



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**  
on the Complaint of

**NEW YORK STATE, DIVISION OF HUMAN  
RIGHTS,**  
Complainant,  
v.  
**GOLDEN MINE 2000, INC. DBA ZAGHLOUL  
GRILL,**  
Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10169517

Federal Charge No. 16GB403514

**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 4, 2016, by Migdalia Pares, 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:**

- Given the record, a \$55,000 civil fine and penalty is assessed in this matter.

Respondent declined to appear and defend against the Complaint and thus, presented no evidence to “mitigate” the civil fine and penalty as indicated in the Recommended Order. The fact that Respondent failed to present evidence related to its ability to pay a fine does not weigh in its favor. Indeed, Respondent’s complete disregard for the Division’s investigation and inquiries throughout the process, including Respondent’s representative’s statement to the Division attorney that he “had no interest in speaking to the Division or participating in the proceedings” evince a serious and wanton disregard for the law and warrant the imposition of a greater penalty to deter Respondent from engaging in future unlawful behavior. On this basis, and because Respondent violated the Human Rights Law by advertising a preference for employees based on sex and age, Respondent is directed to pay to the State of New York a civil fine and penalty in the amount of \$55,000. *See Jacobs v. State Div. of Human Rights*, 131 A.D.3d 883 (1st Dept. 2015), confirming *Staton v. Jacobs Re LLC*, Division Case no. 10150646 (July 17, 2013) (\$55,000 civil fine and penalty assessed against Respondent after default. “Respondents’ actions, both in this case and in choosing to default, have made it clear that they do not fear any response by law enforcement to their conduct. This is perhaps best shown by Respondent Jacobs’ handwritten missives to the Division which evince a blatant contempt for the seriousness of the allegations, as well as a lack of respect for the Division, as a law enforcement agency, to prosecute them”). Interest is to accrue on the civil fine and penalty at a rate of nine percent per annum from the date of this Order until payment is made.

- The statement in the summary of the Recommended Order indicating that Respondent

is being directed to “engage in affirmative action” refers to the training ordered herein.

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 29 2016**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



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**GOLDEN MINE 2000, INC. DBA  
ZAGHLOUL GRILL,**

Respondent.

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

Case No. **10169517**

**SUMMARY**

The New York State Division of Human Rights (“Division”), pursuant to its statutory authority, initiated a complaint against Respondent, a food service establishment, for having posted an unlawfully discriminatory job advertisement seeking “young energetic ladies,” as well as a request for a female bartender. Upon Respondent’s absence and default, the allegations in the complaint are hereby proven. Respondent is directed to pay a civil fine to the State of New York, and to engage in affirmative action.

## PROCEEDINGS IN THE CASE

On June 23, 2014, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent, Zaghoul Grill, 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 Monique Blackwood, an Administrative Law Judge (“ALJ”) of the Division. The Notice of Hearing for July 29, 2015 is hereby entered into evidence as ALJ Exhibit 3. ALJ Blackwood held a hearing on July 29, 2015. Transcript dated July 29, 2015 is designated as Tr. Vol. I. The Division appeared by Darin Bazar, Esq., Senior Attorney. Respondent did not appear. ALJ Blackwood adjourned the hearing to allow the Division time to determine the correct corporate name of Respondent. (Tr. Vol. I, 4)

On August 26, 2015, the Division amended the complaint to reflect Respondent’s correct corporate name as “Golden Mine 2000, Inc. d/b/a Zaghoul Grill.” (A.L.J. Exhibit 1)

On September 30, 2015, pursuant to 9 NYCRR § 465.12(d) (2), the case was re-assigned to ALJ Migdalia Parés. ALJ Parés held hearings on November 16, 2015 and December 4, 2015. The transcripts for November 16 and December 4, 2015 are jointly designated as Tr. Vol. II as the pages are consecutive. Division exhibits were named in the record as DHR exhibits. These exhibits are hereby remarked and referred to as Complainant’s Exhibits.

Complainant appeared at the hearing. The Division was represented by Luwick Francois, Esq., Senior Attorney.

Respondent failed to appear before the Division to defend against the complaint. Respondent defaulted pursuant to 9 N.Y.C.R.R. §465.11(e). The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. §465.12(b) 3.

### **FINDINGS OF FACT**

#### *Complainant*

1. Complaint is an enforcement agency for the Executive Department of the State of New York, established pursuant to Human Rights Law (“HRL”) § 290.3 to, in relevant part, eliminate and prevent discrimination in employment as provided in the HRL. (ALJ Exhibit 1)

2. Pursuant to HRL §295.6, the Division is authorized “upon its own motion, to test and investigate and to make, sign and file complaint alleging violation of this article: *See also* §297.1 (“the division on its own motion may, in like manner, make, sign and file such complaint.”) (ALJ Exhibit 1)

#### *Respondent*

3. Respondent is a business corporation with an address at 61 New Dorp Plaza, Staten Island, New York 10306. (Complainant’s Exhibit 2)

4. On August 28, 2013, Respondent filed a certificate of assumed name (certificate”) with the New York State Department of State. (Complainant’s Exhibit 2)

