



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

KATHLEEN HAGUE,

Complainant,

v.

READERS DIRECT, L.L.C., GARVIN HEGWOOD,
ROBERT COATES,

Respondents.

NOTICE AND
FINAL ORDER

Case No. 10153925

Federal Charge No. 16GB202165

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 October 31, 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, 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: **DEC 30 2014**
Bronx, New York



HELEN DIANE FOSTER
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

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DIVISION OF HUMAN RIGHTS**

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**READERS DIRECT, L.L.C., GARVIN
HEGWOOD, ROBERT COATES,**

Respondents.

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

Case No. **10153925**

SUMMARY

Garvin Hegwood ("Respondent G. Hegwood") sexually harassed Complainant. Robert Coates ("Respondent Coates") retaliated against Complainant, by terminating her employment, when she complained of the sexual harassment. Respondents are liable to Complainant for \$11,179.82 in lost wages and \$90,000 for pain and suffering. Complainant did not establish that she was harassed on the basis on age or race. Respondents are liable to the State of New York in the amount of \$75,000 in civil fines and penalties.

PROCEEDINGS IN THE CASE

On March 19, 2012, 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").

On June 26, 2012, the Division's Buffalo Regional Office amended the complaint to personally name Respondent G. Hegwood. (ALJ Exhibit 2)

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 ALJ of the Division.

On May 13, 2013, a public hearing session was held. Complainant appeared at the hearing. The Division was represented by Neil L. Zions, Esq., Senior Attorney. Respondent G. Hegwood appeared on behalf of himself and Respondent Readers Direct, L.L.C. ("Respondent Agency"), as an owner. Respondent G. Hegwood stated that Respondent Coates was aware of the public hearing. (Tr. 17) Respondent G. Hegwood asked for an adjournment in order to obtain counsel. ALJ Erazo granted Respondents' adjournment request, set the new hearing date for June 24, 2013, and reminded Respondents that they had not submitted a verified answer. ALJ Erazo also adjourned the matter in order to allow Attorney Zions to amend the complaint to individually name co-owner Respondent Coates because he allegedly retaliated against Complainant by terminating her employment. (Tr. 13; Complainant Exhibit 1)

On May 24, 2013, Attorney Zions amended the complaint to individually name co-owner Respondent Coates. (Complainant Exhibit 1)

On May 30, 2013, the Division's Calendar Unit issued notices of the public hearing scheduled for June 24, 2013. (ALJ Exhibit 3)

On June 24, 2013, a public hearing session was held. Complainant appeared at the hearing. The Division was represented by Rosalind Polanowski, Esq., Senior Attorney. Respondents did not appear. No counsel ever appeared on behalf of Respondents. (Tr. 26-36) Attorney Polanowski also submitted proof that the correct legal name for Respondent Agency is not "Readers Direct" but "Readers Direct, L.L.C." (Complainant Exhibit 2) The caption was amended to correctly name Respondent Agency as Readers Direct, L.L.C. (Tr. 33-34)

On June 25, 2013, Respondent G. Hegwood called and left a voicemail message on ALJ Erazo's phone indicating that he could not attend the public hearing. No further information was provided. (ALJ Exhibit 4, p.6)

Respondents 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). Respondents 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.

On December 4, 2013, ALJ Erazo issued a Recommended Order finding Respondents liable for sexual harassment and retaliation. (ALJ Exhibit 4)

On February 26, 2014, the Division's Order Preparation Unit ("OPU") received a notice of appearance from Respondents' attorney Richard Capote, Esq. ("Capote"), from the law firm of Grashow Long. (ALJ Exhibit 8, p.20)

On March 19, 2014, Capote filed Objections with OPU to ALJ Erazo's December 4, 2013 Recommended Order. (ALJ Exhibit 5)

On June 13, 2014, the Division's Commissioner reopened the hearing record because Respondents alleged in their objections that the failure to appear at the June 24, 2013 public hearing session resulted from a misunderstanding of instructions given by the presiding ALJ. The Commissioner directed this matter "returned to the Hearing Unit for a determination as to whether Respondents have demonstrated a reasonable excuse for their failure to appear...Should it be determined that good cause exists, the record shall be reopened and scheduled for a continuation of the hearing on the merits of the complaint." (ALJ Exhibit 6)

On June 24, 2014, the law firm of Grashow Long withdrew its representation of Respondents in all proceedings before the Division. Grashow Long also confirmed Respondents' last known addresses. (ALJ Exhibits 7; 8, p.21)

On July 2, 2014, the Division's Calendar Unit issued a hearing letter to the parties for public hearing dates July 16 and 17, 2014, in order to determine good cause. (ALJ Exhibit 9)

