



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**PRECIOUS GAMBLE,**

Complainant,

v.

**ELAINE COOK,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10158524

**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 April 28, 2014, 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, ACTING 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: **MAY 30 2014**,  
Bronx, New York



HELEN DIANE FOSTER  
ACTING COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**PRECIOUS GAMBLE,**

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v.

**ELAINE COOK,**

Respondent.

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

Case No. **10158524**

**SUMMARY**

Respondent denied Complainant a rental unit because of her age, marital status, and familial status. Complainant was a 25-year-old single parent with a three-year-old child. Complainant is entitled to relief in the form of an award of \$8,000 in mental anguish damages and \$10,000 in punitive damages. Respondent is liable to the State of New York in the amount of \$10,000 in civil fines and penalties.

**PROCEEDINGS IN THE CASE**

On October 25, 2012, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On March 26, 2013, 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.

On April 17, 2013, Respondent elected to proceed with this matter in a court action as provided by § 297.9 of the Human Rights Law. (Complainant's Exhs. 1, 3)

On April 25, 2013, Robert Goldstein, Esq., Director of the Division's Prosecutions Unit, denied Respondent's request because the election was made more than twenty days after the probable cause determination. (Complainant's Exhs. 2, 4)

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

On October 7 and 10, 2013, Respondent made an adjournment request. Respondent did not provide any reason for the request. (ALJ's Exhs. 4, 5) On October 10, 2013, ALJ Erazo denied the adjournment on the grounds that Respondent's request was devoid of detail and, therefore, did not establish good cause for a non-appearance. Respondent did not respond to ALJ Erazo's invitation to provide more information. (ALJ's Exh. 6)

A public hearing session was held on November 18, 2013. Complainant appeared at the hearing. The Division was represented by Neil Zions, Esq., Senior Attorney. Respondent did not appear. Respondent failed to submit a verified answer to the complaint and, therefore, defaulted pursuant to 9 New York Code of Rules and Regulations ("N.Y.C.R.R.") § 465.11(e). Respondent also failed to appear at the public hearing to defend against the complaint. The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. § 465.12(b)3. (Tr. 16)

## FINDINGS OF FACT

### Parties

1. In April of 2012, Complainant was a 25-year-old single parent of a three-year-old child. (ALJ's Exhs. 1, 2; Tr. 17, 22)
2. Complainant was residing with her mother while she searched for a vacant apartment. (Tr. 29)
3. Elaine Cook ("Respondent") owns a two-apartment dwelling at 137 Wilkes Avenue, Buffalo, New York. (ALJ's Exh. 3; Tr. 21)
4. Respondent's apartments at 137 Wilkes Avenue were not owner-occupied. (Tr. 22-23; 66-67)
5. On April 18, 2012, Respondent listed a vacant apartment at 137 Wilkes Avenue, Buffalo, New York, with Belmont Housing Resources for WNY, Inc. ("Belmont"). (Complainant's Exh. 6; Tr. 50)
6. Section 8 housing vouchers are funded by the U.S. Department of Housing and Urban Development as part of its rental assistance program. (Complainant's Exh. 6; p.1; Tr. 26, 106)
7. Belmont only listed vacant apartments from owners willing to accept an applicant's Section 8 housing voucher. (Complainant's Exh. 6; p.1)
8. Respondent advertised the rental unit at \$550 monthly. (Complainant's Exhs. 6, 7, p.2; 10, p.16; Tr. 28)
9. Complainant's Section 8 housing voucher would have covered the full rent of \$550. (Tr. 26, 106)

10. On April 30, 2012, Complainant spoke with Respondent by telephone to inquire about the advertised rental unit at 137 Wilkes Avenue, Buffalo, New York. (Tr. 21)

11. During the April 30, 2012 conversation, Respondent asked Complainant who would live with her in the unit. (Tr. 22)

12. Complainant responded that she would occupy the unit with her minor daughter. (Tr. 22)

13. In response to Respondent's questions, Complainant also stated her age and the age of her child. (Tr. 22)

14. Complainant asked to view the apartment. (Tr. 22)

15. Respondent informed Complainant that the vacant unit was not suitable for a three-year-old child because it was an upper apartment. (Tr. 22-23)

16. Respondent told Complainant that the unit was "not ideal" for her, wished her good luck, and ended the telephone conversation. (Tr. 22-23)

17. Respondent continued to advertise an apartment vacancy, at 137 Wilkes Avenue, until August 8, 2012. (Complainant's Exh. 6; Tr. 45-46, 50-53)

18. Complainant was "upset" and "very angry" at Respondent's comments. (Tr. 26)

19. Complainant felt "shocked" at Respondent's remarks because recently she had been denied another rental because she had a child. (Tr. 30-31)

