Division of
Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of **DARELL HARLOW,** Complainant, v. **BLUE STAR TRANSPORTATION OF CNY, INC., GSN TRANSPORTATION, GURNAKE SINGH, OWNER,** Respondents.	**NOTICE AND FINAL ORDER** Case No. 10179057

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 June 22, 2017, by Michael T. Groben, 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:

- Although Rasheeka Dennis is Complainant's non-supervisory co-worker and

Complainant did not report her harassing comments to Singh, Respondents can still be held liable for the hostile work environment created by such comments. *See Mykytyn v. Hannaford Bros. Co.*, 141 A.D.3d 1153 (4th Dept. 2016) ("To establish that an employer was negligent in the context of a claim of hostile work environment, a plaintiff 'must demonstrate that [his] employer failed to provide a reasonable avenue for complaint' or that 'it knew, or in the exercise of reasonable care should have known, about the harassment yet failed to take appropriate remedial action.'" (quoting *Duch v. Jakubek,* 588 F.3d 757, 762 (2d Cir. 2009)). Here, because Singh was the owner of the company and was himself harassing Complainant, Complainant had nobody to whom to complain.

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, <u>within sixty (60) days after service of this Order</u>. 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. <u>Please do not file the original Notice or Petition with the Division</u>.

ADOPTED, ISSUED, AND ORDERED.

DATED: SEP 21 2017
Bronx, New York

HELEN DIANE FOSTER
COMMISSIONER

Division of
Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of **DARELL HARLOW,** Complainant, v. **BLUE STAR TRANSPORTATION OF CNY, INC., GSN TRANSPORTATION, GURNAKE SINGH, OWNER,** Respondents.	**RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER** Case No. **10179057**

SUMMARY

Complainant alleges that Respondents unlawfully discriminated against him in employment due to disability and terminated his employment in retaliation for Complainant's opposing said discrimination. Complainant further alleges that when he was rehired, Respondents continued to discriminate against him due to disability by harassing Complainant and again terminating his employment. The allegations against Respondent Blue Star Transportation of CNY, Inc., are dismissed. Charges against Respondents GSN Transportation and Gurnake Singh are sustained. Damages are awarded, and a civil fine and penalty is assessed.

PROCEEDINGS IN THE CASE

On December 21, 2015, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent Blue Star Taxi Dispatch Svc., Inc., with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

On March 4, 2016, the complaint was amended to substitute "Blue Star Transportation of CNY, Inc., Gurnake Singh, Owner," as Respondents.

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 Michael T. Groben, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on January 30 and 31, 2017.

Complainant and Respondents appeared at the hearing. The Division was represented by Senior Attorney Alyssa Talanker, Esq. Respondents were represented by Respondent Gurnake Singh.

On the first day of the public hearing, ALJ Groben amended the complaint to add GSN Transportation as a Respondent. ALJ Groben then offered Respondents an opportunity to adjourn the case for additional case preparation. Respondents declined, and the hearing proceeded. (Tr. 207-09)

By letter dated February 7, 2017, the Division attorney requested permission to file a post-hearing brief. By letter dated February 14, 2017, ALJ Groben granted permission for the parties to file post-hearing briefs. The Division and Respondents timely filed post-hearing briefs.

FINDINGS OF FACT

1. Complainant suffers from mental and emotional disorders. He was diagnosed with anxiety and depression at Syracuse Behavioral Health Center in 2006, and was diagnosed with schizophrenia and bipolar disorder at Jamesville Correctional Facility in 2013. (Tr. 13)

2. Complainant had knee surgery in 2010, and still suffers some decreased use of the knee. (Tr. 14)

3. On November 9, 2013, Complainant was hired as a driver by Respondent GSN Transportation ("GSN"), a taxi company owned by Respondent Gurnake Singh ("Singh"). GSN's office (the "Office") is located at 456 East Brighton Avenue in Syracuse, New York. (Tr. 11, 19-20, 111, 131-32, 134, 161, 417-18, 420; Respondents' Exhibit 6)