On July 9, 2014, the Division's Calendar Unit issued a formal hearing notice to the parties for public hearing dates July 16 and 17, 2014, in order to determine good cause. (ALJ Exhibit 10) The hearing letter and formal notice served on Respondents were sent to their last known addresses as identified by their former attorney. (ALJ Exhibits 7; 8, p.21; 9, 10) The United States Postal Service ("USPS") returned the July 9, 2014 hearing notice and July 2, 2014 hearing letter sent to Respondent Coates at 300 Delaware Ave., Suite 101, Buffalo, NY 14202. (ALJ Exhibits 12, 13) However, Respondent Coates received the hearing notice and hearing letter sent to 1625 Buffalo Avenue, Niagara Falls, New York 14303 as they were not returned by USPS. (ALJ Exhibits 9, 10)

On July 16, 2014, Complainant and Division Counsel Zions appeared at the public hearing session. Respondents did not appear. (Tr. 166) Respondents did not request an

adjournment or communicate a reason for their non-appearance. Accordingly, Respondents remain in default since they failed to establish good cause for their non-appearance at the June 24, 2013 public hearing. (Tr. 165-66, 173)

FINDINGS OF FACT

Parties

1. Complainant is a 24-year-old white female. (Tr. 41)
2. Complainant's date of birth is January 7, 1989. (Tr. 41)
3. Respondent G. Hegwood, Respondent Coates, and Michael Hegwood ("M. Hegwood"), are the owners of Respondent Agency, a magazine subscription sales company. (Tr. 41)
4. On December 15, 2011, Respondents G. Hegwood, Coates, and M. Hegwood interviewed and hired Complainant for a position as a "seller." (Tr. 41-43)
5. A seller's job duties were to obtain magazine subscriptions by canvassing prospective purchasers by telephone. (Tr. 46)
6. Respondent G. Hegwood was Complainant's immediate supervisor. (Tr. 44-45, 61-62, 72)

Sexual Harassment

7. Complainant worked in a room along with 19 other sellers. (Tr. 43, 45, 47, 49-53)
8. All 19 sellers were in their 20s. Of the 19 sellers, seven were African American males, seven were African-American females, three were white males, and two were white females. (Tr. 50-53)
9. All of the sellers sat at desks that faced a wall. (Tr. 48)

10. On January 16, 2012, Respondent G. Hegwood praised Complainant on her good work while rubbing her shoulders as she sat at her desk. Complainant shrugged her shoulders to remove his hands from her and moved away from him. Respondent G. Hegwood laughed and walked away. (Tr. 54)

11. In January 2012, there were two additional occasions where Respondent G. Hegwood praised Complainant on her good work while rubbing her shoulders. In each situation, Complainant shrugged her shoulders to remove his hands from her and moved away from him. (Tr. 55-58)

12. On Wednesday, January 25, 2012, for the fourth time, Respondent G. Hegwood again praised Complainant on her good work while rubbing her shoulders.(Tr. 56-57) Respondent G. Hegwood stated, “keep up the good work...[you’ll] do very well in the company.” (Tr. 58)

13. However, on this occasion, when Complainant again demonstrated her discomfort by moving away from Respondent G. Hegwood’s hands, he sent her home early before she had finished her sales routine for the day. (Tr. 56-57)

14. On January 26 and 27, 2012, when Complainant returned to work, Respondent G. Hegwood did not make eye contact with her and ignored her. (Tr. 61)

15. In addition, Respondent G. Hegwood refused to acknowledge or assist Complainant with phone calls when she raised her hand, a standard daily business practice in those instances when a supervisor is required to conclude a sale. (Tr. 61-62)

16. Instead, Respondent G. Hegwood responded to requests of assistance from other sellers. (Tr. 63) Respondent G. Hegwood ignored Complainant and eventually sent M. Hegwood, who was not her supervisor. (Tr. 63-64) Respondent G. Hegwood’s actions made Complainant feel “awkward.” (Tr. 64)

17. On Monday, January 30, 2012, Respondent G. Hegwood returned to his pattern of behaving in a friendly manner and assisting Complainant with her work. However, Respondent G. Hegwood also resumed the offensive touching of Complainant's shoulders. (Tr. 64-65)

18. In addition, Respondent G. Hegwood commenced making sexual commentary. Respondent G. Hegwood whispered in Complainant's ear, while she was on the phone, that she "was sexy" and that he would "like to sleep with" her. (Tr. 65)

19. Complainant immediately responded "no" by shaking her head, since she could not speak to him while on the telephone. (Tr. 65) Respondent G. Hegwood walked away. (Tr. 66)

20. Complainant felt "disgusted" every time Respondent G. Hegwood touched her. (Tr. 104) Complainant was not able to focus on her work. (Tr. 66)

