



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

ALIRA JONDEKER,

Complainant,

v.

H & A DELI,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 10163533

Federal Charge No. 16GB304384

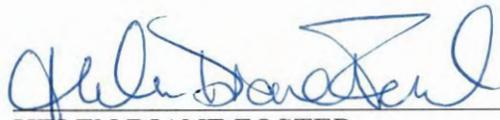
**PLEASE TAKE NOTICE** that the attached is a true copy of the (“Recommended Order”), issued on November 12, 2014, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

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

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED.**

DATED: **DEC 30 2014**  
Bronx, New York



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HELEN DIANE FOSTER  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**ALIRA JONDEKER,**

Complainant,

v.

**H & A DELI,**

Respondent.

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

Case No. **10163533**

**SUMMARY**

Complainant alleged that Respondent discriminated against her based upon her national origin and sex. Complainant proved her claim and is entitled to two days wages for the time she worked for Respondent. Complainant has not made a claim for back wages, other than the pay for the two days she worked for Respondent. She is also entitled to damages for emotional distress. Civil fines and penalties are assessed against Respondent.

**PROCEEDINGS IN THE CASE**

On July 26, 2013, Complainant filed a verified complaint 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”).

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

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A public hearing was held on July 16, 2014.

Complainant appeared at the hearing. The Division was represented by Aaron M. Woskoff, Esq. Respondents failed to appear despite being sent notice of the hearing. Notices sent to Respondents’ address at 416 Jersey Street, Staten Island, New York, 10301 were not returned by the United States Postal Service and are presumed received. The default was noted and the hearing proceeded in accordance with the Division’s Rules of Practice at 9 NYCRR §465.12(b)(3).

#### **FINDINGS OF FACT**

1. Complainant is a Hispanic female, of Peruvian national origin. (Tr. 8)
2. On July 22, 2013, Complainant began working as a cleaner at Respondent’s delicatessen. (Tr. 10)
3. At least four persons were employed in the store in addition to Complainant and Respondent’s owner. (Tr. 15)
4. Complainant was referred to Respondent by an agency, Sureya Enterprise. (Complainant’s Exhibit 1)
5. Complainant worked one day for Respondent without incident. (Tr. 10)

6. The second day, Complainant did not finish her day because Respondent's owner became "aggressive" towards her, by calling her names such as "Mexican piece of shit," "Mexican shit," "bitch" and "stupid." (Tr. 11-13)

7. Respondent's owner yelled at Complainant and brought a dog to stand in her way as she tried to leave the store. (Tr. 12)

8. The dog frightened Complainant and caused her to become very nervous. Complainant began to cry and her hands were shaking. As Complainant left the store, the owner pushed her out and closed the door. (Tr. 12)

9. Complainant was never paid for the two days she worked. Complainant was supposed to earn 12 dollars per hour. She would have earned 168 dollars during the two days she worked for Respondent. (Complainant's Exhibit 3)

10. Complainant is afraid to be near dogs because of this incident. Her hands sweat and shake when she remembers it. (Tr. 23-24)

### **OPINION AND DECISION**

The N.Y. Exec. Law, art. 15 ("Human Rights Law") makes it an unlawful discriminatory practice for an employer to "discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment" because of that person's sex or national origin. Human Rights Law § 296.1 (a).

Harassment is a form of discrimination. In order to sustain a claim of harassment, Complainant must demonstrate that she was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division

must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

In this case, Respondent's owner hurled racial and ethnic slurs at Complainant. He screamed at Complainant, intimidated her and threatened her with a dog. The offensive comments were made directly to Complainant. After treating Complainant in such a manner, he failed to pay her for the work she had done. Complainant has shown that Respondent's actions were harassment based on her national origin.

As a result of Respondent's failure to pay Complainant, she has suffered damages in the form of lost wages. Complainant lost \$168.00 because of that failure and is entitled to be compensated for that amount. *Bell v. NYS Division of Human Rights*, 36 A.D.2d 1129 (3d Dept., 2007). Complainant is entitled to pre-determination interest on the back wage award at a rate of nine per cent per year, from July 23, 2013. "An award of interest is often appropriate from the time which a party was deprived of the use of money since without the addition of interest, the aggrieved party is not made whole." *Aurecchione v. New York State Division of Human Rights*, 98 N.Y.2d 21, 771 N.E.2d 231, 744 N.Y.S.2d 349 (2002). Under New York law, prejudgment interest is calculated on a simple interest basis. *See, Epstein v. Calvin-Miller Intern. Inc.*, 139 F.Supp.2d 469 (S.D.N.Y. 2001), *citing, Marfia v. T.C. Ziraat Bankasi*, 147 F.3d 83, 90 (2dCir. 1998); *Donovan v. Dairy Farmers of America, Inc.*, 53 F.Supp.2d 194, 197 (N.D.N.Y. 1999).

