Division of
Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

KEVIN J. ORMSBY,

Complainant,

v.

CITY OF NIAGARA FALLS, CHARLES WALKER, KRISTEN GRANDINETTI, ANDREW TOUMA,

Respondents.

NOTICE AND FINAL ORDER

Case No. 10166975

Federal Charge No. 16GB401628

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 September 1, 2015, by Martin Erazo, Jr., 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: OCT 15 2015
Bronx, New York

HELEN DIANE FOSTER
COMMISSIONER

Division of
Human Rights

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RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10166975**

SUMMARY

Complainant established that Respondents terminated his employment because of his age. Respondents are liable to Complainant for $15,000 for pain and suffering. Respondents are also liable to the State of New York in the amount of $10,000 in civil fines and penalties.

PROCEEDINGS IN THE CASE

On February 3, 2014, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

On July 24, 2014, after investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents 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 Martin Erazo, Jr., an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on February 18-19, 2015 and March 20, 2015.

Complainant and Respondents appeared at the hearing. Complainant was represented by Andrew P. Fleming, Esq. Respondents were represented by Joseph S. Brown, Esq.

FINDINGS OF FACT

1. Complainant was born on June 1, 1952. (Tr. 192, 121)

2. Complainant worked intermittently for the City of Niagara Falls in various positions beginning in the late 1970's. (Tr. 193-95)

3. In 2013, the Niagara Falls City Council ("City Council") consisted of Robert Anderson, Glenn Choolokian, Samuel Fruscione, Respondent Kristen Grandinetti and Respondent Charles Walker. (Tr. 141)

4. The Council Secretary serves at the discretion of the City Council. An applicant must receive the votes of three out of five council members to be chosen for the position. (Tr. 34, 53, 79; ALJ Exh. 2, p. 15)

5. In 2013, Anderson, Choolokian, Fruscione, and Respondent Walker voted for Complainant's appointment as Council Secretary. Respondent Grandinetti voted against Complainant's appointment. (Tr. 46, 195-96; ALJ Exh. 2, p. 17)

6. Complainant was appointed Council Secretary on January 1, 2013. (ALJ Exh. 2, p. 17)

7. As Council Secretary, Complainant organized councilmember's daily activities; handled all City Council press relations; wrote resolutions and various pieces of legislation; and handled all City Council internet activity, such as e-mails and social media correspondence. (Tr. 46-47)

8. Maintaining confidentiality was a key function of the Council Secretary. (Tr. 34-35, 57, 80, 144, 262; ALJ Exh. 2, p. 19)

9. Complainant did not discuss City Council member meetings with anyone outside the Council. Complainant kept each City Council member's schedule separate from others, preventing members from seeing each other's schedules. (Tr. 47)

10. In 2013, Anderson, Choolokian, and Fruscione formed a majority voting bloc while Respondents Grandinetti and Walker formed a minority voting bloc. (Tr. 33, 53-54, 141)

11. In 2013, Complainant supported Fruscione in his campaign reelection for 2014 by attending a campaign function and assisting in creating a press release. (Tr. 56, 263-64)

12. Fruscione lost the 2014 City Council election to Respondent Andrew Touma. (Tr. 33)

13. The 2013 City Council members did not have concerns about Complainant's job performance. (Tr. 24, 47, 49, 81)

14. However, in early November 2013, Respondent Grandinetti called Ruby Pulliam, Director of Human Resources for the City, and informed her that the City Council was considering replacing Complainant. (Tr. 185)

15. In mid-November 2013, after the general election, outgoing City Council member Fruscione called Respondent Touma to discuss retaining Complainant. Respondent Touma replied that retaining Complainant was not an option. (Tr. 49, 55)

16. Fruscione informed Complainant that he probably would not be part of the City Council team in the future and that he should consider filing his retirement paperwork. (Tr. 39-40, 55-57)

17. If Complainant retired, he would receive more substantial health insurance benefits than if he were removed from his position. (Tr. 208)

18. Retirement papers can be withdrawn at any point prior to the effective date. (Tr. 39-40, 42, 173)

19. Complainant submitted his application for retirement on December 16, 2013. The effective date of his retirement papers was December 31, 2013. (Tr. 174, 183; Respondents' Exh. 1)

20. On December 23, 2013, Fruscione, Choolokian, Anderson, and Respondent Walker met to discuss whether Complainant would remain as Council Secretary when Fruscione was replaced by Respondent Touma. (Tr. 26, 35-37, 49-51, 68)