21. On Tuesday, January 31, 2012, Respondent G. Hegwood sent Complainant home during the day with no explanation. (Tr. 67)

22. On Wednesday, February 1, 2012, when Complainant returned to work, Respondent G. Hegwood sat at the edge of her desk while she was on the phone. (Tr. 67)

23. Respondent G. Hegwood then stood behind Complainant, tugged on her ponytail, told her that she had "good pulling hair from behind," implying a sexual act, chuckled, and walked away. (Tr. 67-68)

24. In February 2012, Respondent G. Hegwood's wife began working for Respondents as a seller for a period lasting approximately two weeks. (Tr. 68-70)

25. During this two-week period of time, Respondent G. Hegwood stopped his sexually offensive behavior towards Complainant. (Tr. 68-70)

26. However, in February 2012, Respondent G. Hegwood resumed his sexually offensive behavior once his wife no longer worked there. (Tr. 71-72)

27. On Friday, February 17, 2012, Respondent G. Hegwood offered Complainant the opportunity to fill-in for a seller who was expected to be absent for a week and perform a higher paying job of "verification calls." (Tr. 72-73)

28. The verification position paid an additional \$2 an hour. (Tr. 72)

29. Verification calls confirmed financial data from buyers among other information. These calls were conducted in a separate room with space for only one seller as background noise needed to be minimized due to the calls being recorded. (Tr. 72, 74- 75)

30. When the door to the verification room was shut, that meant that the seller was recording and no one should walk-in. Otherwise, the verification door remained open. (Tr. 75)

31. On Tuesday, February 21, 2013, Respondent G. Hegwood walked into the verification room, when the door was closed, while Complainant was on the telephone and recording. (Tr. 76)

32. When Complainant finished the call, Respondent G. Hegwood shut the door behind him and asked her, "how would you feel being my mistress." (Tr. 76-77)

33. Complainant responded, "you have to be kidding, you're married." Respondent G. Hegwood retorted, "that's what a mistress is." (Tr. 77)

34. Respondent G. Hegwood pressed his sexual advances by placing \$20 on Complainant's desk, and stated, "there was more where that came from," and indicated that if she needed money he could help her. Respondent G. Hegwood then left the room. (Tr. 77)

35. On Tuesday, February 21, 2012, after the end of the workday, Respondent G. Hegwood sent Complainant telephone text communications, offered to pay money for sexual intercourse, and promised to pay a minimum \$500 "tip" for each sexual act. (Tr. 79, 82-83; Complainant's Exhibit 3)

36. On that same evening of Tuesday, February 21, 2013, Respondent G. Hegwood persisted in his text requests when Complainant did not respond. Respondent G. Hegwood sent follow-up texts that stated, "I'm not that bad am I?" and included "smiley faces." (Tr. 79)

37. Complainant told Respondent G. Hegwood to stop in a reply text. (Tr. 80)

38. Documentary evidence of Respondent G. Hegwood's texts was received at the public hearing. (Tr. 80-82; Complainant's Exhibit 3)

39. Complainant felt very "uncomfortable" and "disturbed" that Respondent G. Hegwood retrieved her cellular phone number from her personnel records in order to text her. (Tr. 101-02)

40. Complainant had concerns about her personal safety and her safety at home because Respondent G. Hegwood had demonstrated that he did not respect any boundaries. (Tr. 103)

41. Complainant had observed that, at some point, Respondent G. Hegwood had moved down the street from her residence. (Tr. 114)

42. In reaction to Respondent G. Hegwood's proximity to her residence, Complainant broke her lease and moved to another residence. (Tr. 114-15)

43. Complainant incurred \$450 in penalties for breaking her lease and \$30 in out of pocket expenses to move. (Tr. 114-15)

44. While recounting these events, Complainant was extremely upset, found it difficult to speak, requiring a recess. (Tr. 82)

45. On Wednesday, February 22, 2012, Respondent G. Hegwood removed Complainant from the temporary verification assignment with no explanation and returned her to normal seller duties at the lower pay rate. (Tr. 78, 83)

46. Respondent G. Hegwood again refused to assist Complainant with phone calls when she needed a supervisor to conclude a sale. (Tr. 87)

47. Respondent G. Hegwood also placed a radio next to her workstation, at a high volume, where Complainant could not hear the customers. (Tr. 86-87)

48. When Complainant attempted to lower the volume, Respondent G. Hegwood reprimanded her. Respondent G. Hegwood stated that he “couldn’t hear it” and she could “go home” if she did not like it. (Tr. 87)

49. Another seller that was also bothered by the radio, lowered the volume in front of Respondent G. Hegwood, and was not reprimanded. (Tr. 87)

50. Also on Wednesday, February 22, 2012, Respondent G. Hegwood proceeded to stand over Complainant, while she was on the phone with customers, and made derisive comments about her conversations. (Tr. 88)