20. Respondent's remarks were also stressful because Complainant was concerned with the limited amount of time remaining before the expiration of her Section 8 housing voucher. (Tr. 26)

21. In addition, Respondent's remarks were particularly upsetting because Complainant's mother was in the process of selling her home so Complainant had the additional pressure of limited time to find an apartment. (Tr. 29-30)

22. At the November 18, 2013 public hearing, 19 months after Respondent denied her an apartment, Complainant testified, "I still feel the same way. My feelings haven't changed towards it. I still feel the same way." (Tr. 32)

23. On June 15, 2012, Complainant signed a lease for an apartment at 287 Davison Street, Buffalo, New York, prior to the expiration of her Section 8 housing voucher. (Tr. 26-27)

24. The Davison Street apartment was a \$545 monthly rental, two-bedroom upstairs unit, the same size as the unit advertised by Respondent. (Tr. 28)

25. Neither Respondent's unit nor the Davison Street unit included utilities. (Tr. 28)

#### H.O.M.E.

26. Housing Opportunities Made Equal, Inc., ("H.O.M.E.") is a non-profit, civil rights organization that was founded in 1963. H.O.M.E.'s mission is to eliminate housing discrimination through outreach and education. (Tr. 34-35)

27. On May 1, 2012, Complainant contacted H.O.M.E. because she felt Respondent unlawfully denied her an apartment. (Tr. 23, 36)

#### Kelly Whitman

28. Kelly Bobbitt, also known as Kelly Whitman ("Whitman"), is a H.O.M.E. fair housing tester. (Complainant's Exh. 7; Tr. 54-55, 71-73)

29. H.O.M.E. assigned Whitman to test the availability of Respondent's apartment at 137 Wilkes Avenue, posing as a married woman with no children. (Complainant's Exh. 7; Tr. 57-58, 75)

30. On June 12, 2012, Whitman spoke with Respondent by telephone and expressed her interest in the apartment at 137 Wilkes Avenue. (Complainant's Exh. 7, p.1)

31. Whitman informed Respondent that she was seeking an apartment for herself and her husband. (Tr. 83)

32. Respondent asked Whitman how long she had been married and Whitman replied, "three years." (Complainant's Exh. 7, p.2; Tr. 83)

33. Respondent asked Whitman if she had children or grandchildren. Whitman replied that she did not have children or grandchildren. (Complainant's Exh. 7, pp.2-3; Tr. 58, 83)

34. Respondent invited Whitman to view the apartment with Respondent's agent, Clemens (first name unknown). (Complainant's Exh. 7, p.3; Tr. 58)

35. Respondent informed Whitman that the rent was \$550 and the security deposit was \$600. (Tr. 84)

36. On July 16, 2012, Whitman met with Clemens to view the apartment. (Complainant's Exh. 7, pp.3-4; Tr. 76-77)

#### Three-Page "Rental/Credit Application"

37. During the July 16, 2012 meeting, Clemens gave Whitman a one-page handwritten instruction letter attached to a three-page rental application captioned "rental/credit application." (Complainant's Exhs. 7, 9; Tr. 58-60, 78-79)

38. The combination "rental/credit application" asks the prospective tenant: "date of birth," "social security number," "driver's license number," "number of adults," "number of children." (Complainant's Exh. 9)

Desiray Vincent

39. Desiray Vincent (“Vincent”) is a H.O.M.E. fair housing tester. (Complainant’s Exh. 8; Tr. 55, 86)

40. Vincent was assigned to test the apartment at 137 Wilkes Avenue location, posing as a single woman with a four-year-old child. (Complainant’s Exh. 8; Tr. 58, 89)

41. On June 4, 2012, Vincent spoke with Respondent by telephone and expressed her interest in the vacant apartment unit at 137 Wilkes Avenue location. (Complainant’s Exh. 8, p.1)

42. Respondent asked Vincent how many people would be living in the apartment. Vincent replied that she and her son would occupy the apartment. (Complainant’s Exh. 8, p.2)

43. Respondent asked Vincent for the age of her son. Vincent replied that her son was four years old. (Complainant’s Exh. 8, p.2; Tr. 96)

44. Respondent informed Vincent that she was unsure if the apartment was available and promised to contact Vincent during the week. (Complainant’s Exh. 8, p.2)

45. On June 7, 2012, Respondent spoke with Vincent and asked her if she was still interested in the apartment. Vincent indicated her continued interest in the apartment. (Complainant’s Exh. 8, p.2)