21. During this meeting, Respondent Walker stated that the City Council was going to move in a "younger direction and they wanted [Complainant] out." (Tr. 26, 50)

22. I do not credit Respondent Walker's and Respondent Grandinetti's claim that they were concerned Complainant would not keep council members' information confidential. Respondents could not provide any specific instances of Complainant having breached confidentiality and they could not identify anyone who had expressed such concerns to them. (Tr. 83, 98, 127, 129-30, 154)

23. Councilmember Choolokian did not hear any rumors or concerns that Complainant broke confidentiality. (Tr. 42-43)

24. Complainant was never informed of concerns that he had breached confidentiality. (Tr. 97, 129)

25. The vote of three council members could have removed Complainant as Council Secretary. (Tr. 99-100)

26. On December 30, 2013, Respondents Walker and Touma met with Complainant. (Tr. 66-70, 90-91, 107)

27. Respondents Walker and Touma were willing to offer Complainant six more months employment at City Hall if he needed additional time to quality for full medical benefits. (Tr. 67-68, 108-109, 113)

28. During the meeting, Complainant stated "I've already taken care of myself," but did not indicate what he meant by the statement. Complainant did not state that he had filed retirement paperwork. (Tr. 66-70, 90-91, 107)

29. Respondents Walker and Touma informed Complainant that his services would not be needed in the upcoming year. (Tr. 204-07, 211; ALJ Exh. 1, p. 22-23, 28)

30. Complainant served as Council Secretary until December 31, 2013. (Tr. 90, 67, 195)

31. Respondents Grandinetti, Touma, and Walker campaigned together for the City Council election. All three were elected. (Tr. 84-85, 114-15, 145)

32. Respondent Touma began serving his term on January 1, 2014. (Tr. 67, 103-04)

33. In 2014, the City Council was composed of Anderson, Choolokian, and Respondents Walker, Grandinetti, and Touma. (Tr. 33; ALJ Exh. 1, p. 27)

34. In 2014, Respondents Walker, Touma, and Grandinetti formed a new majority voting bloc on the City Council. (Tr. 32)

35. Respondents Touma, Grandinetti, and Walker selected Ryan Undercoffer to replace Complainant as Council Secretary. (Tr. 30, 66, 110-111)

36. Respondent Grandinetti knew Undercoffer from previous work they did together and encouraged him to apply for the Council Secretary position. (Tr. 147)

37. Only Undercoffer was interviewed although there were three other candidates for the Council Secretary position. (Tr. 75, 88-89, 93, 137-38, 141-42)

38. On January 7, 2014, the City Council approved the appointment of Undercoffer as Council Secretary. (ALJ Exh. 2, p. 25)

39. Undercoffer was 24 years of age at the time of his appointment. (Tr. 75)

40. On January 5, 2014 Respondent Walker told the Niagara Falls Gazette that "Undercoffer's nomination for the position has nothing to do with his political ties to the three council members" and that "Undercoffer was nominated because he is young, qualified and expressed interest in the position." (Tr. 72-73; ALJ Exh. 1, p. 14)

41. Respondent Walker went on to say "[w]e were looking for someone who can help bring the council into the 21st century." (Tr. 72-73; ALJ Exh. 1, p. 14)

42. Respondent Walker acknowledged making these statements. (Tr. 73)

43. On January 6, 2014, Respondent Grandinetti told the Buffalo News that appointing Undercoffer to the Council Secretary position was "an opportunity to bring in a 'young, fresh face' to the Council office." (Tr. 137; ALJ Exh.1, p. 17)

44. Respondent Grandinetti acknowledged making this statement. (Tr. 138)

45. Respondent Grandinetti testified that her statement was meant to reflect her desire "to have someone come in with fresh eyes... that would not already have loyalties established and would work fairly and evenly with all of the people involved." (Tr.147-48; ALJ Exh. 1, p. 17)

46. However, Respondent Grandinetti also testified that she, Respondent Touma, and Respondent Walker wanted to put "a healthier face on the council." (Tr. 146)

47. Complainant's annual salary as Council Secretary was $46,180. (ALJ Exh. 2, p. 12)

48. Complainant receives monthly Social Security benefits in the amount of $1,468.00. (Tr. 232; Complainant's Exhs. 3, 4)

49. New York State and Local Retirement System provides Complainant a regular monthly allowance of $2,515.15. (Complainant's Exh. 2, p. 2)

