

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

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

FILIBERTO MOREIRA,

Complainant,

-against-

**VMT GENERAL CONSTRUCTION CORP, CN
INDUSTRIES, INC., AS SUCCESSOR-IN-
INTEREST,**

Respondents.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case No.
145427

PLEASE TAKE NOTICE that the within is a true copy of an Order issued herein by the Hon. Edward A. Friedland, Executive Deputy Commissioner of the State Division of Human Rights, after a hearing held before Margaret A. Jackson, an Administrative Law Judge of the Division. 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 which 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 days after service of this Order. The Petition and Notice of Petition must also be served on all parties, including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th

Final Order After Hearing

SDHR Case No. 145427


Filiberto Moreira v. VMT GENERAL CONSTRUCTION CORP, CN Industries, Inc., As
Successor-In-Interest

Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION
WITH THE STATE DIVISION OF HUMAN RIGHTS.

PLEASE TAKE FURTHER NOTICE that a complainant who seeks state judicial review
and who receives an adverse decision therein, may lose his or her right to proceed subsequently
in federal court by virtue of *Kremer v. Chemical Construction Co.*, 456 U.S. 461 (1982).

DATED: 1/24/07
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS


EDWARD A. FRIEDLAND
Executive Deputy Commissioner

Final Order After Hearing

SDHR Case No. 145427

Filiberto Moreira v. VMT GENERAL CONSTRUCTION CORP, CN Industries, Inc., As
Successor-In-Interest

To:

Filiberto Moreira

2615 Third Avenue, Apt. 4A

Bronx, New York 10451

VMT General Construction Corp.

20-67 Shore Boulevard, #2C

Long Island City, New York 11105

CN Industries, Inc.

24-48 - 29th Street, #2B

Astoria, New York 11102

Attention Demetre Beryeles, Chairman

Caroline Downey, Acting General Counsel

Robert Alan Meisels, Esq., of Counsel

State Division of Human Rights

One Fordham Plaza

Bronx, New York 10458

Hon. Andrew Cuomo

Attorney General

120 Broadway

New York, New York 10271

Attention Civil Rights Bureau

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

STATE DIVISION OF HUMAN RIGHTS
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FILIBERTO MOREIRA,

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Complainant alleged that Respondent terminated his employment because of his race when he was fired and told that Respondent was firing all black and Hispanic workers. Respondent defaulted and presented no evidence in opposition, therefore, the Division sustains the complaint.

PROCEEDINGS IN THE CASE

On February 25, 1991, Complainant filed a verified complaint, thereafter amended, with the State Division of Human Rights ("Division"), charging Respondents with an unlawful discriminatory practice relating to employment in violation of the Human Rights Law of the State of New York.

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

On May 17, 2002, the case was assigned to Migdalia Pares, an Administrative Law Judge ("ALJ") of the Division.

On August 23, 2002, the caption was amended naming CN Industries, Inc. as Successor-in-Interest.

On May 13, 2003, Chris Triantopoulos, a family member of Vassilios Triantopoulos, President of CN Industries, was served with a Notice of Hearing returnable May 20, 2003. Vassilios Triantopoulos and his attorney, Chris Economou, Esq., of the Law Offices of Chris Economou, appeared at the May 20, 2003, hearing.

On October 3, 2003, the case was reassigned to ALJ Margaret A. Jackson.

A preliminary conference was scheduled for December 21, 2003. Prior to the conference, Economou indicated that he no longer represented Respondent CN Industries, Inc. in connection with this proceeding. The complaint was represented by the Division through Robert Meisels, Esq. of Counsel.

On February 20, 2004, Ana Beryeles, wife of Demetre Beryeles an authorized party to CN Industries, was served with a Notice of Hearing.

By notice dated February 15, 2005, a public hearing was scheduled to be held on April 7, 2005. Notices were sent to Respondents' last known addresses. The Notices were not returned to the Division as undeliverable. Respondents did not appear at the hearing and pursuant to the rules of practice, an inquest was conducted.

On June 8, 2006, ALJ Jackson issued a recommended Findings of Fact, Decision and Opinion, and Order ("Recommended Order") for the Commissioner's consideration. Objections to the Recommended Order were filed by Division Counsel dated June 19, 2006.