46. Respondent informed Vincent that she was concerned with age of the child. Respondent stated that she did not want Vincent’s child running around because there were both a chandelier and tenants in the downstairs apartment. (Complainant’s Exh. 8, p.2; Tr. 92-93, 97)

47. After Vincent persuaded Respondent that her child was well behaved, Respondent agreed to show her the apartment. (Complainant’s Exh. 8, p.2; Tr. 98-99)

48. On June 8, 2012, Respondent’s niece, Yolanda (last name unknown), met with Vincent to show her the apartment. (Complainant’s Exh. 8, pp.2-3, Tr. 98)

### 33-Page Rental Application

49. On behalf of Respondent, Yolanda gave Vincent a four-page typewritten instruction letter attached to a 33-page rental application. (Complainant's Exh. 10; Tr. 61, 100-01)

50. Yolanda asked Vincent to mail the completed 33-page rental application to Respondent in a self-addressed, pre-paid envelope. (Tr. 100-01)

51. Respondent's 33-page rental application asks prospective tenants to list separately the names and ages of children or grandchildren under the categories of "weekend custody," "holiday custody," or "babysitting" arrangement. (Complainant's Exh. 10, p.6)

52. Respondent's 33-page rental application requires the prospective tenant to again list, in a separate section, the names and ages of all children followed by the statement, "No baby carriages, toys, or other objects shall be allowed to stand in the halls or passageways." (Complainant's Exh. 10, p.19)

53. Respondent's 33-page rental application contains a section captioned: "Children Residing In Upper Apartment." This section proscribes a series of behaviors by children residing or visiting 137 Wilkes Avenue, including:

Children cannot "run, skip, hop, or jump in the upper apartment." Parents or guardians must "train the child to keep their hands and all markings off the walls...this may require parents and guardians to put plastic sheets on the walls..." (Complainant's Exh. 10, p.23)

54. Respondent's 33-page rental application contains a section captioned "rental/credit application" that contains the following questions:

"date of birth," "marital status:  single,  married since \_\_\_\_\_  divorced since \_\_\_\_\_", "drivers license," "proposed occupants: relationship \_\_\_\_\_, age \_\_\_\_\_" "child support/other credit owed." (Complainant's Exh. 10, pp.17-18)

55. Respondent's 33-page rental application also contains an extensive litany of screening criteria, admonitions, restrictions on the use of the property, and requirements of tenancy, not found in the three-page rental application given to the H.O.M.E. tester, Bobbitt. (Complainant's Exh. 10; Tr. 65) These additional requirements include, among many others:

disclosing if the prospective tenant owns or will have pets on the property (Complainant's Exh. 10; p. 5); identifying the names and addresses of the individuals assisting the prospective tenant moving into the property (Complainant's Exh. 10; p.5); providing a 60-day advance notice before vacating the property (Complainant's Exh. 10; p.7); signing a waiver for any claim of loss or damages to person or property for the tenant or any children under the age of 18 years of age (Complainant's Exh. 10; p. 29); prohibiting smoking on the property (Complainant's Exh. 10; p. 31); signing Respondent's policy on "Zero Tolerance for Criminal Activity" (Complainant's Exh. 10; p. 34); signing Respondent's policy regarding the installation of a satellite dish or antenna (Complainant's Exh. 10; p. 35); requiring prior Respondent approval for the installation of cable (Complainant's Exh. 10, p.8); requiring fees for replacement keys (Complainant's Exh. 10; p. 32); restrictions on the use of side and front doors (Complainant's Exh. 10; p.32, 33); restrictions on the use of common areas (Complainant's Exh. 10; p.9).

## **OPINION AND DECISION**

### **Disparate Treatment**

It shall be an unlawful discriminatory practice for "the owner...assignee, or managing agent of, or other person having the right to...rent...a housing accommodation...to discriminate against any person...because of ...age...marital status...familial status in the terms, conditions or privileges of rental...or in the furnishing of facilities or services in connection therewith."

Human Rights Law § 296.5(a)(2)

In order to establish a prima facie case of unlawful discrimination Complainant must demonstrate that: (1) she was a member of a protected class; (2) she was qualified to rent the facility; (3) she suffered an adverse housing action in the provision of services or facilities and

(4) the adverse housing action occurred under circumstances giving rise to an inference of unlawful discrimination. *Dunleavy v. Hilton Hall Apartments Co., LLC, et.al.*, 14 A.D.3d 479, 789 N.Y.S.2d 164 (2nd Dept. 2005).

