

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

BETTY M. MAVINS,

Complainant,

v.

VILLAGE CONVENIENCE STORE, INC.,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 10120816

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 November 26, 2008, by Robert M. Vespoli, 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 GALEN D. KIRKLAND, 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: **JAN 22 2009**  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER

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**VILLAGE CONVENIENCE STORE, INC.,**

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

Case No. **10120816**

**SUMMARY**

The record establishes that Respondent discriminated against Complainant in a place of public accommodation when she was ridiculed and denied service because of her race and color. Accordingly, the instant complaint is sustained and Complainant is awarded \$7,000.00 in compensatory damages for mental anguish.

**PROCEEDINGS IN THE CASE**

On September 20, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to public accommodation 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 Robert M. Vespoli, an Administrative Law Judge ("ALJ") of the Division. On April 24, 2008, the Division's Calendar Unit sent a notice of hearing to each party in this matter. (ALJ's Exhibits 3, 4) On August 14, 2008, the Calendar Unit sent a continuation letter to each party in this matter designating the time and location of the public hearing scheduled for September 15 and 16, 2008. (ALJ's Exh. 5) None of these notices were returned to the Calendar Unit and they are presumed to have been delivered.

A public hearing was held on September 15, 2008. Complainant appeared at the hearing, and the Division was represented by Aaron Woskoff, Esq. Respondent did not appear and has defaulted.

#### **FINDINGS OF FACT**

1. Complainant alleged that Respondent discriminated against her in a place of public accommodation when she was ridiculed and denied service because of her race, color and sex. (ALJ's Exh. 1)

2. Although Respondent received due notice, Respondent did not appear at the public hearing and has defaulted. (Tr. 8)

3. Complainant is an African American female. (Tr. 11)

4. Complainant frequented Respondent's convenience store from 2001 until April 2007. (Tr. 12, 15)

5. Complainant averred that Respondent's owner and employees are Hispanic. (Tr. 12-13, 24)

6. Unlike Respondent's Hispanic customers, black customers were frequently followed around the store by Respondent's employees. (Tr. 18)

7. Respondent's employees consistently served Hispanic customers before African American customers. (Tr. 16-17)

8. Respondent's employees frequently made derogatory comments about black women, stating that black women have "big behinds" and are sexually active. (Tr. 27, 39)

9. One of Respondent's employees often made comments to Complainant about her age and her sexual appetite. (Tr. 37-38) This frequently happened in front of Respondent's owner who laughed at the comments. (Tr. 39) Although Complainant complained about these incidents to Respondent's owner, he did nothing to stop this behavior. (Tr. 39-41)

10. In April 2007, Complainant attempted to purchase 2 peppers for \$.98. She gave the clerk \$1.00, but the clerk did not give her change. She complained to Respondent's owner who refused to give Complainant her change. Respondent's owner replied that black people are always poor and told Complainant he did not want to "hear about [Complainant's] old black ass complaining." (Tr. 19-23; ALJ's Exh. 1) He subsequently took the peppers back, returned Complainant's money and barred Complainant from shopping in the store. (Tr. 19-24)

11. As a result of the treatment Complainant received in Respondent's store, Complainant cried and felt degraded. (Tr. 20, 31, 35)

### OPINION AND DECISION

It is unlawful for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, directly or indirectly, to withhold from or deny to any person the accommodations, advantages, facilities or privileges

thereof because of her race, color or sex. N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.2(a).

Respondent’s store qualifies as a place of public accommodation under the Human Rights Law. Human Rights Law § 292.9.

While the evidence does not show that Respondent denied service to Complainant because of her sex, the record firmly establishes that Respondent denied Complainant the accommodations, advantages, facilities and privileges of its store because of her race and color. The conduct and comments by Respondent’s owner and employees over the years expressed a clear discriminatory bias against black customers. During the incident that occurred in April 2007, Respondent’s owner made disparaging comments directed at Complainant’s race and color when he refused to allow Complainant to purchase merchandise and barred Complainant from shopping in the store. Accordingly, the Division finds that Respondent denied service to Complainant and made her unwelcome in the store because of her race and color in violation of the Human Rights Law.

Complainant is entitled to recover compensatory damages for mental anguish caused by Respondent’s unlawful conduct. 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. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991). Complainant credibly testified that Respondent’s discriminatory conduct caused her to cry and feel degraded. In consideration of the degree of her suffering and the severity of Respondent’s conduct, an award of \$7,000.00 for emotional pain and suffering will effectuate the goals and objectives of the Human Rights Law and is consistent with prior awards of the Commissioner.

*See Keimel v. Manchester Newspapers d/b/a Free Press*, DHR Case No. 10102907 (May 1, 2007); *Swails v. Classic Fashion Resources, Inc., d/b/a Pittsford Pendleton Shop*, DHR Case No. 10115313 (February 6, 2008).

**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, and its agents, representatives, employees, successors, and assigns, shall cease and desist from unlawful discriminatory practices relating to public accommodation; and it is further

ORDERED that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

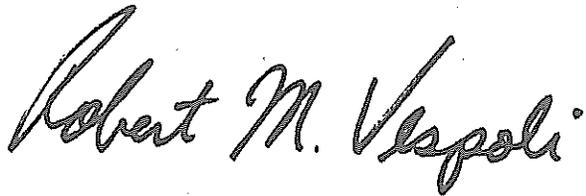
1. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of \$7,000.00 without any withholdings or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of Respondent's unlawful discrimination against her. Interest shall accrue on the award at the rate of nine percent per annum from the date of the Commissioner's Order until payment is actually made by Respondent.

2. The aforesaid payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Betty Mavins, and delivered by certified mail, return receipt requested, to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458. Respondent shall furnish written proof to the New York State Division of Human Rights, Office of General Counsel, One Fordham

Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458, of its compliance with the directives contained within this Order.

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

DATED: November 26, 2008  
Hempstead, New York

A handwritten signature in black ink that reads "Robert M. Vespoli". The signature is written in a cursive style with a large, sweeping initial 'R'.

Robert M. Vespoli  
Administrative Law Judge