted him to stop. (Tr. 90, 94, 130, 135, 161)

25. Complainant told Respondents Aronica and Giangreco that she was very uncomfortable being alone with Nate in the office because of what he would tell her. (Tr. 95)

26. Respondents Aronica and Giangreco told Complainant "not to take it personal," "that is how Nate is," and that was "part of Nate's personality." (Tr. 90, 95, 99)

27. Respondents Aronica and Giangreco informed Complainant that Nate's behavior was "just kind of something he does and not to worry." (Tr. 90, 100)

28. Respondents Aronica and Giangreco also told Complainant that Kelley had sex with Nate in his office. (Tr. 90, 100)

29. Mike Tenner was one of Respondents' debt collectors. (Tr. 108, 112)

30. On June 25, 2013, Tenner sent Complainant a text message that stated "come sit on my dick now." (Tr. 108, 111; Complainant's Exh. 2)

31. When Complainant brought Tenner's text to the attention of Respondents Aronica and Giangreco they responded by laughing. (Tr. 111, 161)

32. Complainant tried to look for other jobs while she worked for Respondents so she could leave the offending work environment. (Tr. 174)

33. Complainant tried to withstand the daily sexually harassing behavior as long as she could because she needed the job to provide for herself and her family. (Tr. 173)

34. However, by the end of each work day, Complainant became increasingly upset, leaving the office in tears. (Tr. 104, 112)

35. On July 15, 2015, Complainant could no longer tolerate the constant humiliation and left Respondents' employment. (Tr. 96, 100, 112)

36. Brian Karlis worked for Respondents as a debt collector. (Tr. 190)

37. Karlis and Complainant had been friends for nearly a decade. (Tr. 121-22)

38. It had been Karlis who informed Complainant about the job opening she had held with Respondents. (Tr. 84, 189)

39. Respondents called Karlis as a witness. At the time of the public hearing Karlis and Complainant had a falling out and were no longer friends. I do not credit Karlis testimony that Complainant never told him of any workplace harassment as Karlis eventually conceded under cross examination that Complainant complained to him about Nate. Complainant told Karlis that Nate was "really creeping her out" and that she did not "want to be left alone with him." (Tr. 232, 240, 244; Complainant's Exh. 5)

40. I do not credit Respondents' claim that Complainant caused the sexually harassing environment she complains of, based on her exchange of sexually laced texts, photographs, and comments that Complainant and Karlis had shared with each other. Complainant and Karlis welcomed those communications between each other. (Tr. 199- 200; Respondents' Exhs. 3, 4)

41. I do not credit Karlis' claim that that their communications were done in front of other employees. At the public hearing Karlis was vague, evasive, and confusing on this point. Karlis first testified that Complainant did not act inappropriately and then stated the opposite. (Tr. 200) Karlis claimed that others were present when Complainant allegedly made inappropriate comments but could not remember who was present or when the comments were made. (Tr. 202-04)

42. Karlis was also not credible when he testified that Complainant posed in front of others for sexually suggestive photographs he took with his cell phone. Karlis conceded that it was against Respondents' rules to use a cell phone in the office. Karlis admitted that he secretly took the pictures on his cell phone, he did not want others to see him take the pictures with his cellphone, he did not share the pictures with others, and printed them for first time during the Division's investigation into Complainant's allegations. (Tr. 213-14, 218, 220-22)

43. After Complainant left Respondent's employment she "couldn't sleep," "didn't want to get out of bed," and was "constantly upset." (Tr. 112-13)

44. Complainant's emotional state negatively impacted her relationship with her son as she did not want "to play with [her] son," "be a mom," as she would "just sit there," and "afraid to be alone with her son." (Tr. 112-13)

45. Complainant had worked a second job, on a part time basis, as a bartender at Tailgators. (Tr. 112, 166)

46. Complainant did not provide any details regarding her income and work schedule at Tailgators. (Tr. 112, 119-20, 159)

47. Two weeks after she left Respondents' employ, Complainant was fired from her bartending job because she was upset, cried while working, and the owners of the bar did not want her in that emotional state around customers. (Tr. 112, 119-20, 159)

48. At the public hearing, 23 months after Respondents constructively discharged Complainant, she was clearly upset and distraught as she testified about the events that had taken place. (Tr. 104)

