



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF  
HUMAN RIGHTS**

on the Complaints of

**BETH A. HENDERSON, TAMI MARTEL,  
STEPHANIE RUFFINS,**

Complainants,

v.

**STELLAR DENTAL MANAGEMENT LLC,**  
Respondent.

**NOTICE AND  
FINAL ORDER**

Case Nos. **10171562**  
**10171565**  
**10171567**

Federal Charge Nos. 16GB500137 16GB500138 16GB500140

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on May 16, 2016, by Martin Erazo, Jr., an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING**

**AMENDMENTS:**

- Because Respondent’s dress code policy was gender neutral, the conclusion in the Recommended Order that this claim should be dismissed is hereby adopted. The remainder of the analysis related to the dress code is not hereby adopted.

- On page 19 of the Recommended Order, the ALJ states that “[t]o prevail on their complaints against Respondent, Complainants must show that it knew or should have known about the harassment and failed to take remedial action. *Pace v. Ogden Svces. Corp.*, 257 A.D.2d 101, 103, 692 N.Y.S.2d 220, 223 (3rd Dept. 1999.” This is correct and hereby adopted because, in this case, the harasser was a co-worker and not a supervisor. The remainder of that paragraph on page 19 and the citation to *Medical Express Ambulance Corp. v. Kirkland* in the following paragraph is not hereby adopted.
- With regard to the retaliation claims, Respondent did, in fact, articulate legitimate, non-discriminatory reasons for terminating each Complainant’s employment. In each case, Respondent asserted that the termination was the result of performance-related issues. However, as stated in the Recommended Order, the proof demonstrates those reasons to be pretextual. Accordingly, the recommendation to sustain the Complaints on this basis is hereby adopted.

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within

sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED.**

DATED: JUN 08 2017  
Bronx, New York



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HELEN DIANE FOSTER  
COMMISSIONER



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**BETH A. HENDERSON, TAMI MARTEL,  
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v.

**STELLAR DENTAL MANAGEMENT LLC,**  
Respondent.

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

Case Nos. **10171562**  
**10171565**  
**10171567**

Federal Charge Nos. 16GB500137 16GB500138 16GB500140

**SUMMARY**

Respondent subjected Complainants to a sexually hostile work environment and retaliated against Complainants Henderson and Ruffins by terminating their employment. Complainant Martel was constructively discharged. Respondent is liable to Complainants for pain and suffering awards and to Complainant Ruffins for lost wages. Complainants Henderson and Martel did not prove they sustained lost wages. Respondent is assessed civil fines and penalties.

### **PROCEEDINGS IN THE CASE**

On October 10, 2014, Complainant Ruffins filed verified complaint 10171567 with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On October 17, 2014, Complainants Henderson and Martel filed verified complaints 10171562 and 10171565, respectively, with the Division, charging Respondent with unlawful discriminatory practices relating to employment in violation of the Human Rights Law.

After investigation, the Division found that it had jurisdiction over the complaints and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the cases to public hearing.

After due notice, the cases came on for hearing before Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on September 23, 24 and October 26, 27, 2015. Complainants and Respondent appeared at the hearing. Complainants were represented by Frank Housh, Esq. Respondent was represented by Melanie J. Beardsley, Esq. On October 26, 2016 complaint number 10171567 was amended to correctly name Respondent as Stellar Dental Management LLC. (Tr. 322-24) After the public hearing, ALJ Erazo marked and received Complainants’ financial records, Exhs. 49-55, as stipulated by the parties. (Tr. 681)

### **FINDINGS OF FACT**

1. Complainants are females. (ALJ's Exhs. 1, 2, 3)
2. Respondent is a dental clinic that operates in four different locations in the western region of New York State. (Tr. 333; ALJ's Exh. 7)
3. Respondent is owned by Drs. Dianna Melman and Kivovich Vlad, who are both dentists at the practice. (Tr. 259, 579; Respondent's Exh. 1, p.5)
4. Respondent maintains procedures on reporting discrimination and harassment which were provided to all employees, including Complainants. (Respondent's Exhs.1, 2, 3, 4)
5. The harassment policy states, "[e]mployees who believe they have been the subject of prohibited harassment should immediately report the matter, preferably in writing to their supervisor or any member of management, which includes Dr. Melman, so management can investigate and take any appropriate responsive actions it deems appropriate and/ or necessary under the circumstances." (Tr. 42; Respondent's Exh. 1, p.3)

#### **Stephanie Ruffins**

6. In April 2014, Aaron Eady, an African American male, started working as a dental assistant at Respondent's Union Road location. (Tr. 38, 213)
7. On July 17, 2014, Complainant Ruffins began employment at the Union Road office as a full-time dental assistant. (Tr. 281)
8. Complainant Ruffin's employment was probationary for the first 90 days. (Tr. 297)
9. Maryann Beres is the general manager in charge of all Respondent's locations. (Tr. 44, 579)

10. Beres assigned Eady to train Complainant Ruffins. (Tr. 282-83)
11. Complainant Ruffins is African American. (Tr. 285)
12. On July 17, 2014, Eady approached Complainant Ruffins, pointed his finger at her and stated that she must do exactly what he tells her to do, “We cannot do the same thing that the white people do. We are black people. We need to stick together. And if you want to stay here longer than a year, you’ll do exactly what I say.” (Tr. 285)
13. On the same day, Eady again approached Complainant Ruffins, asked her if she was married, and asked her if she would ever cheat on her husband. Complainant Ruffins responded, “No” and walked away. (Tr. 286)
14. Eady has a fourth degree black belt in karate. On a daily basis, Eady practiced his karate moves in the office. (288, 347, 389-90, 463)
15. From the start of Complainant Ruffins’ employment, Eady managed to touch her each time he practiced his karate movements in the office. (Tr. 287-88)
16. Lisa Sciandra is an assistant manager at the Union Road location. (Tr. 331; Respondent’s Exh. 1, p.10)
17. Sciandra observed Eady practice his karate movements in the office. (Tr. 389, 390)
18. At first Eady touched Complainant Ruffins’ shoulder, but as time went on, he began to touch her closer to her breast and inner thigh. (Tr. 287-88)
19. One day in July 2014, Eady touched Complainant Ruffins near her left lower thigh. (Tr. 289, 311)
20. On the same day, Complainant Ruffins followed Respondent’s reporting mechanism by informing, Sciandra, who is a manager, that Eady was frequently touching her. In response to Sciandra’s questions, Complainant Ruffins described how Eady used martial arts movements to

inappropriately make contact with her. Complainant Ruffins specifically told Sciandra that she was offended by Eady's actions. (Tr. 289-90)