4. Singh owns and operates a number of taxi service-related companies in Syracuse. These corporations, including GSN and Respondent Blue Star Transportation of CNY, Inc., conduct their operations at the Office, under the name of "Blue Star Taxi," or variations thereof. (Tr. 90-93, 111, 127, 140, 217, 432-33; Respondent's Exhibit 1 and 5)

5. Singh is the president of Respondents Blue Star Transportation of CNY, Inc., and GSN. (Tr. 4, 10-11, 209)

6. At the time he was hired, Complainant believed that his employer was "Blue Star Taxi" or "Blue Star Transportation." (Tr. 12, 90-93, 134, 140)

7. When Complainant was first hired, he did not possess a Syracuse city taxi cab driver license, and so was restricted to driving a "livery vehicle" for Respondents. Complainant subsequently applied for and received his Syracuse city taxi cab driver license. (Tr. 109-13, 420-22; Respondent's Exhibit 2)

8. The application instructions for a Syracuse city taxi driver license state that the applicant "must be of sound physical and mental condition and not suffering from any infirmity of body or mind which might render him unfit for the safe operation of the licensed vehicle." (Tr. 428-31; Respondents' Exhibit 3)

9. Complainant's mental and emotional problems did not cause difficulties in operating a taxi. (Tr. 156-57)

10. When Complainant was hired, he received and signed for a copy of Respondents' employee handbook. (Tr. 127, 418-20; Respondents' Exhibit 5)

11. The employee handbook requires that employees treat customers with respect. (Tr. 350-51; Respondents' Exhibit 5)

12. Complainant worked the 6 p.m. to 6 a.m. shift. (Tr. 12)

13. Brandi Hill ("Hill") has been a dispatcher for one of Singh's transportation companies, Blue Star Taxi, also known as GN Advance, since October 2015. (Tr. 76, 172-73, 273, 276, 303)

14. Rasheeka Dennis (also referenced in the transcript as "Sheeka") was employed as a dispatcher by Respondents until about September, 2015. (Tr. 25, 29, 170, 393, 462) She did not testify at the public hearing.

15. Melissa Watson ("Watson") has been an overnight dispatcher for GSN since 2012. Watson works the late night shift, from10 p.m. to 6 a.m. (Tr. 42, 370)

16. Valerie Delee ("Delee") has been employed by an entity she described as "Blue Star Taxi" for approximately 10 years. She is the manager and head dispatcher for the Office, reporting directly to Singh. (Tr. 16-18, 215-17, 250)

17. Respondents' dispatchers work at the Office. Their responsibilities include taking telephone calls from customers and entering the customer's telephone number, pickup location

and destination, and other information into Respondent's computer dispatch system. (Tr. 19-20, 273-74, 370-71)

18. Cindy Sibley ("Sibley") has been a driver for an entity she described as "Blue Star Taxi GSN Transportation" since 2008. (Tr. 54, 328-29)

19. Respondents' drivers have access to the information entered into the computer system via a computer terminal in each vehicle. The information for a particular customer is automatically sent to the driver assigned to that call. (Tr. 274, 338, 370)

20. The duties of Respondents' drivers include picking up the keys to their vehicle at the Office, logging into the computer system, and then transporting customers. (Tr. 329)

21. Singh requires that Respondents' drivers advise him whether they are on any prescription drugs, and provide documentation of the prescription. Singh also asks employees whether or not they have any mental disabilities. (Tr. 230-31, 239-41, 350, 361-64, 420-21)

22. Complainant takes the medications Risperdal and Trazodone to treat his mental and emotional disorders. (Tr. 13-14)

23. Complainant's job performance was inadequate, and he had had poor relations with his fellow workers and customers. (Tr. 221-22, 280-82, 335-36, 340, 352-53, 371-74, 377-78)

24. By August 2014, Complainant had missed a number of days at work due to depression, and he became concerned that his employment might be terminated. (Tr. 15)

25. Complainant brought his Risperdal and Trazodone medication bottles to work and showed them to Singh and Delee. He also advised them of his mental and emotional disorders. (Tr. 14-18, 106-08)

