

**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

**STATE DIVISION OF HUMAN RIGHTS**

on the Complaint of

**RANDOLPH C. JACKSON,**

Complainant,

v.

**HEFLIN PAINTING INC.,**

Respondent.

**NOTICE OF FINAL  
ORDER AFTER HEARING**

Case No. 10101581

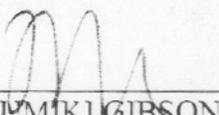
**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on February 8, 2007, by Christine Marback Kellett, an Administrative Law Judge of the New York State Division of Human Rights ("Division").

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER").** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

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

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

**ADOPTED, ISSUED, AND ORDERED**, this 26th day of March, 2007.

  
KUMIKI GIBSON  
COMMISSIONER

TO:

Randolph C. Jackson  
136 Pyramid Pines Est.  
Saratoga Springs, NY 12866

Melanie J. LaFond, Esq.  
Gordon, Siegel, Mastro, Mullaney, Gordon & Galvin, P.C.  
9 Cornell Road Airport Park  
Latham, NY 12110

Heflin Painting Inc.  
Attn: Eric Heflin  
4 Dublin Drive  
Ballston Spa, NY 12020

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ELIOT SPITZER  
GOVERNOR

KUMIKI GIBSON  
COMMISSIONER DESIGNATE

February 8, 2007

Re: Randolph C. Jackson v. A.F. Heflin Painting Contractors,  
Inc., also known as Heflin Painting, Inc., and Eric Heflin,  
as Owner  
Case No. 10101581

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To the Parties Listed Below:

Enclosed please find a copy of my proposed Recommended Findings of Fact, Decision and Opinion, and Order. Please be advised that you have twenty-one (21) days from the date of this letter to file Objections.

Your Objections may be in letter form, should not reargue material in the Record, and should be as concise as possible. Copies of your Objections must be served on opposing counsel, including Division counsel, if any, and on the General Counsel of the Division of Human Rights. Objections provide the parties with an opportunity to be heard on the issues in the case before the issuance of a final Order of the Commissioner. See Rules of Practice of the Division of Human Rights, 9 NYCRR § 465.17(c).

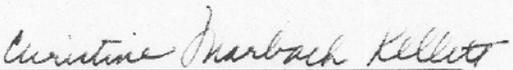
The Objections must be filed by March 1, 2007, with the Order Preparation Unit, at the address below.

NYS Division of Human Rights  
Order Preparation Unit  
One Fordham Plaza, 4th Floor  
Bronx, New York 10458

If we do not receive your Objections by the deadline noted above, the Division will assume that you do not object to the proposed order and will proceed to issue the final Order under that assumption.

Please contact Peter G. Buchenholz, Adjudication Counsel, at (718) 741-8340 if you have any questions regarding the filing of Objections.

Very truly yours,

  
Christine Marbach Kellett  
Administrative Law Judge

TO:

Complainant

Randolph C. Jackson  
136 Pyramid Pines Estate  
Saratoga Springs, NY 12866

Complainant Attorney

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Respondent

Heflin Painting Inc.  
Attn: Eric Heflin, Owner  
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Respondent Attorney

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Peter G. Buchenholz  
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Sharon J. Field, Esq.  
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Trevor G. Usher  
Chief Calendar Clerk

STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS  
on the Complaint of

RANDOLPH C. JACKSON,  
Complainant,

v.

A.F. HEFLIN PAINTING CONTRACTORS, INC.,  
also known as HEFLIN PAINTING, INC., and  
ERIC HEFLIN, as Owner.  
Respondents.

RECOMMENDED  
FINDINGS OF FACT,  
DECISION AND  
OPINION, AND  
ORDER

Case No. 10101581

**PROCEEDINGS IN THE CASE**

On September 16, 2004, Complainant Randolph C. Jackson ("Complainant") filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondent Heflin Painting Inc. with discriminatory acts in employment in violation of Article 15 of the New York State Executive Law ("Human Rights Law") when it condoned a racially hostile work environment, and with constructive discharge (ALJ Exhibit 1).