21. Sciandra replied, "[Eady] just plays like that." Sciandra smiled and walked away. (Tr. 289-90)

22. On August 1, 2014, Eady touched Complainant Ruffins near her genitalia with his thumb. In response, Complainant Ruffins grabbed a dental instrument and told Eady, "If you touch me again, I will poke your fucking eyes with this explorer. I told you to keep your hands off me." (Tr. 293-94)

23. On August 6, 2014, Complainant Martel observed Eady speaking with Beres on the phone. Eady informed Beres, "You know me. We've worked together before. You trust my decision. [Ruffins] is not a team player. [Ruffins] doesn't belong at Stellar. She shouldn't work here. I don't want to train her." (Tr. 248-49, 443, 473-74)

24. Jeannine Jarosz is a manager at the Union Road location. (Tr. 490-91; Respondent's Exh. 1, p.10)

25. On August 7, 2014, Jarosz informed Complainant Ruffins that her employment was terminated, that she was better suited for a slower work environment and she that she was not catching on. (Tr. 300)

26. When Complainant Ruffins asked Jarosz for further explanation, Jarosz asked her to call Beres, who is the general manager. (Tr. 300-01)

27. Beres returned Complainant Ruffins' telephone call. Beres informed Complainant Ruffins that she was dismissed because she had "a very negative attitude" and believed Ruffins worked for Respondent only to gain experience and look for another job. Beres also stated,

“When you get another job, I suggest you keep your mouth shut and do what you’re there to do.”  
(Tr. 302)

28. Complainant Ruffins had not received any disciplinary action from Respondent. (Tr. 296)

29. During her employment Jarosz had commented, “I heard you are doing well, you are certainly catching on.” (Tr. 299)

30. Complainant Ruffins received positive feedbacks from the dentists about her work. On the day Complainant Ruffins was fired, Dr. Palmer told her, “[Y]ou were a great dental assistant. You were catching on just fine.” (Tr. 301)

31. Complainant Ruffins felt “uncomfortable,” “dirty,” and “violated,” when Eady touched her. (Tr. 306)

32. Complainant Ruffins was “absolutely devastated” when Beres fired her. Complainant Ruffins has become withdrawn and socializes less frequently in reaction to Beres’ comments that she should keep her mouth shut. (Tr. 306-07)

33. At the public hearing session on September 24, 2015, 17 months after Complainant Ruffins’ dismissal, she felt “stressed” and her “stomach [was] in knots” as she recalled the events leading up to her dismissal. (Tr. 302)

34. On August 7, 2014, when Respondent terminated Complainant Ruffins’ employment, she worked an average of 40 hours a week at \$12.00 an hour. (Tr. 305)

35. On or about September 19, 2014 Complainant Ruffins became a dental assistant at \$13.50 an hour at approximately 40 hours a week at University Dental. (Tr. 304-05)

36. I do not credit Complainant Ruffins’ testimony that she only worked 20.5 hours a week at University Dental over a period of a year as Complainant’s documentary evidence is

unreliable on this issue. Complainant submitted a very limited number of randomly selected payroll checks, four from 2015, and one from 2016, that significantly range in the amount of hours that she worked. (Complainants' Exhs. 43, 44, 45, 54, 55)

37. Complainant Ruffins' lost wages are \$2,880 for the period of August 7, 2014 to September 19, 2014; the period of time it took her to seek reemployment.

Tami Martel

38. On February 20, 2012, Respondent hired Complainant Martel as a part-time dental hygienist at its Transit Road office location. (Tr. 197-98)

39. Several months later, Respondent increased Complainant Martel's hours to full-time status at \$22.00 an hour. (Tr. 198)

40. Complainant Martel's duties as a dental hygienist were to take patients' x-rays, measure their gums, prepare patients for dental exams, and enter treatment records into the computer. (Tr. 198-99)

41. In February 2013, Respondent increased Complainant Martel's pay to \$22.50 per hour. (Tr. 199)

42. In June 2013, Respondent increased Complainant Martel's pay from \$22.50 to \$26.00 an hour. (Tr. 199)

43. In April, 2014, Complainant Martel started working at the Respondent's Union Road location. (Tr. 198)

44. Approximately two weeks after Complainant Martel began working at the Union Street location Eady began calling her "hot sauce" because "[She was] feisty. [She was] sexy. [She was] like hot sauce." Complainant Martel told Eady to stop calling her "hot sauce." (Tr. 233, 370-71, 471)

45. From June 2014 to August 2014, Eady asked Complainant Martel for dates at least twice a week. Complainant Martel refused Eady's requests. (Tr. 226)

46. On numerous occasions during the period of June 2014 to July 2014, Complainant Martel followed Respondent's reporting mechanism by repeatedly informing Sciandra, who is a manager, about Eady's offending behavior. Complainant Martel told Sciandra that Eady did not address her by her name but rather called her "hot sauce." Sciandra laughed and replied, "[H]e doesn't mean anything by it. He's just joking around." (Tr. 234)

47. On one occasion in late June of 2014, as Complainant Martel worked at a desk in the hygiene room, Eady came up behind her, placed his arm across her left shoulder, and pressed his other arm against her breasts. (Tr. 214-15)