5. The certificate indicates that the principal place of business for Respondent is 61 New Dorp Plaza, Staten Island, New York, 10306. (Complainant’s Exhibit 2)

6. The certificate indicates that Respondent assumed the name of ‘Zaghloul Grill.’ (Complainant’s Exhibit 2; Tr. Vol. II, 31, 49)

7. The certificate requested all the addresses where Respondent would be conducting business. In this section Respondent indicated only one address to conduct business. This was the same address as the principal place of business, namely, 61 New Dorp Plaza, Staten Island, New York, 10306. (Complainant's Exhibit 2)

8. The certificate indicated that Ahmed S. Hassan is Respondent's authorized representative. (Complainant's Exhibit 2)

9. Respondent is a food establishment described as a restaurant. (Complainant's Exhibit 1)

10. Respondent has at least four employees. (Complainant's Exhibits 5A, 5B, 5C; Tr. Vol. II, 37-40, 53-54, 58, 78-92)

*Waitress and Bartender Advertisement*

11. In January 2014, the Division's Initiated Action Unit (DIAU) began an inquiry into the prevalence of job advertisements on the internet which included specifications as to age of employees sought ("DIAU investigation") by food establishments. (ALJ Exhibit 1; Tr. Vol. II, 25, 36)

12. On May 14, 2014, during the course of its investigation into job advertisements on the internet, DIAU staff discovered the internet job advertisement of Respondent, on a website named Shiftgig.com. (ALJ Exhibit 1; Tr. Vol. II, 36)

13. The Shiftgig.com website had the following advertisement, "We. . . are looking for young energetic ladies with experience as waitress . . . we also need a female bartender . . ." (ALJ Exhibit 1; Complainant's Exhibit 1; Tr. Vol. II, 28-29)

14. The Shiftgig.com website job advertisement directed interested applicants to "[s]top by the restaurant to fill up the application Mon. to Sat. [b]etween 2:00PM & 5:00 PM . . . or e-mail . . . resume, a recent picture, and a brief bio . . ." (Complainant's Exhibit 1; Tr. Vol. II, 28-29)

15. The Shiftgig.com website job advertisement stated the name of the restaurant as Zaghoul Grill, and its address as 61 New Dorp N, Staten Island, New York. (Complainant's Exhibit 1)

*Notice*

16. In a letter dated May 19, 2014, DIAU by Jonathan P. Stead, ("Stead") Human Rights Specialist, requested that Respondent confirm if it had placed the advertisement and provide an explanation by June 3, 2014, for the language in question. (Complainant's Exhibit 3; Tr. Vol. II, 29)

17. The May 19, 2014 letter was sent "via certified mail return receipt requested" to Respondent at 61 New Dorp Plaza N, Staten Island, New York 10306, to the attention of Ahmed S. Hassan. (Complainant's Exhibit 3: Tr. Vol. II, 39-40)

18. The return receipt was signed and returned to the DIAU indicating receipt of the May 19, 2014 letter. (Complainant's Exhibit 3: Tr. Vol. II, 40)

19. The Division, after not receiving a response from Respondent's personnel concerning the advertisement, filed this verified complaint. (ALJ Exhibit 1; Tr. Vol. II, 37)

20. The DIAU complaint specified that Respondent's advertisement expressed an unlawful specification as to age and sex. (ALJ Exhibits 1, 2, 3)

21. On June 18, 2014 the DIAU served this complaint on Respondent at its business name and address as it appeared on the internet job advertisement, namely, Zaghoul Grill, 61 New Dorp Plaza N. Staten Island, NY 10306. (ALJ Exhibits 1, 2, 3)

22. Complainant's June 18, 2014, verified complaint placed Respondent on notice that its action of placing an advertisement which expressed an unlawful specification as to age and sex was at issue. (ALJ Exhibits 1, 2, 3)

23. Respondent failed to respond to the Division's written requests for information and cooperation during its investigation. (Complainant's Exhibit 3; Tr. Vol. II, 39-49)

24. On October 27, 2014, the Division by Regional Director William LaMot, issued a probable cause determination and referred the case to a public hearing. The probable cause determination was served on Respondent at 61 New Dorp Plaza N, Staten Island, NY 10306. (ALJ Exhibits 1, 2, 3)

25. The Division by Darin Bazar, Esq., ("Bazar") Senior Attorney, reached out to Ahmed S. Hassan, Respondent's representative, via telephone to address the complaint. Mr. Hassan told Mr. Bazar that he ". . . had no interest in speaking to the Division or participating in the proceedings." (Tr. Vol. II 30-31, 33)

26. On July 10, 2015, November 2, 2015 and November 17, 2015, the Division's Calendar unit mailed formal hearing notices to Respondent at 61 New Dorp Plaza N, Staten Island, New York 10306. (ALJ Exhibits 1, 2, 3)

27. The July 10, 2015, November 2, 2015 and November 17, 2015, formal hearing notices were not returned to the Division by the United States Postal Service and are, therefore, presumed received by all parties.