50. Although Complainant claims that he did not receive a check from the City for his unused vacation and sick time, the proof did not establish the monetary value of that time. (ALJ Exh. 1, p. 31)

51. Complainant has not applied for jobs or accepted work since leaving his position as Council Secretary as he considered himself retired. (Tr. 233, 273-76)

52. As a result of being replaced, Complainant felt distress, embarrassment, and that he was made to "look like damaged goods unfairly," in light of Respondents' public comments. Complainant was frustrated and as if he "had no voice to get the story out" and felt "almost lost." (Tr. 250-53)

53. Complainant's dismissal was "upsetting, disturbing, something you won't forget. I've never been fired in my life before. I've never been threatened with firing in my life before....it kinda hits you like a sledgehammer." (Tr. 249)

54. On February 19, 2015, 14 months after his dismissal, Complainant's dismissal continued to effect "...my sleep, my eating, occupying large parts of my day trying to get this straightened out...the whole disturbing event and how it all went down." (Tr. 249)

OPINION AND DECISION

It is unlawful for an employer to discriminate against an employee on the basis of age. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). Complainant has the burden of establishing a prima facie case by showing that he is a member of a protected group, that he was qualified for the position he held, that he suffered an adverse employment action, and that Respondents' actions occurred under circumstances giving rise to an inference of unlawful discrimination. Once a prima facie case is established, the burden of production shifts to Respondents to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for their employment decision. The burden then shifts to Complainant to show that Respondents' proffered explanations are a pretext for unlawful discrimination. The ultimate burden of proving discrimination always remains with Complainant. *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

Complainant has established a prima facie case of age-based discrimination

Complainant was a member of a protected class as he was 61 years of age. Complainant was qualified for the Council Secretary position. Respondents appointed Complainant to the position and he served in that capacity for one year. Complainant established that he suffered an adverse employment action when Respondents replaced him as Council Secretary. Complainant's replacment occurred under circumstances giving rise to an inference of unlawful discrimination. On January 7, 2014, Complainant was replaced by Undercoffer, who was 24 years of age.

Respondents articulated various reasons why Complainant was replaced as Council Secretary. Respondents argued that Complainant was not terminated, but that he retired,

effective December 31, 2013. Respondents also argued that Complainant was replaced because he could not be trusted with confidential information. Furthermore, Respondent Touma claimed that during the election Complainant supported his political rival.

The Respondents' reasons for replacing Complainant were a pretext for unlawful discrimination. Respondents' actual reasons for replacing Complainant with Undercoffer can be taken from their own clearly stated words. Respondent Walker told fellow City Council members, during a December 23, 2013 meeting, that Undercoffer's younger age was the reason for replacing Complainant. Respondent Walker specifically stated that the City Council was going in a "younger direction and they wanted [Complainant] out." Respondent Walker also conceded telling the Niagara Gazette on January 5, 2014 that Undercoffer's nomination was because he was young, qualified and expressed interest in the position. Respondent Grandinetti testified that she and Respondents Touma and Walker wanted "a healthier face on the council." Respondent Grandinetti conceded telling the Buffalo News on January 6, 2014 that appointing Undercoffer to the Council Secretary position was "an opportunity to bring in a 'young, fresh face' to the Council office."

Respondents argue that Complainant was not replaced as he chose to retire before they hired Undercoffer. However, this argument is without merit. After the November 2013 general election, Complainant was made aware that the 2014 incoming City Council majority was going to replace him. Employees who were dismissed received fewer health insurance benefits than those who chose to retire. Retirement papers can be withdrawn until one day prior to the effective date. As a result, on December 16, 2013, Complainant submitted his retirement papers with an effective date of December 31, 2013. On December 30, 2013, before Complainant's retirement paperwork took effect, Respondents Walker and Touma informed Complainant that

his services would not be needed in 2014.

Respondents also claim that Complainant could not be trusted with confidential information. The proof did not support this argument. Respondents did not identify any instance of Complainant breaking confidentiality and Respondents did not identify anyone who expressed concern regarding Complainant's ability to maintain confidentiality. No confidentiality concerns were brought to Complainant's attention during his time as Council Secretary.

Respondents' Liability

Respondents Grandinetti, Touma, and Walker argue that they are not individually liable as they were not Complainant's employer.