After investigation the Division determined that it had jurisdiction in the case and that probable cause existed to believe that discrimination had occurred. The complaint was referred to a public hearing.

On April 11, 2006, and August 2, 2006, Christine Marbach Kellett, an Administrative Law Judge with the Division, conducted a public hearing on the complaint. Complainant attended the public hearing. Melody LaFond, Esq. represented the Complainant at the public hearing. Eric Heflin ("Heflin"), Respondent's Vice

President, attended the public hearing as the Respondent's representative. David H. Pentowski, Esq. represented the Respondent at the public hearing.

On August 2, 2006, Respondent, which had been identified under the name of Heflin Painting Inc. in the complaint, acknowledged its legal name as recorded with the New York State Department of State was A. F. Heflin Painting Contractors, Inc. (Tr. 223; ALJ Exhibit 5). On behalf of A.F. Heflin Painting Contractors, Inc. Mr. Heflin and Mr. Pentowski appeared at the public hearing, agreed to the amendment of the Complaint to correct the Respondent's name, waived further service of the complaint, and adopted the verified answer previously filed ( Tr. 222-223).

At the public hearing the attorneys agreed to file post-hearing briefs within thirty days (Tr. 246). On September 5, 2006, Complainant's attorney filed a post-hearing brief. Respondent did not file a post hearing brief.

Complainant charged Respondent with violating the Human Rights Law by condoning a racially hostile work environment and with constructive discharge (ALJ Exhibit 1). Respondent denied the charges (ALJ Exhibit 3). Based on the testimony and evidence produced at the public hearing, I find that Complainant established he was the victim of unlawful discriminatory conduct in the work place in the forms of hostile work environment and constructive discharge and that he is entitled to compensatory damages.

### **FINDINGS OF FACT**

#### **The parties**

1. Complainant is a black male (Tr. 12; ALJ Exhibit 1).
2. Respondent was a painting contractor with offices at 4 Dublin Drive, Ballston Spa, NY 12020 (Complainant's Exhibit 1; ALJ Exhibit 5).

3. At all relevant times Respondent employed four or more individuals (Tr. 57).

4. Eric Heflin (Heflin) was the vice-president of and shareholder in, Respondent corporation (Tr. 176, 193).

5. On behalf of Respondent, Heflin actively managed the business, and was responsible for acquiring work, hiring, firing, scheduling, supervising and managing the business (Tr. 18, 176).

6. I find that the proof presented at the public hearing regarding Heflin's duties, responsibilities, and his authority to act on behalf of the corporation supports an amendment of the complaint pursuant to 9 NYCRR 265.12(f)(14) to add Eric Heflin individually as an individually named Respondent

7. Respondent's work was seasonal, and highly dependent on construction schedules (Tr. 20).

8. From August 25, 1999, until July 30, 2004, Complainant worked for Respondent as a painter during the painting season (Tr. 13; ALJ Exhibit 1).

9. Complainant was the only black employee with Respondent at the time (Tr. 23).

10. During the off-season, which corresponded to the winter months of 2001-2004, Complainant went out on temporary disability, and underwent numerous "surgical procedures to the cervical spine and lumbar spine, secondary to disc herniation and spondylitic disease, as well as rotator cuff repair, secondary to rotator cuff pathology and bicipital tendon rupture" (quoted material from p. 2 of 4 of Social Security Administration Notice of Decision-Fully Favorable found in Complainant's Exhibit 2) (Tr. 59-60, 75, 180; Complainant's Exhibit 2).

11. Complainant appreciated Heflin's understanding of his need for medical leave, and was comfortable with the company, knew what his duties were and was making good money (Tr. 46, 100).