48. Complainant Martel moved away from Eady and asked him what he was doing. Eady responded, "I'm just giving you a hug. You looked stressed." Complainant replied, "I'm not stressed out. I don't need a hug." Eady laughed and walked out of the room. (Tr. 216)

49. Complainant Martel followed Respondent's reporting mechanism by reporting the incident to Jarosz, who is a manager, on the same day. Jarosz responded, "He probably didn't mean anything by it." (Tr. 216-18)

50. On another occasion at the end June 2014, Complainant Martel was in the lab, facing the sink, with her back away from the door. Eady came in, closed the door, grabbed Complainant Martel's shoulders, turned her around to face him, and told her she had a wall up and needed to break her wall down. (Tr. 219-20)

51. As Eady held Complainant Martel by the shoulders, he told her that she was single because she would not let a black man into her life, and that she needed to let him into her life and let him be the man he wanted to be for her. Eady then wrapped his arms around

Complainant Martel, pulled her close and hugged her. Complainant Martel pushed Eady away from her. (Tr. 219-20)

52. Complainant Martel “was ready to cry because [she] was disgusted.” (Tr. 222)

53. Complainant Martel immediately reported the incident by following Respondent’s reporting mechanism. Complainant Martel informed Jarosz, who is a manager, about Eady’s offending behavior. Jarosz informed Complainant Martel that she would notify Beres, who is the general manager, about the incident. No one followed up with Complainant Martel about her complaint. (Tr. 221)

54. During the first week of July, 2014 Eady approached Complainant Martel and asked her what weekends she did not have her son. Complainant Martel responded, “I have him every weekend.” Eady replied that they needed “to kick back a few because you’re very tense at work and you obviously need to confide in me.” Complainant Martel said, “No.” (Tr. 225)

55. Eady asked Complainant Martel out for drinks on a regular basis. Complainant Martel refused his request each time. (Tr. 225-26)

56. One day in July 2014, money was stolen from Complainant Martel’s purse. Eady overheard Complainant Martel share her story with Complainant Henderson. Eady approached Complainant Martel and insisted that she borrow money from him. Complainant Martel refused Eady’s monetary offer. However, Eady became more insistent, stating, “You don’t have a choice. You’re taking money from me. You’re going to call me this weekend.” (Tr. 238-39)

57. The following workday was a Monday. Eady approached Complainant Martel and spoke to her in an angry tone. Eady stated, “My weekend was ruined because I didn’t get to hear my hot (sic) – my hot sauce didn’t call me. I didn’t get to hear your sweet voice.” Complainant

Martel did not report this incident because Respondent had not addressed her previous complaints about Eady. (Tr. 239)

58. On July 7, 2014, during a conversation about a raise, Complainant Martel followed Respondent's reporting mechanism by informing Beres, who is the general manager, about Eady's offending behavior. Complainant Martel told Beres that Eady was "very forceful, touchy, feely." Beres did not ask Complainant Martel what she meant. (Tr. 235-36)

59. On July 14, 2014, Jarosz, Complainants Henderson and Martel, sat together in the break room with the door closed. During their conversation, Complainant Martel followed Respondent's reporting mechanism by informing Jarosz, who is a manager, about Eady's offending behavior. Complainant Martel notified Jarosz that Eady was making her feel uncomfortable on a regular basis, that he kept trying to hug her, that he kept trying to touch her, and that he kept asking her on dates although she told him no. Jarosz responded that "she [did not] trust him and there [was] something about him that just doesn't feel right." However, Jarosz took no action to address Complainant Martel's concern. (Tr. 222-24)

60. When Henderson and Complainant Martel left the break room, Eady approached them and asked why the door was closed. Complainant Henderson responded, "Girl talk." Eady said, "I would have liked to have been in a conversation about cock and balls." (Tr. 68, 231)

61. Complainants Martel and Henderson followed Respondent's reporting mechanism by informing Jarosz, who is a manager, about Eady's offending behavior. Jarosz replied that she was going to inform Beres, who is the general manager, about the incident. However, Complainants Martel and Henderson never received any response to their complaint. (Tr. 68, 232)

62. In August 2014, Complainant Martel observed when Complainant Ruffins' employment was terminated on Eady's recommendation. Complainant Eady believed the same would happen to her because she was refusing Eady's sexual advances. As a result, Complainant Martel started looking for another job. (Tr. 249-52)

63. Kristin Inthiar is a manager at the Transit Road location. (Tr. 236; Respondent's Exh. 1, p.10)

64. In August 2014, Complainant Martel informed Inthiar that she had received a job offer. (Tr. 252; Complainant's Exh. 38)

65. In August 2014, Complainant Martel began working at Charlap Dental as a dental hygienist at comparable full-time hours at a higher rate of pay. (Tr. 251-52)

66. On September 24, 2015, 13 months after Complainant Martel left, she remained "upset" "overwhelmed" "drained" and has trouble eating and sleeping when she thinks about what happened with Eady. (Tr. 254-55)

Beth A. Henderson

67. In October 2012, Respondent hired Complainant Henderson as a part-time dental assistant at its Transit Road location. (Tr. 32, 80).