28. As of November 19, 2015, Respondent restaurant was still operating at the same address, namely, 61 New Dorp Plaza N, Staten Island, NY 10306. (Tr. Vol. II, 77-78)

29. Respondent did not appear at the hearings held on July 29, 2015, November 16, 2015 and December 4, 2015. (Tr. Vol. I, 4; Tr. Vol. II, 11, 72-73)

30. Respondent did not submit a verified answer to the complaint

31. I find the following facts: Respondent had notice of the verified complaint, notice of the amendment and notice of the public hearing. Respondent deliberately chose not to cooperate with the Division's investigation and not to appear at the public hearing.

### **OPINION AND DECISION**

#### **Unlawful Employment Advertisement**

Under Human Rights Law § 296.1(d), it is an unlawful discriminatory practice for an employer "to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age ...or . . . sex...unless based upon a bona fide occupational qualification..."

Respondent owned and operated a restaurant with at least four employees. Respondent had an unlawful screening process in place. Respondent was seeking only female wait staff and a female bartender. On May 14, 2014, Respondents placed an advertisement on an internet website seeking "young energetic ladies" and a "female bartender. Placing specifications on employment positions, such as limiting the gender or age of the applicants, violates the Human Rights Law unless based upon a bona fide occupational qualification ("BFOQ"). *see* HRL §296.1(a)(d) In this matter, Respondent did not seek a bona fide occupational qualification ("BFOQ") for their wait staff and bartender positions, thus, Respondent violated the Human Rights Law when it posted the advertisement.

Although given an opportunity to participate in the public hearing process, Respondent failed to appear before the Division to defend against the complaint. Therefore, Respondent

defaulted pursuant to 9 N.Y.C.R.R. §465.11 (e).

The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. §465.12 (b) (3). Respondent failed to rebut a prima facie showing that it violated the Human Rights Law in this regard, nor did Respondent proffer good cause to set aside this default. *Jacob v New York State Division of Human Rights*, 131 A.D. 3d 883, 17 N.Y.S. 3d 19 (2015) (Division default upheld when Respondent failed to appear or show good cause for his nonappearance.)

#### *Civil Fines and Penalties*

Human Rights Law §297 (4) (c) (vi) states that the Division may 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;

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; and other matters as justice may require. *Robert Starr v Cheers 2U LLC d/b/a Hurliman's Pub; Jeffrey Hurliman*, SDHR Case No. 10146477 (January 30, 2013). The goal of deterrence; the nature and circumstances of the violation; and the degree of respondent's culpability, warrant a penalty. As to deterrence Respondent cannot engage in a practice of hiring on the basis of age and gender unless based upon a bona fide occupational qualification. As to the degree of respondent's culpability, here Respondent placed an ad in a website specifically discouraging potential applicants on the basis of age and gender without any bona fide occupational qualification. In addition the circumstances here show that Respondent evaded the Division's lawful review of its

action by intentionally not participating in the Division investigation and hearing process. However, Respondent's action is mitigated by the relevant fact that there was no proof that it was adjudged to have committed any previous similar violation of the Human Rights Law or that it was incapable of paying any penalty. Accordingly, a civil fine of \$5,000.00 is appropriate in this case. *Gifford v McCarthy* 137 A.D. 3d 30, 23 N.Y.S. 3d 422, (3rd Dept. 2016) (\$10,000.00 civil fine against operators of wedding facilities guilty of unlawful discriminatory practice based on sexual orientation, in violation of New York State Human Rights Law) *Robert Starr v Cheers 2U LLC d/b/a Hurliman's Pub; Jeffrey Hurliman*, SDHR Case No. 10146477 (January 30, 2013). SDHR Case No. 10146477 (January 30, 2013) (\$1,000.00 civil fine where Respondent placed an ad for female bartender in violation of New York State Human Rights Law); *County of Erie v New York State Div. of Human Rights*, 121 A.D. 3d 1564, 993 N.Y.S. 2d 849 (4<sup>th</sup> Dept. 2014) (New York State Division of Human Rights did not abuse its discretion in imposing \$5,000.00 penalty based on county's failure to accommodate employee's disability in violation of the New York State Human Rights Law).

**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 the complaint is sustained; and it is further

ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall cease and desist from discriminating in advertising in violation of the Human Rights Law; and it is further

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

1. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay a civil fine and penalty to the State of New York in the amount of five (\$5,000.00) thousand dollars for having violated the Human Rights Law. Payment of the civil fine and penalty shall be made in the form of a certified check, made payable the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458. Interest shall accrue on this award at the rate of nine percent (9%) per annum, from the date of the Commissioner's Final Order until full payment is made;

2. Within sixty days of the Final Order, Respondent shall provide a training session in the prevention of unlawful discrimination, and sex and age discrimination, in particular, in accordance with the Human Rights Law. Training shall be provided to all Respondent's employees in New York State, including Ahmed S. Hassan. 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, 4th Floor, Bronx, New York 10458.

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

DATED: April 28, 2016  
Bronx, New York



Migdalia Parés  
Administrative Law Judge