49. During the period of July 2013 to October 2013, Complainant testified that she received medical treatment at Lakeshore Behavior Health (“Lakeshore”) center, three times a week. (Tr. 77, 113, 145)

50. Complainant’s medical treatment at Lakeshore was due to Respondents’ behavior towards her. (Tr. 77, 113, 145, 171)

51. Complainant received medical treatment at Lakeshore three times week, during 11 weeks, for a total of 33 visits, from mid-July 2013 to the beginning of October 2013. (Tr. 113, 118)

52. Complainant worked for Respondents eight hours a day, five days a week, and earned \$104 a day. Five days x \$104 = \$520 weekly. (Tr. 82-83, 115, 118)

53. On or about October 1, 2013, Complainant began working for a law firm at 14 dollars an hour. (Tr. 118-19)

54. During the 11 weeks she was unemployed, Complainant would have earned \$5,720 had she remained employed with Respondents. $\$520 \times 11 \text{ weeks} = \$5,720$. (Tr. 118-19)

55. I do not credit Complainant’s allegation that Respondents owed her back wages, based on a percentage of collection cases that she entered into the computer system, as well as for outstanding holiday pay. Complainant’s claim was vague, generalized, and lacking in detail. (Tr. 124-25)

OPINION AND DECISION

Sexual Harassment

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. N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.1(a).

To establish a prima facie case of sexual harassment, a complainant must prove (1) that she belongs to a protected group; (2) that she was the subject of unwelcome sexual harassment; (3) that the harassment was based on gender; (4) that the harassment affected a term, condition or privilege of employment; and (5) that the employer knew or should have known of the harassment and failed to take remedial action. *Vitale v. Rosina Food Products Inc.*, 283 A.D.2d 141, 142, 727 N.Y.S.2d 215, 217 (4th Dept. 2001). In addition, Complainant must show that the totality of the circumstances constitutes harassment in the mind of both the victim and a reasonable person. *Father Belle Community Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. to app. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant belongs to a protected group as she is a female. Complainant established she was subjected to an unwelcome sexually hostile work harassment. On a daily to weekly basis, over a period of three months, Respondent Suppa subjected Complainant to a barrage of sexually explicit vulgar language. On a weekly basis, over a period of a month, Nate subjected Complainant to unwelcome sexual advances. Complainant also received unwelcome sexual advances from Tenner, one of the debt collectors. The sexual harassment prevented Complainant from performing her work duties as demonstrated by her strong negative emotional

reaction to the offending behavior. Complainant left her employment because she could no longer tolerate the offending environment. Complainant met her burden of proof that she was subjected to a sexually hostile work environment.

Respondents' Liability

To prevail in her complaint against Respondent AMG, Complainant must show that it knew or should have known about the harassment and failed to take remedial action. *Pace v. Ogden Svces. Corp.*, 257 A.D. 2d 101, 103, 692 N.Y.S. 2d 220, 223 (3rd Dept. 1999). “[A]n employer cannot be held liable for an employee’s discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it.” *Medical Express Ambulance Corp. v. Kirkland*, 79 A.D. 3d 886, 887, 913 N.Y.S. 2d 296, 298 (2nd Dept. 2010), *lv. den.*, 17 N.Y. 3d 716, 934 N.Y.S. 2d 374 (2011), quoting *Matter of State Div. of Human Rights v. St. Elizabeth’s Hosp.*, 66 N.Y. 2d 684, 687, 496 N.Y.S. 2d 411, 412 (1985). “Only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct.” *Medical Express Ambulance Corp.* at 887-88, 913 N.Y.S. 2d at 298. On several occasions during Complainant’s employment, she informed the AMG owners, Respondents Aronica and Giangreco, about the offending behavior of Nate, Tenner, and Respondent Suppa. Respondents Aronica and Giangreco not only failed to take corrective action, they also condoned the sexually harassing behavior. As owners of Respondent AMG, Respondents Aronica and Giangreco are individually liable for the discriminatory actions that damaged Complainant as they condoned the harassment despite Complainant's direct appeal to them. *See Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 542, 483 N.Y.S.2d 659, 473 N.E.2d 11)

Respondents Aronica and Giangreco also argue that they are not liable for the actions of

Nate and Respondent Suppa because those individuals were not their employees. Nonetheless, even if Complainant was subjected to sexual harassment by a non-employee third party, Respondents Aronica and Giangreco are liable for the sexually hostile work environment created by Nate and Respondent Suppa. *See People of the State of New York v. Hamilton*, 125 A.D.2d 1000 (4th Dept. 1986).