51. At one point, on Wednesday, February 22, 2012, Respondent G. Hegwood unplugged Complainant’s telephone while she spoke with a customer, and told her to go home. (Tr. 88)

52. Respondent G. Hegwood’s behavior caused Complainant to lose income again. (Tr. 84)

53. Complainant was extremely “upset” in reaction to Respondent G. Hegwood’s behavior. (Tr. 89)

54. On Wednesday, February 22, 2012, when Complainant arrived home, she vomited several times due to the anxiety cause by Respondent G. Hegwood’s behavior. (Tr. 89)

55. On Thursday, February 23, 2012, Complainant arrived ten minutes late to work and found Respondents’ doors locked. (Tr. 85-86)

56. Complainant expected someone to open Respondents’ doors once she informed them of her arrival. (Tr. 86)

57. Respondent G. Hegwood answered the telephone when Complainant called. (Tr. 86)

58. Respondent G. Hegwood directed Complainant to go home instead of letting her in. (Tr. 86)

59. However, Respondent G. Hegwood allowed another seller who arrived a few minutes later than Complainant to enter the workplace. (Tr. 86)

60. On Thursday, February 23, 2012, when Complainant returned home after being locked out from work, she again vomited several times due to the anxiety cause by Respondent G. Hegwood's behavior. (Tr. 89)

61. On Friday, February 24, 2012, Complainant went to work only to collect her paycheck because she "didn't feel like dealing with" Respondent G. Hegwood. (Tr. 89)

62. On Friday, February 24, 2012, when Complainant arrived home, she received additional text messages from Respondent G. Hegwood that indicated: what was Complainant's problem; that his interaction with her was playful, normal office interaction; that if she was offended by his actions that she could find new employment. (Tr. 90; Complainant's Exhibit 3)

Retaliation

63. On Monday February 27, 2012, when Complainant arrived at work, Respondent G. Hegwood immediately directed her to speak with co-owner, Respondent Coates. (Tr. 90-91)

64. Respondent Coates asked her to explain why her "sales were down." Respondent Coates also asked her to explain why her attitude had changed because she appeared as if she did not want to be there. (Tr. 91)

65. Complainant informed Respondent Coates of Respondent G. Hegwood's sexual advances, his offer of money for sex, and the sexually offending text messages. (Tr. 91, 121-22)

66. Respondent Coates erupted in laughter in response to Complainant's explanation. (Tr. 91)

67. However, Respondent Coates stopped laughing when Complainant indicated that she was going to take legal action. (Tr. 91-92)

68. Respondent Coates immediately responded “we should cut ties,” terminated Complainant’s employment, and ordered her to leave the building. (Tr. 92)

69. Complainant appeared teary-eyed and struggled to keep her composure as she testified about her dismissal. (Tr. 92)

Mental Anguish

70. At the June 24, 2013 public hearing, 16 months after Complainant’s February 27, 2012 dismissal, she appeared extremely upset at several points while she conveyed her workplace experiences. (Tr. 82, 92-93)

71. Complainant’s demeanor at the public hearing was consistent with her claims that she felt “upset” and “stressed” while working for Respondents. (Tr. 92)

72. Complainant testified that she was “never spoken to in an inappropriate manner” by managers in other jobs. (Tr. 94, 96)

73. Respondent G. Hegwood’s sexual advances robbed her of her “self esteem,” she felt it was “unfair” how he focused on her, she was “angry” because he interfered with her work and her ability to earn an income. (Tr. 96-97)

74. Complainant felt “trapped” and “desperate” as she needed the job to pay her rent, place food on the table, pay her car insurance and other expenses. (Tr. 93-94, 100)

75. Respondent G. Hegwood made Complainant feel physically “sick” and “powerless.” She experienced loss of sleep as she “anticipated” having to work with him the next day. (Tr. 97-99)

76. Respondents had no “sexual harassment policy...signs, anything, no HR department, no one other than them.” Complainant always felt “nervous” while working for Respondents because she could not approach any of the three owners, all of whom were family and friends. (Tr. 97)

77. Complainant testified that when Respondents terminated her employment she “cried,” she felt “depressed,” she “lost sleep,” and felt she “was left with nothing.” (Tr. 94-95)

78. Complainant avoided future employment in small office settings. (Tr. 109)

79. Complainant’s experience with Respondents made her distrust males in positions of authority. (Tr. 104-05)

Physical Pain

80. Complainant underwent knee surgery prior to her employment with Respondents. Complainant chose to work for Respondents because it was a sedentary job. Complainant experiences physical pain with prolonged standing. (Tr. 107)

81. Complainant’s physical pain was diminished by having secured a sedentary job with Respondents. (Tr. 107-11)

82. After her termination, Complainant was forced to consider jobs that required her to stand for eight hours a day or longer. (Tr. 107, 109)

83. Complainant’s next jobs, after her termination, were TOPS supermarkets as a cashier (Tr. 134-35); Bon-Ton department store as a salesperson (Tr. 139-40); Ann Taylor department store as a salesperson (Tr. 141); and TGIF restaurant as a server (Tr. 141-43).