The employment environment

12. Shortly after Complainant commenced working for Respondent, Complainant's coworkers used racially offensive comments, including the terms "nigger," "spook," "porch monkey," and "trailer trash" (Tr. 26-27, 101; ALJ Exhibit 1).

13. Complainant found the terms "nigger," "spook," and "porch monkey" racially offensive, and the term "trailer trash" also offended Complainant (Tr. 24, 26-27).

14. Complainant's coworkers made these offensive comments in general and in particular to Complainant, often in front of Heflin (Tr. 26-27, 101).

15. Heflin responded to the comments by asking his employees to calm down, and by reminding them such language was inappropriate (Tr. 101-102).

16. On one occasion, Complainant reported to Heflin that a co-worker, Bob Bilili ("Bilili") was using offensive language (Tr. 29-30). Heflin told Bilili that if he ever used the offensive language again, Heflin would fire him (Tr. 30). Heflin did not assign Complainant and Bilili to work together (Tr. 30, 58). Additionally, Heflin did not rehire Bilili after a break in employment, a decision Complainant associated with his complaints of offensive misconduct (Tr. 30-31, 78).

17. Complainant reported coworker Bryan Doty (Doty"), who also served as a site supervisor on occasion, used racially offensive language, including "nigger" and "spook" (Tr. 15-16, 18, 22-24; ALJ Exhibit 1).

18. Complainant found Doty did not respect him, spoke down to him, embarrassed and humiliated him (Tr. 22-23, 56).

19. Doty directed this abrasive style particularly to Complainant (Tr. 56).

20. This history of antagonism between Complainant and Doty was well known at the work site, and was well known by Heflin (Tr. 27-29, 55, 103).

21. Indeed, Complainant brought his concerns regarding Doty's conduct towards him to Heflin's attention on numerous occasions over the years of his employment by Respondent (Tr. 26-27, 60, 94, 103; ALJ exhibit 1).

22. Heflin would call Doty, or speak with him in private, and things might improve for a while (Tr.27-28, 94, 103). Heflin would assign Complainant to work with other site supervisors rather than Doty for weeks at a time (Tr. 56-57).

23. After his latest round of surgeries in 2003-2004, Complainant returned to work for Respondent on July 18, 2004 (Tr. 59-60, 75, 180; Complainant's Exhibit 2).

24. On July 28, 2004, in the afternoon, Heflin sent Complainant and another co-worker from a Saratoga worksite to a Niskayuna worksite about forty minutes away (Tr. 33-34, 181).

25. Doty was the site supervisor at the Niskayuna site and needed additional men to complete the job timely (Tr. 33-34, 181).

26. Upon Complainant's arrival, Doty initiated a confrontation with Complainant regarding the work to be done and by using the term "nigger" (Tr. 34-35, 98, 199, 202-203).

27. The confrontation included Doty striking Complainant's rear with a paint pole (Tr. 34).

28. Complainant described the physical contact as Doty "stuck the pole up my butt," while Doty described the same contact as patting Complainant's buttocks with the paint pole "like a sports player" (Tr.34, 98, 207).

29. Between being physically assaulted by Doty on July 28, 2004, and the repeated verbal abuse including the use of the term "nigger" by Doty on July 28, 2004, Complainant had reached the limit of his ability to put up with Doty's conduct and he left the site (Tr. 35, 84, 86, 129-130).

30. That evening, Doty reported to Heflin that Complainant left work early after a verbal exchange of words but gave him no other details (Tr. 182, 208).

31. Heflin never asked Complainant for his explanation of the incident. (Tr. 36).

32. The only comment Heflin made to Complainant was on payday, some three days later, when Heflin asked Complainant what was needed to resolve this problem between Complainant and Doty (Tr. 36).

33. After reporting Doty's conduct so many other times, Complainant shrugged off Heflin's question, feeling that it demonstrated Heflin just did not care (Tr. 81, 86, 128).