The Human Rights Law defines an "employer" in Section 292.5, by making reference only to the number of persons in its employ. It does not offer a definition that would give insight into whether an employer-employee relationship exists. There are four elements that should be considered in determining if such a relationship exists: (1) selection and engagement of the employee; (2) the payment of salary or wages; (3) the power of dismissal; and, (4) the power or control over the employee's conduct. *State Div. of Human Rights (Emrich) v. GTE Corp.*, 109 A.D.2d 1082, 1083, 487 N.Y.S.2d 234, 235 (4th Dept. 1985). The key element is the fourth element, in that an employer-employee relationship can be found based upon evidence that the employer exercised "control over the results produced or over the means used to achieve the results." *Scott v. Massachusetts Mutual Life Ins. Co.*, 86 N.Y.2d 429, 433, 633 N.Y.S.2d 754 (1995) (quoting *Matter of Ted is Back Corp.*, 64 N.Y.2d 725, 726, 485 N.Y.S.2d 742 (1984)).

Complainant was an employee of the City of Niagara Falls working in the capacity of Council Secretary. The three person majority vote of the City Council had the exclusive authority to select the Council Secretary. Therefore, the City of Niagara Falls is liable for the

actions of Respondents Grandinetti, Touma, and Walker who collectively exercised their authority to replace Complainant. Individually, Respondents Grandinetti, Touma, and Walker were not Complainant's employer. They did not have an ownership interest or the authority to do more than carry out personnel decisions made by others. *See Patrowich v. Chemical Bank*, 62 N.Y. 2d 541, 43 N.Y.S. 2d 659 (1984).

However, Respondents Grandinetti, Touma, and Walker are individually liable under the aider and abettor provisions of the Human Rights Law. Human Rights Law § 296.6 makes it an unlawful discriminatory practice "for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or attempt to do so." Under this section, liability against the employer is required to find an aider and abettor liable. Where the case against the employer is dismissed, the case against an aider and abettor must also be dismissed. *See Med. Express Ambulance Corp. v. Kirkland*, 79 A.D.3d 886, 888, 913 N.Y.S.2d 296, 299 (2d Dept. 2010), *lv. denied*, 17 N.Y.3d 716, 934 N.Y.S.2d 374 (2011). Individually, Respondents Grandinetti, Touma, and Walker were persons who aided, abetted, and compelled the Complainant's employer to replace him with a younger individual.

Lost Wage Damages

Complainant did not sustain lost wage damages as he failed to mitigate by actively seeking employment after he lost his position with the City of Niagara Falls as Council Secretary. Although Complainant felt compelled to retire in order to preserve his health insurance benefits this did not excuse his obligation to apply for jobs or accept work. A complainant in a discrimination matter "ordinarily has a duty to exercise diligence to mitigate his or her damages by making reasonable efforts to obtain comparable employment." *Rio Mar Restaurant v. New York State Division of Human Rights (Del Carpio)*, 470 A.D.2d 47, 48 (1st

Dept. 2000). Furthermore, Complainant's arguments that he would have continued to work until the age of 65 years as Council Secretary was simply too speculative based on his own proof at the public hearing. Complainant worked intermittently for the City of Niagara Falls since the late 1970's. Complainant only worked as Council Secretary for a year and in a position that was tethered to an unpredictable political environment. Speculative awards are highly disfavored and often "inappropriate." *Hancock v. City of New York*, 272 A.D.2d 80, 707 N.Y.S.2d 832 (1st Dep't. 2000). Therefore, an award of lost wages would not be appropriate in this case.

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondent's violation of the Human Rights Law. The award of compensatory damages may be based solely on Complainant's testimony. "Mental injury may be proved by the complainant's own testimony, corroborated by references to the circumstances of the alleged misconduct." *New York City Transit Auth. v. N.Y. State Div. of Human Rights (Nash)*, N.Y. 2d 207, 573 N.Y.S.2d 49, 54 (1991); *Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981). The severity, frequency, and duration of the conduct may be considered in fashioning an appropriate award. *New York State Dep't of Corr. Servs. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996). 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. *N.Y. State Div. of Human Rights v. Muia*, 176 A.D.2d 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

The record shows that Respondents' actions had a remarkably negative effect on Complainant. Complainant testified that his termination was "upsetting, disturbing, something

you won't forget. I've never been fired in my life before." The impact of Complainant's dismissal manifested itself by affecting his ability to eat and sleep. Complainant felt distress, embarrassment, and made to "look like damaged goods unfairly," in light of Respondents' public comments in the local newspapers. Complainant felt like he "had no voice to get the story out" and felt "almost lost." On February 19, 2015, 14 months after his dismissal, Complainant continues to feel humiliation and anguish as a result of Respondents' publicized statements and actions. Complainant testified at the public hearing that the dismissal continues to effect "...my sleep, my eating, occupying large parts of my day trying to get this straightened out...the whole disturbing event and how it all went down."