84. In those jobs, Complainant experienced swelling of her knees as well as constant shooting pain in her legs and back. (Tr. 110) These jobs involved standing for long periods of time. (Tr. 109-11)

85. As of the June 24, 2013 public hearing, Complainant remains employed as a server at the TGIF restaurant while continuing to experience discomfort and pain. (Tr. 112)

86. Since Complainant's termination, she has had three doctor's visits because of the pain she experiences while working in a standing posture. (Tr. 118-19)

87. Complainant was prescribed Ibuprofen 800. (Tr. 117)

88. Complainant has purchased, for her knee and back pain, since her termination, seven pairs of gel inserts for the pain, at a cost of \$20 per pair. (Tr. 117)

Lost Wages with Respondents

89. I find that from January 16, 2012 to February 27, 2012, Respondent G. Hegwood prevented Complainant from earning an income in an amount totaling \$439.20: (\$291.20 for five days of lost wages; \$48 in lost wages for removal from the verification position; \$100 in bonuses). (Tr. 120-26)

90. Complainant worked a 40-hour week with Respondents, at \$7.25 an hour for a total of \$58.24 a day. (Tr. 120-21) Complainant would have earned a total of \$291.20 for the three days Respondent G. Hegwood sent her home on January 25, 2012, January 31, 2012, and February 22, 2012; for February 23, 2012, the day Respondents locked her out of the office; and for February 24, 2012, when Complainant chose not to work in reaction to the sexually hostile work environment. ($5 \times \$58.24 = \291.20) (Tr. 127-28, 130)

91. Respondents assigned Complainant, on a temporary basis, to a verification position for the days of Monday, February 20, 2012 to Friday, February 24, 2012, at a rate of an additional \$2 per hour. (Tr. 72) Complainant would have earned an additional \$48 for the three days Wednesday, February 22, 2012, to Friday, February 24, 2012, when Respondent G. Hegwood removed her from the verification position ($\$16 \text{ per day} \times \text{three days} = \48). (Tr. 128-29)

92. Respondents also offered sellers the opportunity to earn bonus income. Sellers that met Respondents' first-level production goal could earn \$100 daily. Sellers that met Respondents' second-level production goal could earn an additional \$100 daily. (Tr. 125)

93. Complainant established that, on one occasion, she met Respondents' first-level production goal, during her first month of employment, from December 15, 2011, when she was hired, to January 15, 2012, when Respondent G. Hegwood had not begun to sexually harass her. (Tr. 120-26, 136-37)

94. I find that Complainant would have also earned an additional \$100 in bonuses by continuing to meet Respondents' first-level production goal, during her second month of employment with Respondents: January 16, 2012, when the sexual harassment began, to February 27, 2012, when Complainant was dismissed.

Lost Wages

95. I find that from February 27, 2012, when Complainant was dismissed, to June 24, 2013, the date of the public hearing, she would have earned the following income with Respondents: $484 \text{ workdays} \times \$58.24 \text{ daily earnings} = \$28,188.16$.

96. I also find that Complainant would have earned an additional \$1600 in bonuses (\$100 per month) during the 16 months, from February 27, 2012, when Complainant was dismissed, to June 24, 2013, the date of the public hearing. \$1600 is consistent with Complainant's proof that she had earned \$100 in bonuses during the month that Respondent G. Hegwood did not unlawfully interfere with her work. (Tr. 120-26, 136-37)

97. From March 11, 2012 to October 28, 2012 Complainant received 3,870.25 in NYS unemployment benefits. During this time period the weekly amount of unemployment varied based on Complainant's work hours. (Tr. 133; Complainant's Exhibit 5)

98. From August 4, 2012 to August 24, 2012, Complainant worked at TOPS supermarket and earned \$877.69. (Tr. 134-35; Complainant's Exhibit 5)

99. From November 1, 2012 to January 1, 2013, Complainant worked a seasonal job at the Bon-Ton at \$8.50 an hour x 8 hours a day = \$68 daily; 62 workdays x \$68 = \$4,216. (Tr. 139-40)

100. From January 2, 2013 to February 1, 2013, Complainant worked at Ann Taylor department store at \$7.45 an hour x 8 hours a day = \$59.60 daily; 31 workdays x \$59.60 = \$1,847.60. (Tr. 141)

101. From February 2, 2013, to June 24, 2013, the date of the public hearing, Complainant worked at TGIF restaurant, at \$7.25 an hour base pay x 8 hours a day = \$58 daily; 142 workdays x \$58 = \$8,236. (Tr. 141-43)

102. Complainant's net lost wages, during the period of February 27, 2012 to June 24, 2013 are \$29,788.16 - \$19,047.54 from earnings and unemployment during the same time period = \$10,740.62 net lost wages.