34. This was particularly painful to Complainant as he respected and liked Heflin (Tr. 124-126).

35. Heflin's explanation for his failure to investigate the incident between Doty and Complainant was that he felt his employees were adults who could work it out (Tr. 194).

36. To support his assertions of a racially harassing environment, Complainant called former co-worker John White ("White") as a witness (Tr. 135).

37. In 2000-2001, White witnessed Complainant being subjected to racially offensive language at the worksite, some directed at Complainant, some spoken in general (Tr. 140-141; ALJ Exhibit 4).

38. White confirmed Complainant told his fellow workers he was offended by the racially offensive language (Tr. 143).

39. Respondent's witness, John Bublak ("Bublak") provided confirmation that everyone in the workplace knew Doty and Complainant did not get along (Tr. 188-189).

40. Bublak's confirmation of animosity between Doty and Complainant was important as Bublak worked for Respondent at the same time as Complainant, including in 2004, whereas White's knowledge of workplace conditions stopped with his own termination in 2001.

41. Respondent's witness, Doty, attempted to explain the incident on July 28, 2004, by claiming Complainant called him a fat slob (Tr. 199, 202-203).

42. Doty admitted to using the term "nigger" that day (Tr. 199, 202-203).

43. Doty admitted the use of the term "nigger" after denying it, and he admitted that Heflin showed him an affidavit from White in connection with this case, after claiming Heflin never discussed Complainant's case with him (Tr.199-201, 208-209). These admissions and contradictions I find make Complainant's report of being struck with the paint pole more credible than Doty's description of the contact as a sporting tap.

#### Damages

44. As a painter for Respondent in 2004, Complainant earned \$15.00 an hour for a forty hour week, or \$600 weekly (Tr. 15; Complainant's Exhibit 1).

45. Between July and December 2004, Complainant sought other work, earning \$1510.00 as a painter for another contractor (Complainant's Exhibit 1).

46. Complainant's family went on public assistance (Tr. 120-121).

47. By December 2004, Complainant removed himself from actively seeking work due to his deteriorating physical condition, and applied for disability status (SSI) from the Social Security Administration (Tr. 122; Complainant's Exhibit 2).

48. Complainant remained unable to work as of the date of the public hearing, and continued to receive SSI benefits (Tr. 41, 122; Complainant's Exhibit 2).

49. Complainant reported that the atmosphere at work made him angry, depressed and annoyed, and that he brought the tensions home with him affecting his family (Tr. 108).

50. Complainant often could not eat or sleep and the symptoms associated with Complainant's diagnosed Lupus increased (Tr. 48).

51. Complainant has been on medication for depression for two years in connection with being unable to work (Tr. 48, 109; Complainant's Exhibit 2).

## **DECISION AND OPINION**

### **1. Amendment of Complaint**

The record established that Eric Heflin was the vice-president and an owner of the Respondent corporation, with day to day management responsibilities including hiring and firing authority for the Respondent. The complaint is amended to add Eric Heflin individually as a named respondent. *See: 9 NYCRR 265.12(f) (14); Tomka v. Seiler Corp.*, 66 F.3<sup>rd</sup> 1295 (2<sup>nd</sup> C., 1995); *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 483 N.Y.S.2d 659, 473 N.E.2d 111(1984).

## II. The Complaint

Complainant charged Respondent with violating the Human Rights Law, section 296 subpara.1, which prohibits unlawful discrimination based upon race. N.Y.S. Executive Law section 296 subparagraph 1. The unlawful acts charged included those of a hostile work environment in which racially offensive language was permitted to continue at the work place and of constructive discharge when no investigation of an incident on July 28, 2004, involving Complainant and a co-worker took place. Respondent denied knowing that offensive racial language was used at the work place and claimed Complainant never told him of the incident with Doty on July 28, 2004.

Complainant met his burden of proof and is entitled to damages.