Accordingly, Complainant is entitled to $15,000 for the pain and suffering he experienced for the period of December 2013 to February 2015 because of Respondents' discriminatory actions. The award is reasonably related to Respondents' wrongdoings, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *See In the Matter of New York State Tug Hill Commission, Petitioner-Respondent v New York State Division of Human Rights et al* 52 A.D.3d 1169, 860 N.Y.S.2d 698 (4th Dept. 2008), *In the Matter of General Electric Company, v New York State Division of Human Rights et al.*, 26 A.D.3d 609, 809 N.Y.S.2d 274 (3rd Dept. 2006)

Civil Fines and Penalties

A civil fine and penalty of $10,000 is appropriate in this matter. *See Noe v. N.Y. State Div. of Human Rights (Martin), et.al.*,101 A.D.3d 1756, 957 N.Y.S.2d 796 (4th Dept. 2012) (Commissioner's penalty of $20,000 affirmed), *also see Johnston v. N.Y. State Div. of Human Rights, et.al.*, 100 A.D.3d 1354, 953 N.Y.S.2d 757 (4th Dept. 2012), *New York State Div. of Human Rights v. Stennett*, 98 A.D.3d 512, 949 N.Y.S.2d 459 (2d Dept. 2012).

Human Rights Law § 297 (4)(c)(vi) permits the Division to asses 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."

Furthermore, Human Rights Law § 297 (4)(e) requires that "any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article." The additional 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; other matters as justice may require. *Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540, November 15, 2007, *aff'd, Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009), *119-121 East 97th Street Corp. et. al., v. New York City Commission on Human Rights, et. al.*, 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept.1996).

The goal of deterrence, Respondents' degree of culpability, and the nature and circumstances of Respondents' violation warrant this penalty. Respondents' discriminatory replacement of Complainant was in clear violation of the Human Rights Law. Respondents terminated Complainant's employment quite simply because they wanted a younger person to fill the Council Secretary position. The proof did not show that there was an issue regarding Complainant's work performance. At the public hearing Respondents remained steadfast in their decision to dismiss Complainant despite the words that they used to describe their reasons for

replacing him. In New York State it is unacceptable to terminate an individual's employment solely for the purpose of hiring a younger person. There was no proof that Respondents were adjudged to have committed any previous similar violation of the Human Rights Law or are incapable of paying any penalty.

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 Respondents, their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee in the terms and conditions of employment; and it is further

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

1. Within sixty days of the date of the Commissioner's Final Order, Respondents Charles Walker, Kristen Grandinetti, Andrew Touma, and the City of Niagara Falls, shall pay to Complainant, Kevin J. Ormsby, the sum of $15,000.00 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondents' unlawful discrimination against him. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

2. The payment shall be made by Respondents Charles Walker, Kristen Grandinetti, Andrew Touma, and the City of Niagara Falls, in the form of a certified check, made payable to the order of Kevin J. Ormsby and delivered by certified mail, return receipt requested, to Andrew P. Fleming, Esq., 5113 South Park Avenue, Hamburg, New York 14075.

3. Within sixty days of the Commissioner's Final Order, Respondents Charles Walker, Kristen Grandinetti, Andrew Touma, and the City of Niagara Falls, shall pay to the State of New York the sum of $10,000.00 as a civil fine and penalty for their violation of the Human Rights Law. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

4. The payment of the civil fine and penalty shall be made by Respondents Charles Walker, Kristen Grandinetti, Andrew Touma, and the City of Niagara Falls, in the form of a certified check, made payable to 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, 4th Floor, Bronx, New York 10458.

5. Within sixty days of the Final Order, the City of Niagara Falls shall provide a training session in the prevention of unlawful discrimination in accordance with the Human Rights Law. Training shall be provided to the City Council of the City of Niagara Falls including Respondents Charles Walker, Kristen Grandinetti, and Andrew Touma. Proof of the training session shall be provided to Caroline Downey, Esq., General Counsel of the Division, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Respondents Charles Walker, Kristen Grandinetti, Andrew Touma, and the City of Niagara Falls, shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: September 1, 2015
Buffalo, New York

Martin Erazo, Jr.
Administrative Law Judge