On November 15, 2006, Adjudication Counsel Peter G. Buchenholz issued an Alternative Proposed Order ("APO") for the Commissioner's consideration. No Objections to the APO were received by the Commissioner's Order Preparation Unit.

FINDINGS OF FACT

1. Complainant, a black male, alleged that Respondents discriminated against him in employment when it terminated his employment because of his race or color. (ALJ's Exhibit I).
2. Despite being duly noticed, Respondents failed to appear at the hearing to defend against the complaint. (Tr. 3).
3. Complainant worked for Respondent VMT General Construction Corp. at work sites located at 119th Street and 121st Street on Seventh Avenue in Manhattan. The employees on the work sites were Polish, Greek, African-American, Hispanic and white. (Tr. 13, 14, 26).
4. Complainant worked for Respondents as a demolitionist for approximately eighteen months. (Tr. 7).
5. A white individual identified only as Teddy was the foreman of the job sites, and Benny Ortiz, who was Hispanic, was the assistant foreman who supervised Complainant. (Tr. 7).
6. Complainant was working one day on the roof of an eight story building when Ortiz told him to stop working. Ortiz threatened Complainant that he was going to push him off of the roof if he did not quit. An argument ensued between Complainant and Ortiz. Complainant described Ortiz as "a big army man." Complainant picked up a four-by-four to protect himself after which Ortiz backed up. (Tr. 10-11).
7. Ortiz told Complainant that he was directed by Teddy, his supervisor, to push him off the roof. (Tr. 11).
8. After Complainant came off the roof, Ortiz told him that Teddy said not to come back to work or show up at the site any more. When Complainant went inside to get his belongings, Teddy told Complainant that he was going to fire all the black and Hispanic workers and bring his own crew to the site. (Tr. 13-14, 16, 30).

9. Though the date of the termination cannot be determined from the record, it is noted that Complainant was on Respondents' payroll during the fourth quarter of 1990, and, therefore, filed his complaint within the statute of limitations period. (Complainant's Exhibit 1; Tr. 14).

10. Before being fired, Complainant earned \$5,903.52 for the fourth quarter of 1990, or \$1,816.47 per month for a thirty-five hour work week. (Complainant's Exhibit 1; Tr. 17).

11. Complainant was unemployed three months before he joined the Merchant Marines, at a salary of \$4,000 per month for a fifty-six hour work week. (Tr. 18).

12. Complainant testified that being fired "hurt" because he had a family to support. As a result of his lost income, his financial situation was "tough." His wife had to take over supporting his family, which made him feel badly. He socialized less frequently, and he experienced difficulty sleeping because he felt worried. He had been studying political science at Pace University and had to drop out because of his lost income. (Tr. 19-22).

DECISION AND OPINION

Respondents failed to appear for the Division hearing despite being duly noticed. Pursuant to the Division's of Rules of Practice, on April 7, 2005, the hearing proceeded on the evidence in support of the complaint. 9 NYCRR § 465.12(b)(3).

The Division determines that Respondents discriminated against Complainant in violation of the Human Rights Law.

The Human Rights Law prohibits an employer from discriminating against an employee based on his race or color. Human Rights Law § 296.

Complainant, a black male, alleged that Respondents discriminated against him in employment when it terminated his employment because of his race or color.

Absent direct evidence of discrimination, a complainant may prove a prima facie case of discrimination by establishing that that he suffered an adverse job action as a result of his membership in a protected class. Once a prima facie case is established, the burden of production shifts to the respondent to rebut the presumption of discrimination by articulating legitimate, non-discriminatory reasons for its actions. The complainant may then show that the respondent's given reasons were a pretext for discrimination. *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 (1975).

Complainant has established a prima facie case of discrimination. His credible testimony establishes that he was fired and that when he was fired he was told that Respondents were getting rid of all of the black employees. Respondents have failed to provide legitimate, non-discriminatory reasons for terminating Complainant's employment.

Accordingly, Respondents discriminated against Complainant when it terminated him because of the color of his skin.

As a result of Respondents' discrimination, Complainant is entitled to an award of back pay, less any wages earned. Human Rights Law § 297.4(c).