### Discrimination based on hostile work environment

The Human Rights Law prohibits discrimination in employment based upon race. N.Y.S. Executive Law section 296. subparagraph 1. The discrimination may take the form of a hostile work environment.

A complainant alleging unlawful discrimination in violation of the Human Rights Law is required to establish a prima facie case, as set forth in McDonnell Douglas Corp v. Green, 411 U.S. 792, 802 (1973). *See: Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 377 N.Y.S.2d 471, 339 N.E.2d 880 (1975).

The four prongs of the prima facie case are that complainant is in a protected class, that he was satisfactorily performing the duties of the position for which he is qualified, and that he is subjected to a negative employment action, which negative employment action is predicated upon, or inferred to be related to, his protected class. Upon the establishment of a prima facie case, a burden to produce shifts to the

Respondent to set forth an explanation for its actions, which explanation is itself not a violation of the Human Rights Law. Upon the production of such an explanation, the Complainant must show that the explanation offered is a pretext for illegal discrimination. Ferrante v. American Lung Assoc., 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997), citing to McDonnell Douglas Corp v. Green, 411 U.S. 792, 802 (1973), Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981) and St. Mary's Honor Ctr. v. Hicks, 113 S. Ct. 2742, 2749 (1993).

The analysis of a claim of discrimination based upon hostile work environment required that the complainant must show that he is a member of a protected class, that he was subjected to unwelcome conduct or words, that the conduct or words were prompted by his protected class membership, that the conduct or words created a hostile environment which affected the terms and conditions of employment and that the employer is liable for the conduct. Quinn v. JPMorgan Chase & Co., 2006 NY Slip Op 50980U; 12 Misc. 3d 1160A, 819 N.Y.S.2d 212; 2006 N.Y. Misc. LEXIS 1274 (S. Ct. New York County, 2006).

Complainant met his burden of establishing a prima facie case for a discrimination claim based upon hostile work environment claim due to race. Complainant was a member of a protected class in that he was black. Complainant was qualified for his position of painter, and Respondent's continued employment of Complainant demonstrated he performed his duties satisfactorily. Complainant established that he was subjected to negative employment action in that the work environment was tainted by racial slurs such as the use of term "nigger" and "spook." Terms such as "nigger" and "spook" are inherently racially offensive. Complainant also

established he told his co-workers and his employer that he was offended by the language. See: McIntyre v. Manhattan Ford, Lincoln-Mercury, 175 Misc. 2d 795, 802, 669 N.Y.S.2d 122 (Sup. Ct, NY County, 1997).

Heflin, an owner and supervisor with hiring and firing responsibilities knew of Complainant's complaints, and took some steps to stop the conduct at the work place, at least as to one of the offending co-workers. However, although Heflin knew Complainant had experienced difficulties with Doty, Heflin took only temporary and ineffective steps to correct the hostile work environment as to Doty and Complainant. Such inaction constitutes condonation of the hostile work environment. See: Patrowich v. Chemical Bank, 63 N.Y.2d 541, 483 N.Y.S.2d 659, 473 N.E. 2d 111 (1984)

Respondent's answered the charge of a hostile work environment with two points. First, Respondent denied that the language was used. The testimony of Respondent's own witnesses, Heflin, Doty and Bublak, did not support these positions. The record established that racially offensive language was regularly used at the workplace, even after Complainant reported this conduct as offensive. At least one co-worker, Bilili, was not re-hired after being cautioned about racially offensive language.

Second Respondent argued that the work place could not be so bad because Complainant returned to work. This argument has no legal basis. Heflin himself acknowledged he had cautioned his employees about the inappropriate language. Doty admitted using the term "nigger" on July 28, 2004. Bublak's testimony regarding the treatment of Complainant by Respondent's employees mirrored the testimony of both Complainant and his witness, White. Complainant was treated differently than other workers because of his race. Under the totality of the circumstances in this case,

Complainant's workplace was hostile both from his point of view and from the point of view of a reasonable person. See: Father Belle Community Ctr. v. New York State Division of Human Rights, 221 A.D. 2d 44, 642 N.Y.S.2d 739 (4<sup>th</sup> Dept., 1996), appeal denied, 647 N.Y.S.2d 652 (4<sup>th</sup> Dept., 1996), lv. denied 89 NY 2d 809, 655 N.Y.S. 2d 889 (1997); Patrowich v. Chemical Bank, *op cit*.