OPINION AND DECISION

Hostile Work Environment

Under N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a), it is an unlawful discriminatory practice for an employer "because of the ... age, race, sex ... of any individual to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

In order to sustain a claim of harassment on the basis of age, race, or sex, Complainant must demonstrate that she was subjected to a work environment permeated with discriminatory

intimidation, ridicule and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. Complainant must subjectively view the conduct as unwelcome that creates a hostile environment. In addition, a reasonable person must objectively view the conduct as severe or pervasive enough to create an abusive environment. *Father Belle Community Center v. New York State Division of Human Rights*, 221 A.D.2d 44, 642 N.Y.S.2d 739 (4th Dept., 1996), *leave to appeal denied*, 89 N.Y.2d 809, 716 N.Y.S.2d 533 (1997). When assessing claims of hostile environment and its pervasiveness, the ultimate decision depends on the totality of the circumstances. *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 175 Misc.2d 795, 669 N.Y.S.2d 122 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D. 269, 682 N.Y.S.2d 167 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919, 713 N.E.2d 418 (1999), *leave to appeal denied*, 94 N.Y.2d 753 722 N.E.2d 507 (1999).

Complainant worked as a seller. Respondents sold magazine subscriptions by telephone. Respondent G. Hegwood was a co-owner and Complainant's immediate supervisor. Complainant's income was based on an hourly wage and bonuses, if she reached Respondents' sales goals.

At the public hearing, Complainant's proof did not establish that Respondents subjected her to a hostile work environment because of age or race. However, Complainant described offensive conduct that was sufficiently severe or pervasive to sustain her claim of harassment because of her gender. Respondent G. Hegwood subjected Complainant to an outrageous, offensive, sexually charged work environment during the time-period of January 16, 2012 to February 27, 2012. Respondent G. Hegwood's actions altered Complainant's employment conditions and created an abusive working environment.

Respondent G. Hegwood engaged in an unrelenting pattern of offensive sexual behavior on a weekly, and at times, daily basis. Respondent G. Hegwood's actions included rubbing Complainant's shoulders; whispering sexual comments into her ear while she worked on the phone; asking her to engage in various sexual acts while she worked on the phone; pulling on her ponytail while she worked on the phone; indicating that her hair was good for sex; offering her money for sex; and sending her sexually offensive phone text messages. Complainant rejected Respondent G. Hegwood's sexual advances. In response to each rejection, Respondent G. Hegwood escalated his sexual advances and his punishments for the rejections. Respondent G. Hegwood refused to perform his supervisory role by ignoring Complainant's requests for assistance with sales calls; limited her ability to earn income by sending her home early; locked her out of Respondents' offices; pulled her telephone line from the wall while she was making a sale; placed a radio, at a loud volume, next to her desk, while she tried to make phone sales; and asked her to leave the job if she did not like his sexual advances. Finally, on February 27, 2012, Respondent G. Hegwood directed Complainant to the office of co-owner Respondent Coates, incredibly, to address her workplace attitude.

The more Complainant protested Respondent G. Hegwood's sexual advances, the more emboldened he became. Respondent G. Hegwood made it clear that he wanted Complainant to submit to his will and punished her by impairing her ability to earn income when she did not comply with his sexual directives.

Retaliation

It is an unlawful discriminatory practice to retaliate against a person who has opposed any practices forbidden under the Human Rights Law or who has otherwise complained about discrimination. Human Rights Law § 296.7. To prove a prima facie case of retaliation,

Complainant must establish that she engaged in protected activity, that Respondents were aware she engaged in such activity, that she suffered an adverse employment action, and that there was a causal connection between the protected activity and the adverse employment action. *Pace v. Ogden Services Corp.*, 257 A.D. 2d 101, 104, 692 N.Y.S. 2d 220, 223-24 (3d Dept. 1999).

Complainant established a prima facie complaint of retaliation. Complainant engaged in protected activity on February 27, 2012 when she informed co-owner Respondent Coates of Respondent G. Hegwood's offensive sexual activity. On February 27, 2012, Complainant suffered an adverse employment action when Respondent Coates terminated her employment. Finally, there was a causal connection between the protected activity and the adverse employment action. Respondent Coates terminated Complainant's employment when she informed him that she was going to take legal action in response to Respondent G. Hegwood's sexually offending behavior.