26. After Complainant disclosed his condition, when Complainant reported to work at the Office, Singh would frequently say, "Did you take your medication today?" On these occasions, other employees were present. (Tr. 19-22, 30)

27. On other occasions, Singh would call Complainant a "crazy motherfucker" or "crazy," in front of other employees. (Tr. 20-22)

28. On at least one occasion, Complainant complained to Singh about these remarks, saying that he did not like to be called "crazy" and did not like to have his medication mentioned in front of other people. Singh's response was to tell Complainant to "get back to work." (Tr. 22-23)

29. Delee was also in the habit of asking Complainant whether he had taken his medication, in front of others in the Office. In December 2014 or January 2015, Complainant complained to her regarding this practice. In response, Delee stated, "Nobody cares." (Tr. 28-30, 33-34) Complainant did not complain to Singh about this treatment.

30. Rasheeka Dennis made remarks to Complainant about him being "crazy" during January or February 2015. (Tr. 29-32, 36-37) Complainant did not complain to Singh about this treatment.

31. Steve Outley ("Outley") worked as a driver for Blue Star Transportation from December 28, 2014 to May 2015. He is a cousin of Complainant. (Tr. 189-90, 199)

32. Outley generally worked the 6 a.m. to 6 p.m. shift, and would occasionally encounter Complainant at the Office as Complainant was starting his own shift. (Tr. 189-90, 192)

33. On two occasions, when Complainant entered the Office to begin his shift, Outley heard Singh ask him, "Did you take your medicine?" Tr. 192-93, 198-99, 204)

34. Four to five drivers and two dispatchers were present in the Office at that time. (Tr. 192-93)

35. When Complainant asked Singh what he meant by that question, Singh's response was to shrug his shoulder and laugh. (Tr. 193-94)

36. Outley observed that Complainant was "uptight," "upset," and "had an attitude" as a result of these comments. (Tr. 193, 204) Outley appeared forthright and accurate in his testimony. I found him to be a credible witness.

37. Singh continued to inquire regarding Complainant's medication and call him "crazy" on a frequent basis until February 2015. (Tr. 35)

38. Singh's comments "bothered" Complainant. (Tr. 22)

39. In February 2015, Complainant argued with Rasheeka Dennis over the radio, and Complainant returned to the Office to confront her. The next day, Delee suspended Complainant. (Tr. 40-47, 472)

40. Delee testified that she did not have the authority to suspend Complainant, however she claimed that she did not "recall" if Complainant was suspended in February 2015. Delee also did not recall how many times Complainant had been employed by Respondents. (Tr. 242-45, 250-52) Delee's testimony was vague, contradictory, and not credible.

41. Singh claimed in testimony that Complainant was terminated in 2014, rather than 2015, but admitted that he did not know the date that Complainant's employment was terminated. (Tr. 453-54)

42. Complainant was suspended for a short period, because of his poor work performance and relations with customers and his fellow workers. His employment was terminated in February 2015. (Tr. 34-35, 39-40, 46-49, 191, 389, 394, 424-25, 455-56, 461-63)

Complainant Is Rehired

43. At Sibley's request, Singh re-hired Complainant to work as a driver for GSN on or about August 11, 2015. (Tr. 49-51, 54, 136-37, 341-42, 427, 433-34; Respondents' Exhibits 7 and 8)

44. Complainant worked the 6 a.m. to 6 p.m. shift. (Tr. 55)

45. When Complainant was rehired, Singh advised Complainant that he would have to improve his job performance. For several weeks, Complainant's performance was much improved. However, Singh again began to receive complaints regarding Complainant's job performance, and his conflicts with fellow employees and customers. (Tr. 224-25, 232, 244, 300, 342-44, 352, 426-27)

46. Complainant acknowledged at the public hearing that he had problems with other drivers and with customers. (Tr. 150, 157-58)

47. Singh continued to ask Complainant whether he had taken his "medications today" and refer to him as a "crazy motherfucker" in front of other employees at the Office. (Tr. 56-57)

48. When Complainant protested, Singh ignored him, telling Complainant, "Get your ass to work." (Tr. 57)

49. Singh continued to make these remarks from the time Complainant was re-hired until he was terminated for the second time. (Tr. 57-58)