Heflin was an owner of the employing corporation, its vice-president, and the individual charged by Respondent with the day-to-day management, including hiring and firing. He admitted knowing of the bad relationship between Doty and Complainant. He expected the bad relationship to work itself out. An employer is required to do more than simply expect employees to work things out. Heflin's inaction condoned the racially offensive conduct, and permitted the hostile work environment to continue. He is held to personal liability for the actions of the subordinate employees including Doty. Tomka v. Seiler Corp., 66 F.3<sup>rd</sup> 1295, 1319 (2<sup>nd</sup> C., 1995).

#### Constructive Discharge

Under the Human Rights Law, constructive discharge occurs when the discriminatory conduct of the Respondent is so intolerable that a reasonable employee would resign. Both the views of the complainant and those of a reasonable person are considered. See: Father Belle Community Ctr. v. New York State Division of Human Rights, 221 A.D. 2d 44, 642 N.Y.S.2d 739 (4<sup>th</sup> Dept., 1996), appeal denied, 647 N.Y.S.2d 652 (4<sup>th</sup> Dept., 1996), lv. denied 89 NY 2d 809, 655 N.Y.S. 2d 889 (1997).

The record established that on Complainant's last day of work, he was physically assaulted by Doty, the same worker who regularly verbally abused him. Respondent answered the charge of constructive discharge by claiming that Complainant quit in order

to avoid wage garnishment for back child support; and that Complainant did not report Doty's physical assault. These arguments were not persuasive.

Respondent offered only speculation regarding its garnishment argument. That argument failed to recognize that the child support debt would remain whether or not Complainant paid it through wage garnishment, or by other authorized methods such as seizure of income tax refunds. Complainant's testimony regarding his attitude toward the wage garnishment and his ability to pay it when employed by Respondent refuted Respondent's speculations. The argument that Complainant did not report the physical assault belies the fact that Doty himself reported there had been an incident. Given the history between the parties, Heflin was under a duty to make reasonable inquiry as to what had occurred between the two employees.

The testimony of the witnesses established that there was a long history of animosity between Doty and Complainant, and that Complainant told Heflin his concerns regarding Doty's treatment on numerous occasions. The record established that Heflin, as the employer-supervisor, was advised by Doty that an incident occurred but took no steps to investigate, failing to ask Complainant about his side of the argument when he picked up his paycheck. A single incident is sufficient to justify a finding of hostile work environment and constructive discharge. See: Imperial Diner, Inc. v. State Division of Human Rights Appeal Board, 52 N.Y.2d 72, 78 (1980). This Complainant was justified in not returning to work: the conditions under which he worked, particularly the use of the term "nigger" and being struck with a painter's pole, constituted constructive discharge.

Damages

The Human Rights Law authorizes the Commissioner to make an award of compensatory damages to a complainant victimized by discrimination in the workplace. NYS Executive Law section 297.4 (c) (iii) and (iv). Compensatory damages may take the form of monetary damages to a complainant for lost wages, as well as monetary damages to a complainant for mental anguish, pain and suffering.

In the instant case, while Complainant expected to continue working, in reality he was only physically able to work for the seventeen weeks between the end of July and the beginning of December when he applied for SSI benefits. The amount of wages from the Respondent that Complainant could have earned during this period was \$10,200.00 (17 times \$600.00). Complainant mitigated his damages by seeking other employment. He found temporary work for which he was paid \$1,510.00. Complainant is entitled to the difference between the amount he expected to make (\$10,200.00) and the amount he did make (\$1,510.00) or damages in the form of lost wages of \$8,690.00.