68. Complainant Henderson's duties as a dental assistant were to administer x-rays, assist dentists during dental procedures, take impressions of patients' teeth, prepare bleach trays, sterilize instruments, clean the work area, and shop for office supplies. (Tr. 33)

69. On September 16, 2013 Complainant Henderson was reprimanded for inappropriate behavior for arguing with another individual on her cell phone while in the office. (Respondent's Exh. 5)

70. In December 2013, Respondent increased Complainant Henderson's hourly wage from \$13.50 to \$14.00 per hour when she began working a full-time schedule. (Tr. 79-80)

71. In April 2014, Respondent transferred Complainant Henderson to its Union Road location.<sup>1</sup> (Tr. 34, 129-30)

72. Eady and Complainant Henderson both worked with Dr. Palmer. (Tr. 455)

73. On May 12, 2014, Beres reprimanded Complainant Henderson for engaging in inappropriate office behavior, including gossiping about a patient, spreading rumors about Drs. Melman and Kunkes, and engaging in confrontational behavior with co-workers and supervisors. (Complainants' Exhs. 1, 2)

74. Complainant Henderson is Caucasian. (Tr. 41, 122)

75. On or about June 19, 2014, Eady saw Complainant Henderson's boyfriend, who is African American, drop her off at work. An hour later Eady told Complainant Henderson, "I see you like black men." (Tr. 38, 40, 187)

76. Subsequently, on the same day, Eady asked Complainant Henderson, "Is it true white women like black men because they have bigger cocks?" Complainant Henderson responded, "You're disgusting." (Tr. 41)

77. Complainant Henderson followed Respondent's reporting mechanism. Complainant Henderson informed Sciandra, who is a manager, about Eady's offensive June 19, 2014 comments, on the same day they occurred. Sciandra responded that "he didn't mean anything by it" and that she would inform Beres, who is the general manager, of the complaint. (Tr. 41-44)

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<sup>1</sup> At the public hearing, Complainant Henderson clarified that her allegations took place in the year 2014, not 2013, as mistakenly indicated at various points in her verified complaint, testimony, and post-hearing brief. (Tr. 73-75)

78. Neither Sciandra nor Beres informed Complainant Henderson if they took any steps to address the Eady's comments. (Tr. 45)

79. One day in June, 2014, Complainant Henderson went to Wal-Mart to purchase office supplies. Complainant Henderson spoke with Sciandra by telephone while at the store. Sciandra told Complainant Henderson that Eady needed something and handed the phone to him. Eady told Complainant Henderson to "pick up some Viagra." (Tr. 55)

80. When Complainant Henderson returned to the office she followed Respondent's reporting mechanism by telling Sciandra, who is a manager, that she was offended by Eady's comment. Sciandra thought the incident was "funny." (Tr. 56-58)

81. On June 30, 2014, Jarosz directed Complainant Henderson to work at the Hamburg office for a two week period, as her help was needed at that location. Complainant Henderson refused to comply with the directive because it would cost her additional tolls. (Respondent's Exh. 8)

82. Instead, Complainant Henderson decided to use her leave time during that two-week period to avoid complying with Jarosz' directive. (Respondent's Exhs. 8, 17, p.14)

83. In early July 2014, Eady observed Complainant Henderson's boyfriend drop her off at work. Eady commented "Once you go black, you don't go back." Complainant Henderson told Eady to leave her alone. Complainant Henderson did not inform Respondent about this comment. (Tr. 70, 127)

84. On a weekly basis, during the course of her employment at the Union Road location, Complainant Henderson followed Respondent's reporting mechanism by repeatedly informing Jarosz, who is a manager, about Eady's offending behavior. Specifically, Complainant

Henderson complained to Jarosz that Eady regularly grabbed instruments or lab slips out of her hands. (Tr. 62-63, 509)

85. On one particular occasion, in July 2014, Eady walked into an operatory room while Complainant Henderson assisted Dr. Palmer, grabbed the instruments from her hand, and walked out. (Tr. 61-62, 496, 509)

86. Dr. Palmer told Complainant Henderson that she would speak with Dr. Melman and Eady about the incident. (Tr. 62- 63)

87. Dr. Palmer informed Jarosz that Eady had grabbed the instruments from Complainant Henderson's hands while working with a patient. (Tr. 61, 509)

88. On July 21, 2014, Beres, who is the general manager, denied Complainant Henderson's request for a pay increase because she continued to engage in inappropriate workplace behavior. (Complainant's Exhs. 3, 4)

89. On or about July 25, 2014, Complainant Henderson was training Ruffins on the computer. Complainant Henderson's back was to the door when Eady came in the room and placed his right hand on Complainant Henderson's breasts. Complainant Henderson told Eady "to get off [her]." (Tr. 46-47, 295)

90. Complainant Henderson followed Respondent's reporting mechanism and immediately reported the incident to Sciandra, who is a manager. Sciandra responded that she would look into the incident and speak with Eady. (Tr. 46-47)

91. Complainant Henderson was upset and disturbed by Eady's brazen action. (Tr. 47)

92. On July 25, 2014, Beres directed Complainant Henderson to work at the Transit Road office for the day because a dental assistant had called in sick at that location. Complainant Henderson refused to comply with the directive. (Respondent's Exh. 9, p.2)

93. When Beres explained to Complainant Henderson that her help was needed at the Transit Road office, she replied, "I help out enough." (Respondent's Exh. 9, p.2)

94. Beres sent Complainant Henderson home for the day in response to her refusal to comply with a directive. (Respondent's Exh. 9, p.2)

95. I do not credit Complainant's claim at the public hearing that in June and July of 2014 Respondent reduced her work hours as Complainant conceded that she refused work assignments Respondent gave her during those months. (Tr. 136-38)

96. On August 4, 2014, Jarosz gave Complainant Henderson a verbal warning for not clocking out on two occasions when taking breaks. (Respondent's Exh. 10)

97. On August 7, 2014, while Complainant Henderson was in an operatory room with other individuals, Eady entered the room and then bumped into Complainant Henderson. (Tr. 49-50)

98. Complainant Henderson left the operatory room and went into the lab. Eady entered the lab and shut the door. Eady did not say anything to Complainant Henderson but just stood in the room. Complainant Henderson left the lab. (Tr. 51)

99. Eady complained to Jarosz that Complainant Henderson had spoken to him in a loud volume. (Tr. 51)

100. Jarosz approached Complainant Henderson and informed her that Eady complained that Complainant Henderson was speaking loudly to him. Complainant Henderson responded that no conversation took place with Eady. Complainant Henderson followed Respondent's reporting mechanism and informed Jarosz, who is a manager, about Eady's intimidating behavior of bumping into her in the operatory room, following her into the lab, and closing the door behind him. (Tr. 51)