50. Complainant was angered by these comments; he felt depressed, angry and worthless, and "down on" himself "all the time." (Tr. 84-85)

51. During this period, Complainant and another driver working a different shift who he knew as "Driver 17" drove the same vehicle. Driver 17 stated to Singh in Complainant's

presence that he did not want "that crazy motherfucker" (referring to Complainant) driving the vehicle. (Tr. 26-28, 36-38)

52. When Complainant protested Driver 17's comments, Singh's response was to tell him to "Get back to work." Singh did not take action to resolve the problem, and Driver 17's remarks continued. (Tr. 26-27, 38)

53. Edwin Huppman ("Huppman") was employed as a driver for an entity he described as "Blue Star Taxi" from September 2013 to August 2016. (Tr. 165-66, 169, 175, 179)

54. Huppman generally worked the 6 p.m. to 6 a.m. shift, changing to a later shift sometimes after August 2015. While working the 6 p.m. to 6 a.m. shift, he occasionally saw Complainant at the Office. (Tr. 165-68, 183-84)

55. In or about August and September 2015, Huppman was present at the Office on two separate occasions when Singh asked Complainant, "Have you taken your meds today?" (Tr. 166-69, 175, 182)

56. On the occasion in August 2015, approximately three to four other drivers and two dispatchers were present. (Tr. 166-67, 169)

57. Huppman observed that after Singh asked his question, "all the other people, dispatchers" were chuckling and laughing. (Tr. 168)

58. Huppman observed that Complainant "wasn't pleased" and appeared "upset" by Singh's remarks. (Tr. 169)

59. On two occasions during approximately the same time period, Huppman also observed Delee say to Complainant, "You taking your medication today?" and, "You're not crazy or anything today, are you?" (Tr. 169)

60. Singh was not present in the Office on these two occasions. Approximately two to three other persons were present, including drivers and another dispatcher. (Tr. 170)

61. Huppman observed that Complainant appeared to be "upset." (Tr. 170)

62. At the public hearing, Huppman candidly acknowledged Complainant's poor work record and his difficult relationships with fellow employees and customers. Complainant argued with his fellow employees and customers. (Tr. 170-71, 176-77) I found Huppman to be a credible witness.

63. Delee continued to ask Complainant whether he had taken his medications, in front of fellow employees. Complainant protested this treatment to Delee, to no avail. (Tr. 58-59) Complainant did not inform Singh of Delee's remarks.

64. On or about November 28, 2015, Complainant was transporting passengers in his vehicle when he was involved in a serious accident. (Tr. 64-66, 438)

65. Complainant sustained injuries to his knee, back, and neck, and his vehicle was a total loss. (Tr. 66-67, 78-81, 153, 313, 438)

66. After taking a few days off due to his injuries, Complainant returned to work on the evening of December 2, 2015. (Tr. 68-72)

67. Complainant's wrecked vehicle was stored in the parking lot of the Office. Upon arriving, Complainant looked in the car for his GPS, a bottle of liquor, and other property that he had left in the vehicle. These items were not in the vehicle. (Tr. 71, 73, 75, 438-39)

68. Respondents' drivers are not permitted to discuss personal business over the radio. (Tr. 346-47)

69. Complainant then was given a vehicle to drive and he left the Office. Complainant then inquired over the radio whether anyone knew what had happened to his GPS, liquor bottle, and

other property. When Delee advised him that personal information should not be broadcast on the radio system, Complainant drove back to the Office. (Tr. 75-76, 223-24, 228-29, 252-54, 259, 295-99, 314, 444-46)

70. When Complainant returned to the Office, he confronted Singh and asked him for the forms necessary to apply for Workers' Compensation benefits for his injuries in the November 28, 2015 accident. Singh refused to do so, and told Complainant that his employment was terminated. (Tr. 76-77, 259-60, 303-05, 312-13, 450-51)