If Complainant establishes a prima facie case of housing discrimination, the burden shifts to Respondent to produce evidence that the adverse housing decision resulted from a legitimate non-discriminatory reason. If Respondent articulates a legitimate non-discriminatory reason for the adverse housing action, the burden again shifts to Complainant. Complainant must show that a discriminatory reason more likely motivated Respondent or that Respondent's tendered explanation was unworthy of credence. Under the Human Rights Law, the burden of proving discrimination always remains with Complainant. *Hirschmann v. Hassapoyannes*, 811 N.Y.S.2d 870 (N.Y. Sup. Ct. 2005).

Complainant established a prima facie case of housing discrimination on the basis of age, marital status, and familial status.

First, Complainant was a member of several protected classes. Complainant was a 25-year-old single parent of a three-year-old child. Second, Complainant demonstrated that she was qualified to rent Respondent's apartment. Complainant had a Section 8 housing voucher that would have paid the \$550 rent for the apartment. Third, Complainant suffered an adverse housing action when Respondent refused to rent her an apartment. Fourth, Complainant demonstrated that Respondent's actions gave rise to an inference of unlawful discrimination. Respondent clearly asked Complainant to state her age, the age of her child, and who was going to live with her. Respondent specifically articulated concerns about renting to Complainant because she had a young child. Respondent's rental applications made inquiries into the age, marital status, and familial status, of all prospective tenants.

Respondent did not establish that it acted on legitimate, non-discriminatory reasons for refusing Complainant an apartment, since Respondent failed to appear at the Division's public hearing. The uncontroverted proof established that Respondent sought to vary the terms, conditions and privileges of rental based on the age, marital status, and familial status of prospective tenants.

### Rental Applications

It shall be an unlawful discriminatory practice for "the owner...assignee, or managing agent of, or other person having the right to...rent...a housing accommodation...to make any inquiry in connection with the prospective...rental...which expresses, directly or indirectly, any limitation, specification or discrimination as to ...age...marital status...familial status, or any intent to make any such limitation specification or discrimination." Human Rights Law

§ 296.5(a)(3)

Respondent had two rental applications: a three-page rental application for families without children and a 33-page rental application for families with children. Both of Respondent's rental applications are unlawful.

First, Respondent's written inquiries into age, marital status, and familial status clearly expressed an unlawful limitation and specification as to protected bases. Respondent's written inquiries were not merely informal questions, asked in passing during an interview, outside a context of unlawful discrimination. *Matter of Delta Airlines v. New York State Division of Human Rights*, 91 N.Y.2d 65, 72 (1997). Respondent had a formal written process of gathering unlawful information in order to make rental decisions. Second, Respondent's captioning of its rental applications as "credit applications" does not change its unlawful nature. There is no evidence in this record that Respondent has ever used the information in the credit application to

check for credit worthiness. Most significantly, there is absolutely no evidence to support that Respondent makes rental offers before considering the information gathered from the unlawful inquiries into a protected class status. Finally, Respondent has demonstrated a particular dislike for prospective tenants with young children. Placing unlawful specifications on rental units, such as considering the ages of children, violates the familial status provisions of Human Rights Law. *N.Y. State Div. of Human Rights (Moynihan)*, 115 A.D.3d 897, 789 N.Y.S.2d 367 (4th Dept. 2005) A fair reading of the extensive 33-page rental application shows that a family with children would find it a discouraging and daunting task to complete. Furthermore, the 33-page rental application set significantly more stringent standards for tenancy. Respondent plainly made the terms and conditions of tenancy inhospitable for families with children. Respondent unlawfully considered her prejudices about noise, safety, and cleanliness of children in determining if she would rent to families with children.

#### Mental Anguish Damages

The Human Rights Law attempts to restore a complainant to a situation comparable to the one she would have occupied, had no unlawful discrimination occurred. Complainant is entitled to recover compensatory damages caused by Respondent's violation of the Human Rights Law. 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 actions had a negative effect on Complainant. Complainant felt "shocked" because she recently had experienced a denial of another rental because she had a child. Complainant was "upset" and "very angry" at Respondent's conduct. Respondent's remarks were also stressful because Complainant was concerned with the limited amount of time remaining before the expiration of her Section 8 housing voucher. Furthermore, Respondent's remarks were upsetting because Complainant's mother was in the process of selling her home so Complainant had the additional pressure of limited time to find an apartment. At the November 18, 2013 public hearing, 19 months after Respondent denied her an apartment, Complainant testified, "I still feel the same way. My feelings haven't changed towards it. I still feel the same way."

Accordingly, Complainant is entitled to \$8,000 for the pain and suffering she experienced because of Respondent's discriminatory actions. The award is reasonably related to the wrongdoing, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *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), (Court upheld Commissioner's award for a comparable emotional injury suffered by a mother with children who was denied a rental.)