Respondents did not establish that it acted on legitimate, non-discriminatory reasons, for dismissing Complainant since they failed to appear at the Division's June 24, 2013 public hearing.

Liability

Readers Direct, L.L.C., is strictly liable for the hostile work environment created by its owners, Respondent G. Hegwood and Respondent Coates. *Faragher v. Boca Raton*, 524 U.S. 775, 118 S.Ct. 2275 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 752, 118 S. Ct. 2257 (1988). In addition, Respondent G. Hegwood and Respondent Coates are individually liable, as owners, for his own unlawful discriminatory conduct. *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 473 N.E.3d 11, 493 N.Y.S. 659 (1984).

Lost Wage Damages

Respondents owe Complainant total lost wages in the amount of \$11,179.82.

Complainant established that she lost the opportunity to earn \$439.20, while she worked for Respondents, during the period of January 16, 2012 to February 27, 2012. Complainant also established that she would have earned with Respondents \$29,788.16 from February 27, 2012 to June 24, 2012, the date of the public hearing. $\$439.20 + \$29,788.16 = \$30,227.20$. Complainant mitigated her losses by seeking and securing employment. $\$30,227.20 - \$19,047.54$ (from earnings and unemployment during the same time period) = \$11,179.82 net lost wages.

Complainant's claims of additional earnings from bonus income are simply too speculative based on her own proof at the public hearing. Speculative awards are highly disfavored and often "inappropriate." *Hancock v. City of New York*, 272 A.D.2d 80, 707 N.Y.S.2d 832 (1st Dep't. 2000).

Respondents are also liable to Complainant for predetermination interest on the back pay award at a rate of nine percent, per annum, from October 5, 2012, a reasonable intermediate date between January 16, 2012, when lost earnings caused by the sexual harassment commenced, and June 24, 2013, the date of the public hearing, 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.

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondents' 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).

Respondents' G. Hegwood and Coates actions had a markedly negative effect on Complainant. From January 16, 2012 to February 27, 2012, Respondent G. Hegwood's comments about Complainant's body, and his touching her body, made her feel disgusted. Complainant had an extremely strong, nauseating, physical reaction to the harassment. Respondent G. Hegwood made her feel physically ill to the point where she vomited several times. Respondent G. Hegwood made Complainant feel physically "sick" and "powerless." Complainant experienced loss of sleep as she "anticipated" having to work with Respondent G.

Hegwood the next day. Complainant testified that Respondent G. Hegwood's sexual advances robbed her of her self esteem, she felt it was "unfair" how he targeted her, she was angry because he interfered with her work and her ability to earn an income. Complainant felt "trapped" and "desperate" as she needed the job to pay her rent, place food on the table, pay her car insurance and other expenses. Complainant also became increasingly afraid for her personal safety as Respondent G. Hegwood became bolder and increased his physical aggression in response to her rejections of his sexual advances. Respondent G. Hegwood pulled on her hair, placed a radio next to her at full volume, locked her out of the office, and unplugged the phone line from the wall as she spoke with a customer. In addition, Respondent Coates personally contributed to and condoned the conduct that caused Complainant's mental anguish. When Complainant informed Respondent Coates of the sexual harassment, he laughed and then terminated her employment. Complainant's experience with Respondents G. Hegwood and Coates made her distrust males in positions of authority.

Complainant's demeanor at the public hearing supports her claim that she currently remains emotionally impacted. At the public hearing, 16 months after Complainant's dismissal, Complainant appeared extremely upset at several points during the public hearing while she conveyed her workplace experiences. Complainant was visibly shaken when she testified how Respondent G. Hegwood abused her. Complainant was distraught and flustered requiring a recess at various times.

Finally, Respondents' unlawful dismissal of Complainant exacerbated her physical pain. Complainant underwent knee surgery prior to her employment with Respondents. Complainant chose to work for Respondents because it was a sedentary job. After her termination, Complainant was forced to accept jobs that required her to stand for eight hours a day or longer. Complainant

accepted jobs, after her termination, which involved standing for long periods of time such as cashier, salesperson, and server. In those jobs, Complainant experienced swelling of her knees, and constant shooting pain in her legs and back. As of the June 24, 2013 public hearing, Complainant remains employed as a server, in a restaurant, although experiencing discomfort and pain. Since Complainant's termination, she has had three doctor's visits because of pain experienced from working in a standing posture.