71. Singh also refused Complainant's request for a termination letter. (Tr. 77-78)

72. Complainant's employment was terminated because of his radio call regarding his GPS and liquor bottle, his poor work performance, and his poor relationships with customers and co-workers. (Tr. 56, 62, 65, 77, 143, 231-33, 260, 324, 391-92, 427-28, 438, 464-65)

73. Complainant was unable to secure Workers' Compensation benefits initially, because GSN had no Workers' Compensation policy. (Tr. 81-84, 446-47; Complainant's Exhibit 1)

74. When Delee was asked at the public hearing whether her paychecks were issued by Blue Star Taxi, Delee denied knowledge, stating that "I never really look at 'em." *(sic)* (Tr. 116) Delee's claim that she worked for approximately ten years without knowing who paid her wages defies logic and reason, and is not credible.

75. Sibley denied that she ever heard Singh mistreat Complainant, or make any reference to Complainant regarding medications or any disability. (Tr. 333, 335-36, 344, 351-52)

76. Sibley worked a shift of at least 12 hours, starting at 8:30 a.m. She was not present in the Office at the same time as Complainant began or ended his own shift during either the first period of Complainant's employment, or the second. (Tr. 331, 358-59, 362)

77. Hill also denied having any knowledge witnessing any mistreatment of Complainant by Singh. However, Hill did not establish that she would necessarily have been present on the occasions when Complainant, Huppman, and Outley alleged that mistreatment occurred. In addition, Hill was unable to recall such basic information as the year in which particular incidents occurred. (Tr. 276-77, 286-87, 305) Hill was not a credible witness.

78. Hill also denied any knowledge that Complainant had any mental disability. However, she conceded on cross-examination that "I could tell maybe" that Complainant was mentally ill and that Complainant "did not act rational." (Tr. 279-80, 300)

79. Watson also denied that she had any knowledge of Complainant's disability or that she ever heard Singh make reference to Complainant's medications. However, Watson did not work the same shift as Complainant, and would not necessarily have been present for any incidents of discrimination. (Tr. 378-80, 385, 392, 397-98)

OPINION AND DECISION

At the time he was hired by Respondents, Complainant believed that his employer was "Blue Star Taxi" or "Blue Star Transportation." However, Complainant submitted no credible proof that he was employed by Respondent Blue Star Transportation of CNY, Inc., and the charges against that respondent are dismissed.

Pursuant to N.Y. Exec. Law art. 15 (the "Human Rights Law"), § 296.1 (a), it is an unlawful act for an employer to discriminate against an employee on the basis of disability. To make out a prima facie case of unlawful disability discrimination, a complainant must show that he suffered from a disability, and that the disability engendered the behavior for which he was discriminated against. *Thide v. New York State Dep't of Trans.*, 27 A.D.3d 452, 811 N.Y.S.2d

418 (2d Dept. 2006); (*see McEniry v. Landi*, 84N.Y.2d 554, 558, 620 N.Y.S.2d 328 (1994); *Timashpolsky v. State Univ. of N.Y. Health Science Ctr. at Brooklyn*, 306 A.D.2d 271, 761 N.Y.S.2d 94 (2003)).

"If the complainant succeeds in establishing a prima facie case, the burden of proof shifts to the respondent to demonstrate that the disability prevented the employee from performing the duties of the job in a reasonable manner or that the respondent's action was motivated by legitimate, nondiscriminatory reasons." *Thide* at 453.

If the respondent successfully establishes that it had valid nondiscriminatory reasons for its action, the burden shifts back to the complainant to raise a plausible issue of fact as to whether the stated reasons were pretextual. *Thide* at 453; (*see Cooks v. New York City Tr. Auth.*, 289 A.D.2d 278, 734 N.Y.S.2d 207 (2d Dept. 2001)).

A disability is defined under the Human Rights Law as "...a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory techniques..." Human Rights Law § 292.21. In order to meet this definition, an employee must only show that he suffers from some diagnosable impairment. *Nowak v. EGW Home Care, Inc.*, 82 F. Supp. 2d 101, 111 (W.D.N.Y. 2000) (citing *State Div. of Human Rights v. Xerox Corp.*, 65 N.Y.2d 213, 218-19, 491 N.Y.S.2d 106 (1985).