101. On August 7, 2014, Beres terminated Complainant Henderson's employment because of the incident that occurred with Eady that day. (Tr. 77; Respondent's Exh.11)

102. At the public hearing session on September 24, 2015, 13 months after Complainant Henderson's dismissal, she remained "hurt," "anxious," and "drained" by Respondent's actions. Complainant Henderson is "saddened" that Respondent did not see that "Eady is a disgusting human being." Complainant Henderson's dismissal caused her to feel "withdrawn." As a result she doesn't "go out with [her] friends." (Tr. 82-82, 86-87)

103. Complainant Henderson has not worked since her termination. (Tr. 78, 175-76)

104. I do not credit Complainant Henderson's claim that she actively sought to obtain employment after she was dismissed as her job searches were limited to two "working interviews" and sending her resume to five companies over a period of a year. (Tr. 78, 175-76)

#### Dress Code

105. Respondent had a dress code regarding hair, uniforms, perfume, and other aspects of personal appearance and hygiene. (Respondent's Exh. 1, p.5)

106. Respondent's also had a policy that clinical employees had to wear a surgical gown over their scrubs during work hours. (Tr. 204; Complainant's Exh. 41, p.1)

107. All employees, including, Eady, followed Respondent's gown policy. (Tr. 518-19; Complainant's Exh. 41, p.1)

108. In 2014, Respondent posted two memoranda at its Union Road location in furtherance of its dress code policy. One memorandum reminded employees of its dress code requirements and also listed the expectations for the proper use of makeup. Another memorandum stated that nails must be polished and cannot have chips or cracks. (Tr. 212; Complainant's Exh. 27)

## **OPINION AND DECISION**

### **Dress Code**

Complainants, who are females, claim that they were required to follow a dress code that was not imposed on male workers. Complainants claim that the surgical gown requirement was not applied to Eady, who is male. In addition, Complainants allege that makeup and manicure requirements were only imposed on females. It is an unlawful discriminatory practice for an employer to discriminate against an employee in the terms and conditions of employment on the basis of sex. N.Y. Exec. Law, art. 15 (“Human Rights Law”) §296.1(a).

Respondent has a written dress code that applies to all of its employees regardless of gender. The proof at hearing established that all clinical employees were required to wear a surgical gown. All employees, including Eady, complied with the gown requirement. Respondent also issued memoranda reminding employees of its dress code requirements. Complainants argue that the memoranda only applied to females. However, on its face, the particular memorandum produced at hearing was gender neutral. As importantly, Complainants did not suffer any adverse job action as a result of Respondent’s dress code and grooming policies. While an employer may have “...a reasonable grooming policy which may be said to differentiate between male and female,” in this particular matter Respondent had a neutral policy and practice that applied to all employees regardless of gender. *Page Airways of Albany, Inc., v. New York State Division of Human Rights*, 39 N.Y.2d 877 (1976).

### **Sexual Harassment**

Complainants claim they were subjected to a sexually hostile work environment. “A hostile work environment exists when the workplace is permeated with discriminatory

intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment." *Father Belle Community Ctr. v. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739 (4th Dept. 1996) (internal quotations and citations omitted), *reargument denied*, 647 N.Y.S.2d 652 (4th Dept. 1996), *leave to appeal denied*, 89 N.Y.2d 809 (1997). "Whether a workplace may be viewed as hostile or abusive – from both a reasonable person's standpoint as well as from the victim's subjective perspective – can be determined only by considering the totality of the circumstances." *Id.* at 51. "In determining whether a plaintiff was subjected to a hostile work environment a court may consider the frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating or a mere offensive utterance and whether it unreasonably interfered with the plaintiff's work performance." *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.*, 175 Misc.2d 795, 803, 669 N.Y.S.2d 122 (N.Y. Sup. Ct. 1997), *appeal dismissed*, 256 A.D.2d 269 (1st Dept. 1998), *appeal dismissed*, 93 N.Y.2d 919 (1999), *leave to appeal denied*, 94 N.Y.2d 753 (1999).

All three Complainants are females. Each Complainant established that she was subjected to unwelcome sexual harassment by co-worker Eady.

Complainant Henderson established that from June 2014 through August 2014, Eady subjected her to several instances of offensive sexual commentary including "is it true white women like black men because they have bigger cocks?"; one instance where he grabbed her breasts; and one particular instance where he physically intimidated her when he followed her into a room and closed the door.

Complainant Martel established that from April 2014 through August 2014, Eady regularly subjected her to offensive sexual commentary including calling her lunch time conversation with other females as a discussion about "cock and balls;" referred to her as "hot

sauce” instead of calling her by her name; hugged her and pressed against her breasts; grabbed her by the shoulders, pressed himself into her and told her that she needed to let a black man into her life; and regularly intimidated her by asking her on dates.

Complainant Ruffins established that during July and August 2014, Eady subjected her to offensive sexual comments, including asking if she would consider cheating on her husband; regularly touched her body as he practiced karate moves in the office; and in one particular instance, he touched her near her genitalia.

Each Complainant established that she clearly informed Eady that his actions were unwelcome. Eady’s sexual harassment prevented Complainants from performing their work duties as demonstrated by their strong negative emotional reactions to the offending behavior. Any reasonable person could only view Eady’s conduct as hostile and abusive.

#### Respondent’s Liability

To prevail in their complaints against Respondent, Complainants must show that it knew or should have known about the harassment and failed to take remedial action. *Pace v. Ogden Svces. Corp.*, 257 A.D. 2d 101, 103, 692 N.Y.S. 2d 220, 223 (3rd Dept. 1999). “[A]n employer cannot be held liable for an employee’s discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it.” *Medical Express Ambulance Corp. v. Kirkland*, 79 A.D. 3d 886, 887, 913 N.Y.S. 2d 296, 298 (2nd Dept. 2010), *lv. den.*, 17 N.Y. 3d 716, 934 N.Y.S. 2d 374 (2011), quoting *Matter of State Div. of Human Rights v. St. Elizabeth’s Hosp.*, 66 N.Y. 2d 684, 687, 496 N.Y.S. 2d 411, 412 (1985).