Given Respondents G. Hegwood's and Coates' conduct, and the degree and duration of Complainant's suffering, an award of \$90,000 for emotional and physical distress is appropriate and would effectuate the purposes of the Human Rights Law in making Complainant whole. Of the \$90,000, \$10,000 reflects the physical pain experienced by Complainant while standing. The \$10,000 portion of the award is made with the awareness that other factors contributed to Complainant's physical pain outside of Respondents' discriminatory actions since Complainant suffered from the physical injury prior to her employment. However, the proof established that after sustaining the injury, Complainant's physical pain diminished by having secured a sedentary job with Respondents. Respondents' discriminatory conduct exacerbated her physical suffering. *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, in 2001, with the exception of the fear for personal safety and physical pain present in this matter. The owner's sexual harassment included verbal harassment and physical touching; Court upheld Commissioner's award), *Tyler v. Ashish, et.al.*, SDHR 10124990 (April 20, 2011) (\$65,500 award based on similar facts to the present case where a female employee suffered comparable

pain and suffering, in 2007, with the exception of the fear for personal safety and physical pain present in this matter).

Civil Fines and Penalties

A civil fine and penalty of \$75,000 is appropriate in this matter. Human Rights Law § 297 (4)(c)(vi) directs 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.”

The proof established that Respondents’ actions easily met the statutory thresholds of willful, wanton, and malicious conduct. Respondents G. Hegwood and Coates acted with deliberate indifference of protected rights; acted in a manner considered outrageous in a civil society; and acted with the purpose of harming and causing injury to another by interfering with Complainant’s rights protected by the Human Rights Law. 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 Respondents’ culpability; any relevant history of Respondents’ actions; Respondents’ 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 a penalty.

Respondent G. Hegwood's egregious and repulsive behavior cannot be permitted in any workplace in New York State. Respondent G. Hegwood treated Complainant as his personal property and the workplace as a personal playground. Respondent Coates condoned Respondent G. Hegwood's behavior when he fired the Complainant for complaining about the revolting sexual harassment. Instead of helping Complainant, Respondent Coates further victimized her. Respondent Coates permitted a highly sexualized work environment where Complainant was expected to comply with Respondent G. Hegwood's sexual whims in exchange for earning a living. Respondent G. Hegwood interfered with, and caused a reduction in, Complainant's income when she did not submit to his sexual advances. Respondent G. Hegwood's aggression increased as Complainant resisted. As stated, Respondent G. Hegwood sent Complainant home early, locked her out of the office, unplugged the phone line from the wall as she spoke with customers, and placed a radio at a loud volume next to her desk. Complainant could not earn an income if she was not at work, if she could not meet Respondents' bonus goals, or if she could not concentrate on her work. As a result, Complainant was sent a clear message: non-compliance to sexual advances has consequences. Complainant's resistance to humiliation was met with more humiliation. Incredibly, although Respondent Coates became aware of the oppressive workplace conditions under which Complainant labored, he questioned Complainant about her poor attitude and lack of enthusiasm.

In addition to Respondents' unlawful behavior towards Complainant, Respondents evaded the Division's lawful review of their actions by intentionally not participating in the Division's hearing process.

There was no proof that Respondents were adjudged to have committed any previous similar violation of the Human Rights Law or are 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 Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, shall pay to Complainant the sum of \$11,179.82 as damages for back pay. Interest shall accrue on this award at the rate of nine percent per annum, from October 5, 2012, a reasonable intermediate date between January 16, 2012 and June 24, 2013, until the date payment is actually made by Respondents.
2. Within sixty days of the date of the Commissioner's Final Order, Respondents Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, shall pay to

Complainant the sum of \$90,000 as compensatory damages for mental anguish, humiliation, and pain, 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 Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, in the form of a certified check, to the order of Kathleen Hague and delivered by certified mail, return receipt requested, to her address 1975 Military Road, Niagara Falls, New York 14304. 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, Respondents Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, shall pay to the State of New York the sum of \$75,000 as a civil fine and penalty for their violations 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.

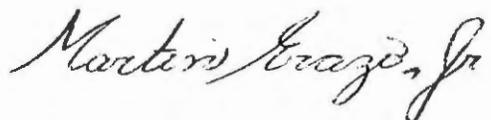
5. The payment of the civil fine and penalty shall be made by Respondents Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, in the form of a certified check, to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Within sixty days of the Final Order, Respondents Readers Direct., L.L.C., Garvin Hegwood, and Robert Coates, jointly and severally, shall establish a policy regarding the prevention of unlawful discrimination. This policy shall include clear reporting mechanism for

all employees in the event of discriminatory behavior or treatment. In addition, Garvin Hegwood, individually, and Robert Coates, individually, shall attend a training program in the prevention of unlawful discrimination in accordance with the Human Rights Law. All Respondents' employees shall also attend a training program in the prevention of unlawful discrimination. A copy of the policy, the reporting mechanism, 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.

7. Respondents Readers Direct, L.L.C., Garvin Hegwood, individually, and Robert Coates, individually, shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: October 31, 2014
Buffalo, New York



Martin Erazo, Jr.
Administrative Law Judge