Complainant suffers from anxiety and depression, schizophrenia, and bipolar disorder. Complainant takes medication for these conditions. Respondents' claim at the public hearing that Complainant could not be found to suffer from a mental disability, because he was granted a taxi license by the city of Syracuse, is unavailing. Respondents submitted no proof, other than this unsupported claim, in opposition to Complainant's proof regarding his disability, and the mere

fact that Complainant was granted a license does not overcome Complainant's credible testimony regarding his mental and emotional condition. Complainant has a mental impairment, and he is thus a disabled person under the Human Rights Law. Complainant also had an impairment to the function of his knee as a result of surgery, when he was first hired to work for Respondents. However, Complainant failed to submit any proof that he was subjected to any discrimination by Respondents because of his knee condition.

Workplace harassment which creates a hostile work environment may constitute a form of unlawful discrimination. A hostile work environment may be found to exist where 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 and create an abusive working environment. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, at 310, 786 N.Y.S.2d 382, at 394 (2004), quoting *Harris v. Forklift Sys. Inc.*, 510 U.S. 17, at 21 (1993). Whether an environment is hostile or abusive can be determined only by looking at all of the circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect of the employees' psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive." *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, at 310-11, 786 N.Y.S.2d 382, at 394, quoting *Harris*, at 23. Moreover, the conduct must both have altered the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff, and have created an objectively hostile or abusive environment-- one that a reasonable person would find to be so. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, at 311, 786 N.Y.S.2d 382, at 395, quoting *Harris*, at 21.

The record evidence demonstrates that Complainant was employed by GSN. Singh, owner and president of GSN, subjected Complainant during both his first and second terms of employment to frequent mockery and abusive remarks regarding Complainant's mental condition, and the medication Complainant relied on to treat his condition. The fact that these remarks occurred in front of Complainant's co-workers further embarrassed Complainant. Complainant asked Singh to stop this mocking behavior, to no avail. Delee also taunted Complainant regarding his medications and his disability. Complainant did not allege that he reported this harassment to Singh. However, Delee suspended Complainant before his first termination from employment, in 2015. Delee had the authority to take tangible employment action against Complainant, and she may thus be considered a supervisor. *Vance v. Ball State University*, 133 S. Ct. 2434 (2013). Therefore, Respondents are also liable for Delee's harassment of Complainant.

Rasheeka Dennis, an employee under Singh's authority, also made comments regarding Complainant's mental disability. However, Complainant submitted no proof that he had reported her statements to Singh or anyone else in authority, or that Dennis was herself a supervisor. Thus, Respondents are not liable for any harm incurred by Complainant as a result of Dennis's actions or statements.

Complainant's claim of hostile work environment with respect to the actions and statements of Singh and Delee is sustained.

Retaliation

It is an unlawful discriminatory practice to retaliate against a person who has opposed discrimination under the Human Rights Law. Human Rights Law § 296.7. In order to establish a prima facie case of retaliation, a complainant must show that (1) he has engaged in a protected

activity, (2) the respondent was aware that he participated in the protected activity; (3) the complainant suffered an adverse employment action, and (4) there is a causal connection between the protected activity and the adverse action. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, at 312-313, 786 N.Y.S.2d 382, at 391 (2004).

In the instant case, Complainant complained to Singh and Delee regarding their statements and actions toward him, and his employment was terminated on two occasions. Complainant has satisfied the first three prongs of his prima facie case. However, Complainant submitted no direct proof that his termination was motivated by unlawful animus, nor did he establish temporal proximity between his complaints and the termination of his employment, on either occasion. Even if it is conceded, *arguendo*, that Complainant established a prima facie case, the record was replete with instances of Complainant's poor work performance, and his tumultuous relationships with his co-workers. Respondents, as per the employee handbook issued to Complainant upon his hiring, expected employees to respect customers. The repeated complaints against Complainant by customers demonstrate that he was deficient in this regard as well. The claim of retaliation regarding Complainant's first and second terms of employment is dismissed.