Respondent Suppa argues that he was not individually liable as he was not Complainant's employer. However, Respondent Suppa is individually liable under the aider and abettor provisions of the Human Rights Law. Human Rights Law § 296.6 makes it an unlawful discriminatory practice "for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or attempt to do so." Under this section, liability against the employer is required to find an aider and abettor liable. Respondent Suppa aided and abetted Respondents AMG, Aronica, and Giangreco in subjecting Complainant to a sexually hostile working environment. Therefore, Respondent Suppa is individually liable for the sexually hostile working environment in which Complainant worked.

Constructive Discharge

In order to maintain a claim for constructive discharge, a complainant must demonstrate that respondent "deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *Morris v. Schroeder Capital*, 7 N.Y.3d 616, 621 (N.Y. 2006) quoting *Pena v. Brattleboro Retreat*, 702 F.2d 322, 325 (2d Cir. 1983). When a constructive discharge is found, an employee's resignation is treated as if the employer had actually terminated the employee. Complainant established that Respondents' unlawful discriminatory conduct was intentional and that such conduct created working conditions so intolerable that a reasonable person would have been compelled to resign. *Morris at 622*.

Complainant tried to withstand the daily sexually harassing behavior as long as she could because she needed the job to provide for herself and her family. However, Complainant increasingly found herself leaving the office upset, in tears. By July 15, 2013, Complainant could no longer tolerate the constant humiliation and left Respondents' employment.

Complainant established that Respondents' unlawful discriminatory conduct created working conditions so intolerable that a reasonable person would have been compelled to resign.

Lost Wage Damages

Complainant's lost wages are \$5,720 for the period of July 15, 2013 to October 1, 2013; the period of time it took Complainant to seek reemployment. Respondent is liable to Complainant for predetermination interest on the back pay award at a rate of nine percent, per annum, from August 23, 2013, a reasonable intermediate date between July 15, 2013 and October 1, 2103, through the date of the Commissioner's Final Order. *Aurecchione v. New York State Division of Human Rights*, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002). In addition, Respondents are liable to Complainant for interest on the back pay award at a rate of nine percent, per annum, from the date of the Commissioner's Final Order until payment is made.

Finally, Complainant did not prove that Respondents owe her additional monies for entering debt collection cases into Respondents' computer system or for holiday pay.

Accordingly, this particular claim for additional monies is dismissed.

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondent's violation of the Human Rights Law. The award of compensatory damages may be based solely on a complainant's testimony. "Mental injury may be proved by the complainant's own testimony, corroborated by referenced to the circumstances of the alleged misconduct." *New*

York City Transit Auth. V. N.Y. State Div. of Human Rights (Nash), N.Y. 2d 207, 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. Serv. 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 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Respondents' actions had a very strong, negative effect, on Complainant. Complainant withstood daily sexually harassing behavior for a period of three months because she needed the job to provide for herself and her family. However, Complainant regularly left the office upset, in tears. After Complainant left Respondents' employ she "couldn't sleep," "didn't want to get out of bed," and was "constantly upset." Complainant did not want to play with her son or "be a mom," as she would "just sit there," "afraid to be alone with her son." Complainant's emotional state caused her to lose her second job as a bartender. Complainant received medical treatment at Lakeshore Behavior Health, on approximately thirty-three occasions after her employment, for a period of nearly three months, in order to deal with the sexually harassing environment that Respondents subjected her. At the public hearing, 23 months after Respondent constructively discharged Complainant, she was clearly upset and distraught as she testified about the events that had taken place.