Respondent has taken the implausible position that it never received any notice. The proof clearly established that each Complainant followed Respondent’s reporting mechanism by repeatedly informing a supervisor or manager about Eady’s offending behavior. Eady’s actions

persisted after management was informed about his behavior. “Only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct.” *Medical Express Ambulance Corp.* at 887-88, 913 N.Y.S. 2d at 298.

On or about June 19, 2014, Complainant Henderson followed Respondent’s reporting mechanism by informing a manager, Sciandra, about sexually offensive comments that Eady made that day. Sciandra told Complainant Henderson she would inform general manager Beres. However, Sciandra failed in her responsibility as a manager to take any corrective action. In a separate instance in June, 2014, Eady made another sexually offensive comment in Sciandra’s presence. Complainant Henderson told Sciandra that the comment was offensive. Sciandra failed to correct or address Eady’s behavior. Instead, Sciandra found Eady’s comment to be amusing. On or about July 25, 2014, Complainant Henderson properly followed Respondent’s reporting mechanism by informing Sciandra that Eady touched her breasts. Sciandra failed to correct or address the complaint. Sciandra replied that she would speak with Eady. Sciandra never took any action to correct Eady’s behavior. Respondent argues that Complainant Henderson could not have complained to Sciandra on the dates of June 19 and July 25, 2014 as Sciandra did not work at the Union Road location on those dates. Nonetheless, Complainant Henderson’s testimony is credible. Complainant Henderson testified that these two dates were approximations. Furthermore, Complainant Ruffins witnessed Eady touching Complainant Henderson’s breasts in July of 2014. Each time Complainant Henderson complained, Eady’s offending behavior continued. Management simply failed to take corrective action.

From June to July 2014, Complainant Martel properly followed Respondent’s reporting mechanism by informing Sciandra, on numerous occasions, of Eady’s offending “hot sauce”

comments. Instead of addressing Complainant Martel's sexual harassment complaint, as required by Respondent's own policy, Sciandra, who is a manager, laughed and replied, "he's just joking around." In June 2014 Complainant Martel properly followed Respondent's reporting mechanism by informing Jarosz, who is also a manager, that Eady had hugged her. Jarosz did not address the complaint as required by Respondent's policy. Instead, Jarosz told Complainant Martel, "He probably didn't mean anything by it." In a separate instance in June 2014, Complainant Martel also told Jarosz about another instance when Eady inappropriately hugged her. Again, Jarosz did not address the complaint as required by Respondent's policy. Although, Jarosz indicated she would inform general manager Beres, Jarosz never took any corrective action. Eady continued with his offending behavior. In July 2014, Complainant Martel informed Jarosz that Eady kept touching her and asking her on dates but Jarosz took no corrective action in violation of Respondent's own reporting policy. Management failed to take corrective action.

In July 2014, Complainant Ruffins properly followed Respondent's reporting mechanism by informing Sciandra that Eady was frequently touching her. Sciandra failed in her responsibility as a manager to address and correct the situation as indicated in Respondent's own policy. Instead, Sciandra responded to Complainant Ruffins, "Eady just plays like that." Again, management failed to take corrective action.

Respondent argues that Complainants failed to follow its notice requirements as indicated in its reporting policy. However, a plain reading of Respondent's own policy shows that Complainants followed its internal process by reporting Eady's behavior to various managers. More importantly, a respondent cannot escape liability merely by claiming that it had a reporting mechanism and policy in place. *See Polodori v. Societe Generale Groupe*, 39 A.D.3d 404, 835

N.Y.S.2d 80 (1<sup>st</sup> Dept. 2007) The purpose of an effective anti-harassment policy is to give a respondent adequate notice to correct workplace harassment. Respondent had notice of Eady's behavior. The issue is not the adequacy of Respondent's policies but rather Respondent's failure to stop the harassment.

### Retaliation

Complainants Henderson and Ruffins claim that their respective employment was terminated when they complained about Eady. Human Rights Law §296.7 makes it an unlawful discriminatory practice "...for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article."

In order to establish a prima facie case of retaliation, a complainant must show that: (1) she engaged in activity protected by Human Rights Law § 296; (2) the respondent was aware that she participated in the protected activity; (3) she suffered from an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action. *Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3d Dept. 1999). There is no requirement that the retaliation only affect compensation, terms, conditions, or privileges of employment. A materially adverse act is one that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Mejia v. Roosevelt Island Medical Assoc.*, 31 Misc.3d 1206(A), 927 N.Y.S.2d 817 (Table) (Sup.Ct. N.Y. Co. 2011). Once a complainant has met this burden, the respondent has the burden of coming forward with legitimate, nondiscriminatory reasons in support of its actions. *Pace* at 104, 692 N.Y.S.2d at 224. If the respondent meets this burden, the complainant then must show that the reasons

presented are a pretext for unlawful retaliation. *Id.*

Complainant Henderson engaged in protected activity when she made internal complaints with Respondent in June and July of 2014. On August 7, 2014 Respondent terminated Complainant Henderson's employment. A causal connection is established by temporal proximity between the July 2014 protected activity and the August 2014 adverse action. *See Roberts v. Philip Morris Mgmt. Corp.*, 288 A.D.2d 166, 733 N.Y.S.2d 190 (1st Dept. 2001). Thus, Complainant Henderson has established a prima facie case of retaliation. Respondent did not present legitimate, non-discriminatory reasons for the action taken on August 7, 2014. Respondent argues that Complainant Henderson had a history of conflict with co-workers and insubordination. However, the proof shows that Respondent tolerated Complainant Henderson's behavior in the workplace until she complained about Eady's behavior. Indeed, the proof shows that Respondent terminated Complainant Henderson's employment when Complainant Henderson complained about Eady's intimidating behavior of following her into a room and closing the door behind him.