Under the circumstances in this case, Complainant is also entitled to interest on those lost wages at the statutory rate for the lost wages: Aurecchione v. NYS Division of Human Rights, 98 N.Y. 2d 21, 744 N.Y.S.2d 349 (2002). September 30, 2000 is a reasonable intermediate date between July 28, 2000 and December 1, 2000.

Complainant was angry, frustrated and depressed by Doty's conduct, and the lack of meaningful correction of that conduct by Heflin. He would express his anger and frustration regarding his working conditions at home with his family. When Doty struck him with the painting pole, Complainant had had enough. Currently he is on medication for depression. One factor for his depression is his anger at the environment under which

he worked for Respondent and his disappointment in Heflin's failure to take effective action; another factor is Complainant's frustration at his physical inability to work. Under the circumstances here, an award of \$15,000.00 for mental anguish, emotional pain and suffering, resulting from his employment experience with Respondent is consistent with the objectives and goals of the Human Rights Law, as well as with recent Commissioner's orders. (Matter of R & B Autobody & Radiator, Inc. v. New York State Div. of Human Rights, Appellate Division, 3rd Dept., entered June 8, 2006 citing to Matter of Town of Lumberland v. New York State Division of Human Rights, 229 A.D.2d 631(3rd Dept., 1996).

The Commissioner is also empowered to order equitable remedies. It is respectfully recommended that the Commissioner order Respondent to adopt a policy of discrimination prevention, to distribute the policy to its employees, to establish a reporting process, to promulgate a training program for its management and employees in ways to prevent discrimination at the workplace, and to adopt a "no tolerance" policy with regard to racially offensive epithets at the workplace.

#### **ORDER**

On the basis of the foregoing Findings of Fact, Decision and Opinion and pursuant to the provisions of the Human Rights Law, it is

ORDERED that Respondent, its agents, representative, employees, successors and assigns shall take the following affirmative steps to effectuate the purposes of the Human Rights Law

1. Respondent, its agents, representatives, employees, successors and assigns shall immediately cease and desist all discriminatory conduct in violation of the Human Rights Law; and

2. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant the sum of \$8,690, as compensatory damages for the lost wages resulting from the discriminatory conduct of the Respondent. In addition, Complainant shall be paid interest on the lost wage amount at the statutory rate from September 30, 2004, a reasonable intermediate date; and

3. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant the sum of fifteen thousand dollars as compensatory damages for the mental anguish, pain and suffering he endured as a result of the unlawful discriminatory conduct against him; and

4. Interest shall accrue on the monetary awards ordered at the statutory rate from the date of the Final Order and be due and payable to Complainant until payment is actually made by Respondent; and

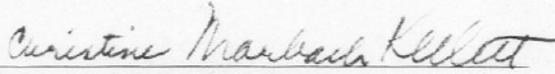
5. Payment of the above awards shall be made by Respondent in the form of a certified check made payable to the order of the Complainant and delivered to him at his then current address by registered mail, return receipt requested. Simultaneously Respondent shall furnish written proof of the aforesaid payment required by this order to Caroline Downey, Acting General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458; and

6. In conjunction with advice received from the Division of Human Rights, Respondent shall develop, promulgate, initiate, operate and enforce policies, including

the adoption of a "zero tolerance" policy with regard to racially offensive epithets at the workplace, aimed at the recognition and prevention of discrimination on any grounds, including racial prejudice and biases, and shall provide to its executives, officers and employees training in the recognition and prevention of discrimination in the workplace; and

7. Respondent shall comply with the directives contained in this order and shall cooperate with the Division during any investigation into its compliance with this Order.

DATED: February 8, 2007  
Albany, New York

  
Christine Marbach Kellett  
Administrative Law Judge