Complainant was out of work for three months following the termination until he joined the Merchant Marines earning a salary greater than that which he earned during his employment by Respondents. Complainant earned \$1,816.47 per month with Respondents and is, therefore, entitled to a back pay award in the amount of \$5,449.41.

Because the date of Complainant's termination cannot be determined from the record, no pre-determination interest is awarded; however, Complainant is entitled to post-determination interest at a rate of nine percent per annum on his gross back pay award from the date of this Order

until the date payment is made. *New York State Div. of Human Rights v. Marcus Garvey Nursing Home*, 249 A.D.2d 549, 550, 672 N.Y.S.2d 130 (2d Dept. 1998).

In addition to back pay, "an award of . . . damages to a person aggrieved by an illegal discriminatory practice may include compensation for mental anguish." *Cosmos Forms, Ltd. v. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989). Such compensation may be based solely on a complainant's testimony. *Id.* at 442; *see also Cullen v. Nassau County Civil Serv. Comm'n*, 53 N.Y.2d 492, 442 N.Y.S.2d 470 (1981). It must, however, be reasonably related to Respondents' discriminatory conduct. *Quality Care v. Rosa*, 194 A.D.2d 610, 599 N.Y.S.2d 65 (2d Dept. 1993); *School Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. N.Y.C. Commission on Human Rights*, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2d Dept. 1992). Complainant has been aggrieved by Respondents' unlawful conduct and is entitled to compensation for his mental anguish.

As a result of being terminated by Respondents, Complainant testified that being fired "hurt" because he had a family to support. As a result of his lost income, his financial situation was "tough." His wife had to take over supporting his family which made him feel badly. He socialized less frequently and he experienced difficulty sleeping because he felt worried. He had been studying political science at Pace University and had to drop out because of his lost income. Under the circumstances an award to \$10,000 for the emotional distress he suffered as a result of the discriminatory treatment is appropriate and is reasonably-related to Respondents' discriminatory conduct. *See State Div. of Human Rights v. Dorik's Au Natural Restaurant*, 239 A.D.2d 158, 657 N.Y.S.2d 895 (1st Dept. 1997); *Ebasco Servs. v. New York State Div. of Human Rights*, 234 A.D.2d 80, 651 N.Y.S.2d 297 (1st Dept. 1996).

Additionally, Complainant is entitled to post-determination interest at a rate of nine percent per annum on his mental anguish award from the date of this Order until the date payment is made.

New York State Div. of Human Rights v. Marcus Garvey Nursing Home, 249 A.D.2d 549, 550, 672 N.Y.S.2d 130 (2d Dept. 1998).

ORDER

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

ORDERED that Respondents, their agents, representatives, employee's successors and assigns shall cease and desist from discriminating in employment based on race in violation of the Human Rights Law; and it is further

ORDERED that Respondents, their agents, representatives, employees, successors and assigns take the following affirmative actions to effectuate the purposes of the Human Rights law:

1. Within sixty days of the date of this Order, Respondents shall pay to Complainant \$5,449.41, less standard deductions. Respondents shall also pay interest on this amount at the rate of nine percent per annum from the date of this Order until the date payment is made.

2. Within sixty days of the date of this Order, Respondents shall pay to Complainant \$10,000 without any withholding or deductions, as compensatory damages for the mental pain and humiliation Complainant suffered as a result of Respondents' unlawful discriminatory conduct. Respondents shall also pay interest on this amount at the rate of nine percent per annum from the date of this Order until the date payment is made.

3. The aforesaid payment shall be made by Respondents in the form of two certified checks made payable to the order of Complainant and delivered to him by registered mail, Return Receipt Requested, with copies to Caroline Downey, Acting General Counsel of the Division, at her office

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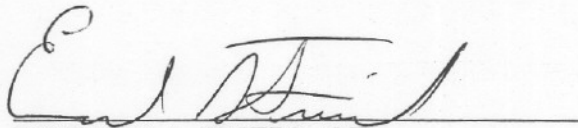
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Successor-In-Interest

address of State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx New York
10458.

4. Respondents shall furnish written proof of its compliance with the directives herein
contained and shall cooperate with representatives of the Division during any investigation into the
compliance with the directives of this Order.

DATED: 1/24/07
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS


EDWARD A. FRIEDLAND
Executive Deputy Commissioner