Complainant Ruffins also engaged in protected activity when she made an internal complaint with Respondent in August 2014 that Eady was touching her body. In August 2014, Respondent terminated Complainant Ruffin's employment. A causal connection can also be established by the temporal proximity between the July 2014 protected activity and the August 2014 adverse action. *Id.* Respondent did not present legitimate, non-discriminatory reasons for the action taken in August 2014. Respondent presented two arguments for Complainant Ruffins' dismissal, neither of which are worthy of credence. First Respondent argues that Complainant Ruffins' work performance was not adequate for the volume of work they perform. Second, Respondent argues that Complainant Ruffins was merely using her work experience to move on

to another job. However, the proof shows that Respondent dismissed Complainant Ruffins based on Eady's recommendation. Eady told the general manager, Beres, that Complainant Ruffins was not a good team player. Eady's dismissal recommendation came immediately after he tried to touch Complainant Ruffins near her genitalia and she rebuffed his sexual advance. Indeed, Beres' parting advice to Complainant Ruffins plainly revealed Respondent's motivation in dismissing her. Beres advised Complainant Ruffins that in her next job she should keep her mouth shut and do what she was told.

### Constructive Discharge

Complainant Martel claims that she was constructively discharged. In order to maintain a claim for constructive discharge, a complainant must demonstrate that respondent "deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *Morris v. Schroeder Capital*, 7 N.Y.3d 616, 621 (N.Y. 2006) quoting *Pena v. Brattleboro Retreat*, 702 F.2d 322, 325 (2d Cir. 1983). When a constructive discharge is found, an employee's resignation is treated as if the employer had actually terminated the employee. Complainant Martel established that Respondent's unlawful discriminatory conduct was intentional and that such conduct created working conditions so intolerable that a reasonable person would have been compelled to resign. *Morris at 622*. Eady became increasingly aggressive in his sexual advances towards Complainant Martel and her complaints to management went unheeded. Complainant Martel appropriately feared that Eady's offending activity would continue unabated and that he would cause her dismissal if she did not acquiesce to his advances as he had done with Complainant Ruffins. Complainant Martel established that Respondent's unlawful discriminatory conduct created working conditions so intolerable that a reasonable person would have been compelled to resign.

### Lost Wage Damages

Complainant Henderson did not sustain lost wage damages as she failed to mitigate by actively seeking employment after she separated from employment with Respondent. A complainant in a discrimination matter “ordinarily has a duty to exercise diligence to mitigate his or her damages by making reasonable efforts to obtain comparable employment.” *Rio Mar Restaurant v. New York State Division of Human Rights (Del Carpio)*, 470 A.D.2d 47, 48 (1st Dept. 2000).

Complainant Martel did not sustain lost wage damages as she secured a comparable job as a dental hygienist at a higher rate of pay before separating from employment.

Complainant Ruffins’ lost wages are \$2,880 for the period of August 7, 2014 to September 19, 2014; the period of time it took her to seek reemployment. Respondent is liable to Complainant Ruffins for predetermination interest on the back pay award at a rate of nine percent per annum, from August 29, 2014, a reasonable intermediate date between August 7, 2014 and September 19, 2014, 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, Respondent is liable to Complainant Ruffins 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

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

*York City Transit Auth. V. N.Y. State Div. of Human Rights (Nash)*, N.Y. 2d 207, 573 N.Y.S.2d 49, 54 (1991); *Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981). The severity, frequency, and duration of the conduct may be considered in fashioning an appropriate award. *New York State Dep't of Corr. Serv. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996). In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record, and comparable to awards for similar injuries. *N.Y. State Div. of Human Rights v. Muia*, 176 A.D.2d 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Respondent's actions had a very strong, negative effect, on each Complainant. All Complainants were subjected to an environment where Respondent allowed Eady to physically touch them and make offensive sexual commentaries.

During an approximate three month period, Respondent subjected Complainant Henderson to a sexually hostile work environment. Eady grabbed Complainant Henderson's breasts and physically intimidated her by following her into a room and closing the door behind him. Eady also subjected Henderson to extremely offensive sexual comments. In reaction to Eady's actions, Complainant Henderson felt "hurt," "anxious," "drained" and found him "disgusting." At the public hearing, 13 months after Complainant Henderson's dismissal, she continued to feel the same strong reactions. Complainant Henderson also felt "saddened" by Respondent's failure to respond to her complaints. Complainant Henderson's dismissal caused her to become "withdrawn" and to not "go out with [her] friends." Accordingly, Complainant Henderson is entitled to \$35,000 for the pain and suffering she experienced. The award is reasonably related to Respondent's wrongdoings, supported by the evidence, comparable with

other awards for similar injuries, and, therefore, justified in this case. *See Dilworth v. Traton, Inc., Fayiz Hilal, et.al.*, SDHR Case No. 141584, March 16, 2007, *aff'd, Hilal v. N.Y. State Div. of Human Rights (Dilworth)*, 57 A.D.3d 898, 869 N.Y.S.2d 613 (2nd Dept. 2008) (\$35,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences after being subjected to a sexually hostile work environment).

During the approximate three week period Complainant Ruffins worked for Respondent, she was regularly touched by Eady. Complainant Ruffins felt “uncomfortable,” “extremely dirty,” and “violated” each time Eady touched her. Complainant Ruffins also felt “absolutely devastated” when Respondent fired her. At the public hearing, 17 months after Respondent dismissed Complainant Ruffins, her “stomach was in knots” as she was visibly upset while she testified about the events that had taken place. Accordingly, Complainant Ruffins is entitled to \$50,000 for the pain and suffering she experienced. The respective award is reasonably related to Respondent’s wrongdoings, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *See Brancati v. ABS Electronics, Inc. et al.* SDHR Case No. 7942696, January 22, 2017, *aff'd, in relevant part, Matter of N.Y. State Div. of Human Rights (Brancati) et al., v. ABS Electronics, Inc., et al*, 102 A.D.3d 967, 958 N.Y.S.2d 502 (2<sup>nd</sup> Dept. 2013) (\$50,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences after being subjected to a sexually hostile work environment); *also see Lutz v. Raddon Hotel Islandia, et.al.*, SDHR Case No. 790787, April 25, 2007, *aff'd, Matter of Columbia Sussex Corp. v. N.Y. State Div. of Human Rights (Lutz)*, 63 AD3d 736 (2nd Dept. 2009) (\$50,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences after being subjected to a sexually hostile work environment over a period of four weeks).