As a result of the Respondent's discriminatory actions, Complainant is entitled to recover damages owing to her emotional distress. She suffered stress and anxiety from the harassment she received. Complainant was subjected to a stream of offensive comments directed towards

her and referencing her Hispanic origins. The New York Court of Appeals has stated that “distress follows such bias and exclusion as night follows day.” *300 Gramatan Avenue Associates v. New York State Division of Human Rights*, 45 N.Y.2d 176, 408 N.Y.S.2d 54, 59 (1978). Complainant is therefore entitled to \$5,000.00, which is reasonably related to the harm she suffered and will effectuate the purpose of the Human Rights Law. *Kowalewski v. New York State Division of Human Rights*, 26 A.D.3d 888, 809 N.Y.S. 2d 347 (4th Dept. 2006); *Bayport-Blue Point School District v. State Division of Human Rights*, 131 A.D. 2d 849, 517 N.Y.S. 2d 209 (2d Dept. 1987).

Pursuant to § 297 of the Human Rights Law, the Division may assess civil fines and penalties. In this case, a civil fine is appropriate to deter Respondents from future discriminatory behavior. Respondent’s harassing words and actions were deliberate, and resulted in humiliation to Complainant. Given the circumstances, considering the goal of deterrence, the nature and circumstances of the violation, the degree of Respondent’s culpability and Respondent’s size, \$10,000 is an appropriate civil fine and penalty. *See Noe v. Kirkland*, 101 A.D.3d 1756, 1758, 957 N.Y.S. 2d 797 (4th Dept. 2012) (\$20,000 civil fine and penalty confirmed); *Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 514, 949 N.Y.S. 2d 459 (2d Dept. 2012) (\$25,000 civil fine and penalty confirmed).

## ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that that Respondents and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and it is further

ORDERED that Respondents shall take the following actions to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this order:

1. Within 60 days of the Commissioner's Final Order, Respondent shall pay to Complainant the sum of \$5,000, without any withholdings or deductions, as compensatory damages for mental anguish and humiliation she suffered as a result of Respondent's discriminatory acts. Interest shall accrue on this award at the rate nine percent per year, from the date of the Commissioner's Final Order until payment is actually made by Respondent.
2. Within 60 days of the Commissioner's Final Order, Respondent shall pay to Complainant the sum of \$168.00, minus applicable withholding taxes and fees as compensation for her lost wages. Interest shall accrue at a rate of nine percent per year from July 23, 2013.

3. The aforementioned payments shall be made in the form of a certified check, made payable to the order of Complainant, Alira Jondeker, and delivered by certified mail, return receipt requested, to Caroline Downey, General Counsel of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4<sup>th</sup> floor, Bronx, NY 10458. Respondent shall simultaneously furnish written proof of compliance with the directives contained in this Order by certified mail, return receipt requested to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4<sup>th</sup> floor, Bronx, NY 10458.

4. Within 60 days of the date of the Commissioner's Order, Respondent shall pay the sum of \$10,000 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 the New York State Division of Human Rights at One Fordham Plaza, 4th floor, Bronx, New York 10458, attention: Caroline Downey, General Counsel. Interest shall accrue on this assessment at a rate of nine per cent per year from the date of this Order until payment is made.

5. Within 60 days of the date of the Commissioner's Final Order, Respondent shall establish policies and procedures for the prevention of unlawful discrimination and harassment in accordance with the Human Rights Law. These policies and procedures shall include an official anti-discrimination and harassment policy and a formalized reporting mechanism for employees who believe they have been discriminated against. The policies shall also contain the development and implementation of a training program relating to the prevention of unlawful discrimination in accordance with the Human Rights Law. Training and a copy of the policies shall be provided to all employees. A copy of the policies and procedures shall be provided, within sixty days of the date of the Commissioner's Final Order, to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4<sup>th</sup> floor, Bronx, NY 10458.

6. Respondent shall cooperate with the representatives of the Division during any investigation into their compliance with the directives of this Order.

DATED: November 12, 2014  
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas S. Protano". The signature is fluid and cursive, with the first name "Thomas" written in a larger, more prominent script than the last name "S. Protano".

Thomas S. Protano  
Administrative Law Judge