Complainant's Termination: Disability

With respect to the claim that Complainant was terminated because of his disabilities, mental or physical, it is noted that Complainant made Respondents aware of his mental illness after he was hired for the first time, and his employment was not terminated until about six months afterward. The fact that Respondents then rehired Complainant for a second time, knowing of his condition., makes this claim highly unlikely. With respect to the injuries Complainant sustained in the vehicle accident shortly before his second dismissal, Complainant

submitted no proof that his dismissal was due to his medical condition, or to the claim Complainant wished to make for Workers' Compensation. As noted above, Respondents terminated Complainant's employment the second time because of his poor work record and relationships with employees and customers. This claim is dismissed.

Damages

Complainant is entitled to recover compensatory damages for mental anguish caused by Respondents' discriminatory conduct. When considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record, and comparable to awards for similar injuries. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991). Because of the "strong antidiscrimination policy" embodied in the Human Rights Law, a complainant seeking an award for pain and suffering "need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous provision." *Batavia Lodge No. 196, etc. v. N.Y. State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). Mental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct. *New York City Transit Auth. v. State Div. of Human Rights*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991).

Complainant suffered emotional distress damages. Complainant was "upset" and "bothered" by Singh's and Delee's comments; he felt "depressed," "angry" and "worthless," and "down on" himself "all the time." Complainant protested the humiliating remarks made to him by Singh and Delee, to no avail. As a result, he is awarded $7,500 as an amount which is reasonably related to Respondents' discriminatory conduct, and consistent with case law in this regard. *Quality Care, Inc.,v. Rosa*, 194 A.D.2d 610, 599 N.Y.S.2d 65 (2d Dept. 1993); *Club*

Swamp Annex v. White, 167 A.D.2d 400, 561 N.Y.S.2d 609 (2d Dept. 1990).

Civil Fines

Civil fines and penalties may be assessed in appropriate cases of unlawful discrimination. Human Rights Law § 297.4(c). The record did not contain any proof regarding the history of Respondent Singh's or GSN's prior actions and was similarly devoid of any evidence regarding their financial resources. However, the hostile work environment inflicted on Complainant involved deliberate and mocking statements regarding his disability and his dependence on medication. Taking into account the goal of deterrence, the nature and circumstances of this violation, and the degree of the Respondents' culpability, I find that an assessment of a civil fine and penalty in the amount of $2,000 is appropriate.

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 the charge against Blue Star Transportation of CNY, Inc., is hereby dismissed

IT IS FURTHER ORDERED, that Respondents GSN Transportation and Gurnake Singh, their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and

IT IS FURTHER ORDERED, that Respondents GSN Transportation and Gurnake Singh shall take the following action to effectuate the purposes of the Human Rights Law and the findings and conclusions of this order:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay Complainant, as an award of compensatory damages for mental pain and suffering, the amount of seven thousand five hundred dollars ($7,500) without any deductions or withholdings. Respondents shall pay interest on this award at the rate of nine (9) percent per annum from the date of the Commissioner's Order until payment is actually made by Respondents.
2. The aforesaid payment shall be made by Respondents in the form of a certified check made payable to the order of Complainant, and delivered by certified mail, return receipt requested, to the New York State Division of Human Rights, Albany Regional Office, Empire State Plaza, Agency Building 1, 2nd floor, Att'n Alyssa Talanker, Esq., P.O. Box 2049, Albany, N.Y. 12220.

3. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay the sum of two thousand dollars ($2,000) as a civil fine and penalty, by certified check made out to the "State of New York" and delivered by certified mail, return receipt requested, to the offices of Caroline Downey, Esq., General Counsel of the Division of Human Rights, at One Fordham Plaza, 4th floor, Bronx, New York, 10458. Interest shall accrue at the rate of nine (9) per cent per annum on any amount paid after 60 days from the date of said Final Order until payment is made.
4. Respondent shall furnish proof to the New York State Division of Human Rights, Compliance Unit, One Fordham Plaza, 4th floor, Bronx, N.Y. 10458, of its compliance with the directives contained in this Order.

DATED: June 21, 2017
Bronx, New York

Michael T. Groben
Administrative Law Judge