During an approximate five month period, Respondent subjected Complainant Martel to a sexually hostile work environment. On a least two occasions, Eady grabbed and hugged Complainant Martel. On one of those occasions he pressed into Complainant Martel's breasts. Eady regularly attempted to hug her, touch her, and ask her out on dates. On a daily basis Eady subjected Complainant Martel to offensive sexual language such as calling her "hot sauce." In reaction to Eady's actions, Complainant Martel felt "upset," "overwhelmed," "drained." Complainant Martel had trouble eating and sleeping. 13 months after Complainant Martel's constructive discharge, she still experienced the same reactions when recalling Eady's actions. Accordingly, Complainant Martel is entitled to \$65,000 for the pain and suffering she experienced. The award is reasonably related to Respondent's wrongdoings, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *See Gollel v. Village Plaza Family Restaurant, et.al.*, SDHR Case No. 7943080, November 14, 2006, *aff'd*, *N.Y. State Div. of Human Rights (Gollel) v. Village Plaza Family Restaurant, Inc.*, 59 A.D.3d 1038, 872 N.Y.S.2d 815 (4th Dept. 2009) (\$65,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences after being subjected to a sexually hostile work environment over an approximate period of 8 months), *Tyler v. Ashish, et.al.*, SDHR 10124990, April 20, 2011, (\$65,000 award based on similar facts to the present case where a female employee suffered comparable pain and suffering consequences).

#### Civil Fines and Penalties

A civil fine and penalty of \$20,000 is appropriate for each of the three matters before the Division for a total of \$60,000. *See Noe v. N.Y. State Div. of Human Rights (Martin)*, et.al., 101 A.D.3d 1756, 957 N.Y.S.2d 796 (4th Dept. 2012) (Commissioner's penalty of \$20,000

affirmed), *also see Johnston v. N.Y. State Div. of Human Rights, et.al.*, 100 A.D.3d 1354, 953 N.Y.S.2d 757 (4th Dept. 2012), *New York State Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 949 N.Y.S.2d 459 (2d Dept. 2012).

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

Furthermore, Human Rights Law § 297 (4)(e) requires that “any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” The additional factors that determine the appropriate amount of a civil fine and penalty are the goal of deterrence; the nature and circumstances of the violation; the degree of respondent’s culpability; any relevant history of respondent’s actions; respondent’s financial resources; other matters as justice may require. *Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540, November 15, 2007, *aff’d, Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009), 119-121 East 97th Street Corp, et. al., v. New York City Commission on Human Rights, et. al., 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept.1996).

The goal of deterrence, Respondent’s degree of culpability, and the nature and circumstances of Respondent’s violation warrant this penalty. Respondent ignored Complainants’ pleas for help in clear violation of the Human Rights Law. Respondent’s managers were not concerned with Eady’s actions and at times found his actions funny, amusing,

or blamed Complainants. Particularly egregious was Respondent's decision to terminate Complainants Ruffins and Henderson after they complained about Eady's offensive behavior. Complainant Martel was constructively discharged. While Complainants' lives were severely disrupted with the loss of their employment, Eady's life was never inconvenienced. Indeed, Eady continues to work for Respondent. Respondent never disciplined, reprimanded, or counselled Eady for his behavior. Respondent conducted no internal investigation while Complainants worked there. The civil fine serves as an inducement for Respondent to comply with the Human Rights Law and presents an example to the public that the Division vigorously enforces the Human Rights Law. There was no proof that Respondent was adjudged to have committed any previous similar violation of the Human Rights Law or is 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 Respondent, its 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 Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant, Stephanie Ruffins, the sum of \$2,880 as damages for economic loss. Interest shall accrue on this award at the rate of nine percent per annum, from August 29, 2014, a reasonable intermediate date between August 7, 2014 and September 18, 2014, until the date payment is actually made by Respondent.
2. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant, Stephanie Ruffins, the sum of \$50,000 as compensatory damages for mental anguish and humiliation Complainant Ruffins 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.

3. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant, Beth A. Henderson, the sum of \$35,000 as compensatory damages for mental anguish and humiliation Complainant Henderson 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.

4. Within sixty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant, Tami Martel, the sum of \$65,000 as compensatory damages for mental anguish and humiliation Complainant Martel 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.

5. The payments shall be made by Respondent, in the form of separate certified checks, made payable to the order of Beth A. Henderson, Tami Martel, and Stephanie Ruffins, and delivered by certified mail, return receipt requested, to Frank Housh, Esq., 70 Niagara Street, Buffalo, New York, 14202. Copies of the certified checks shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Within sixty days of the Commissioner's Final Order, Respondent shall pay to the State of New York the sum of \$60,000 as a civil fine and penalty for its violation of the Human Rights Law. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondent.

7. 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, New York State Division of Human Rights, at One Fordham Plaza, Bronx, New York 10458.

8. Within sixty days of the Final Order, Respondent's managers and owners shall attend a training session in the prevention of unlawful discrimination in accordance with the Human Rights Law. Proof of the training session shall be provided to Caroline Downey, Esq., General Counsel, of the New York State Division of Human Rights, at One Fordham Plaza, Bronx, New York 10458.

9. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: May 11, 2016  
Buffalo, New York



Martin Erazo, Jr.  
Administrative Law Judge