### Punitive Damages

Respondent's callous act, of summarily denying Complainant a rental unit when she learned she had a young child, was particularly outrageous. Respondent told Complainant that the rental unit was "not ideal" for her. Section 297 (4)(c)(iv) of the Human Rights law permits the Division to award punitive damages up to \$10,000 in cases of housing discrimination. The Division is vested with an "extremely strong statutory policy of eliminating discrimination." *Van Cleef Realty, Inc. v. State Div. of Human Rights*, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2d Dept. 1995). Accordingly, a punitive award of \$10,000 for Complainant, will serve to effectuate the purposes of the Human Rights Law. *State Division of Human Rights v. Gruzdaitis et. al.*, 265 A.D.2d 904; 696 N.Y.S.2d 330 (4th Dept. 1999)

### Economic Damages

Complainant did not sustain economic losses. On April 30, 2012, Complainant was living with her mother when she sought the apartment with Respondent. Respondent's rental was \$550 monthly. Complainant continued to live with her mother for an additional six weeks when she found a comparable apartment on June 15, 2012 at \$545 monthly.

### Civil Fines and Penalties

Section 297 (4)(c)(vi) of the Human Rights law 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."

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.”

A penalty of \$10,000 is appropriate in this matter. *Matter of Noe v Kirkland*, 107 A.D.3d 1756 (4th Dept. 2012) (Court affirmed Commissioner’s \$20,000 civil fine where a complainant was denied a rental property).

There are several factors that determine if civil fines and penalties are appropriate: 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. *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; the nature and circumstances of Respondent’s violation; and Respondent’s degree of culpability warrant a penalty. Respondent’s actions in denying Complainant a rental unit were deliberate. Respondent denied Complainant a rental because she was a 25-year-old single parent of a three-year-old child. Respondent was particularly distressed about having a young child living in the upstairs apartment. Respondent also discouraged the H.O.M.E. tester, posing as a single parent with a young child, from living in the upstairs apartment. After Respondent’s unsuccessful attempt in dissuading this H.O.M.E. tester from applying, Respondent gave her a 33-page rental application to complete. As stated earlier, a fair reading of the extensive 33-page rental application shows that any person would find it a daunting task to complete. The 33-page rental application also sets more stringent terms and conditions of tenancy as compared with the three-page rental application. Respondent’s actions were outrageous. Respondent appears to punish prospective tenants with young children for

daring to apply for a rental. The Human Rights Law allows families with children an equal opportunity to obtain housing accommodations without the burdens of prejudice.

Finally, both Respondent's rental applications contained unlawful inquiries. Respondent considered the age, marital status, and familial status of prospective tenants before considering them as suitable for a rental unit. Respondent's use of the word "credit" located in the rental applications was merely a sham to gain additional information that cannot be asked in considering the suitability of a prospective tenant. As indicated above, there is absolutely no evidence in this record to indicate that Respondent makes rental offers before considering the "credit" information gathered from the unlawful inquiries into the various protected class status.

There was no proof that Respondent was 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 that Respondent, her agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any tenants or rental applicants, in the terms and conditions of housing; and it is further

ORDERED, that Respondent, her 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 shall pay Complainant the gross sum of \$8,000 as compensatory damages for mental anguish and

humiliation she 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. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay Complainant the gross sum of \$10,000 as punitive damages for 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.

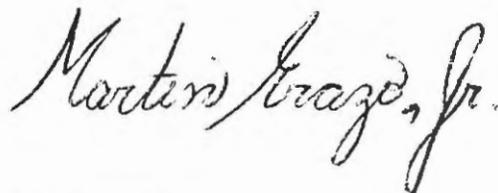
3. The payments shall be made by Respondent in the form of certified checks, made payable to the order of Precious Gamble, and delivered by certified mail, return receipt requested, to her address at 25 Linda Drive, Apt. 6., Cheektowaga, New York, 14225. A copy of the certified check shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay to the New York State, the sum of \$10,000 as a civil fine and penalty for Respondent's unlawful discrimination. 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.

5. The payment of the civil fine and penalty shall be made by Respondent, 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.

6. Within sixty days of the Final Order, Respondent shall remove all unlawful inquiries from the rental applications. Respondent shall only have one rental application, for all prospective tenants, that conforms to the New York State Human Rights Law.
7. Within sixty days of the Final Order, Respondent shall attend training in the prevention of unlawful discrimination in accordance with the Human Rights Law. A copy of attendance at a training, on the Human Rights Law, 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.
8. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: April 28, 2014  
Buffalo, New York

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

Martin Erazo, Jr.  
Administrative Law Judge