Accordingly, Complainant is entitled to \$65,000 for the pain and suffering she experienced for the period of April 2013 to June 2015, because of Respondents' discriminatory

actions. The award is reasonably related to Respondents' wrongdoings, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *See Gollel v. Village Plaza Family Restaurant, et.al.*, SDHR Case No. 7943080, November 14, 2006, *aff'd*, *N.Y. State Div. of Human Rights (Gollel) v. Village Plaza Family Restaurant, Inc.*, 59 A.D.3d 1038, 872 N.Y.S.2d 815 (4th Dept. 2009) (\$65,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences), *Tyler v. Ashish, et.al.*, SDHR 10124990, April 20, 2011, (\$65,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences).

Civil Fines and Penalties

A civil fine and penalty of \$15,000 is appropriate in this matter. *See Noe v. N.Y. State Div. of Human Rights (Martin), et.al.*, 101 A.D.3d 1756, 957 N.Y.S.2d 796 (4th Dept. 2012) (Commissioner's penalty of \$20,000 affirmed), *also see Johnston v. N.Y. State Div. of Human Rights, et.al.*, 100 A.D.3d 1354, 953 N.Y.S.2d 757 (4th Dept. 2012), *New York State Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 949 N.Y.S.2d 459 (2d Dept. 2012).

Human Rights Law § 297 (4)(c)(vi) permits the Division to assess civil fines and penalties, "in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious."

Furthermore, Human Rights Law § 297 (4)(e) requires that "any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article."

The additional factors that determine the appropriate amount of a civil fine and penalty are the goal of deterrence; the nature and circumstances of the violation; the degree of respondent's culpability; any relevant history of respondent's actions; respondent's financial resources; other matters as justice may require. *Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540, November 15, 2007, *aff'd*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009), 119-121 East 97th Street Corp, et. al., v. New York City Commission on Human Rights, et. al., 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept.1996).

The goal of deterrence, Respondents' degree of culpability, and the nature and circumstances of Respondents' violation warrant this penalty. Respondents' Aronica and Giangreco ignored Complainant's pleas for help in clear violation of the Human Rights Law. Respondents Aronica and Giangreco believed it was more important not to risk offending Nate or Respondent Suppa by correcting or stopping their sexually offending behavior. The civil fine serves as an inducement for Respondents to comply with the Human Rights Law and presents an example to the public that the Division vigorously enforces the Human Rights Law. There was no proof that Respondents were adjudged to have committed any previous similar violation of the Human Rights Law or incapable of paying any penalty.

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, their 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, their 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, Respondents, Michael Aronica, Michael Giangreco, and John Suppa, shall pay to Complainant, Brittany Fragale, the sum of \$5,720 as damages for economic loss. Interest shall accrue on this award at the rate of nine percent per annum, from August 23, 2013, a reasonable intermediate date between July 15, 2013 and October 1, 2013, until the date payment is actually made by Respondents.
2. Within sixty days of the date of the Commissioner's Final Order, Respondents, Michael Aronica, Michael Giangreco, and John Suppa, shall pay to Complainant, Brittany Fragale, the sum of \$65,000 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondents' 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 Respondents.

3. The payments shall be made by Respondents, Michael Aronica, Michael Giangreco, and John Suppa, in the form of certified checks, made payable to the order of, Brittany Fragale, and delivered by certified mail, return receipt requested, to Christopher D. Galasso, Esq., 17 Limestone Drive, Suite 2, Williamsville, New York 14221. A copy of the certified checks shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Within sixty days of the Commissioner's Final Order, Respondents, Michael Aronica, Michael Giangreco, and John Suppa, shall pay to the State of New York the sum of \$15,000 as a civil fine and penalty for their 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 Respondents.

5. The payment of the civil fine and penalty shall be made by Respondents, Michael Aronica, Michael Giangreco, and John Suppa, in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, at 65 Court Street, Buffalo, New York 14202.

6. Within sixty days of the Final Order, Respondents, Michael Aronica, Michael Giangreco, and John Suppa shall attend a training session in the prevention of unlawful discrimination in accordance with the Human Rights Law. Proof of the training session shall be provided to Caroline Downey, Esq., General Counsel, of the New York State Division of Human Rights, at 65 Court Street, Buffalo, New York 14202.

7. Respondents, Michael Aronica, Michael Giangreco, and John Suppa, shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: November 24, 2015
Buffalo, New York

A handwritten signature in cursive script that reads "Martin Erazo, Jr.".

Martin Erazo, Jr.
Administrative Law Judge