NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of **CARRIE A. OURSLER,** Complainant, v. **KT'S JUNCTION, INC.,** Respondent.	**NOTICE AND FINAL ORDER** Case No. 10127328

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 June 30, 2009, 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 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: SEP 18 2009
Bronx, New York

GALEN D. KIRKLAND
COMMISSIONER

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

CARRIE A. OURSLER,

Complainant,

v.

K-TS RESTAURANT, INC., d/b/a K-TS JUNCTION, d/b/a KT's JUNCTION, dba, KT's JUNCTION INC.,

Respondent.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10127328**

SUMMARY

Complainant established that Respondent reduced her hours and terminated her employment of four years because of her pregnancy. Therefore, Complainant is entitled to back pay and compensatory damages for mental anguish.

PROCEEDINGS IN THE CASE

On August 6, 2008, 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 Michael Groben, an Administrative Law Judge ("ALJ") of the Division. ALJ Groben held a public hearing session on April 30, 2009.

Complainant and Respondent appeared at the hearing. The Division was represented by Cara Romanzo, Esq. Respondent was represented by Terri Bright, Esq.

The Division served the Notice of Hearing on Respondent, named here as KT's Junction Inc., by mailing the notice to KT's Junction Inc., Attn. Carol Elmer, Manager, 6524 Route 80, Apulia Station, NY 13020. (ALJ Exh. 1; Tr. 6-7, 180-82)

Carol Ann Elmer ("Elmer"), also known as Carol (Kay) Elmer, appeared at the hearing and testified that she is the owner of the restaurant, KT's Junction, in Apulia Station. (Tr. 6-7, 180-182) Elmer testified that her business address is 6524 Route 80, Apulia Station, New York, 13084. (Tr. 6-7, 182) Elmer also-testified that her address is 3252 Pioneer Rd., Lafayette, New York 13084. (Tr. 181-182)

The public hearing record contains an Employee W-2 Wage Summary 2008 ("W-2") that Respondent issued Complainant. The W-2 identified the employer with two names, K-TS Restaurant, Inc., and K-TS Junction. The W-2 identifies the employer's address as 3252 Pioneer Rd. La Fayette, New York 13084. Respondent's name, KT's Junction Inc. does not appear as the employer in the W-2 issued to Complainant. (Complainant's Exh. 5)

Based on the above, the caption is hereby amended to read as follows: Carrie A. Oursler v. K-TS Restaurant, Inc., d/b/a K-TS Junction, d/b/a KT's Junction, d/b/a KT's Junction Inc. (ALJ Exhs. 1, 4; Complainant's Exh. 5; Tr. 6-7, 180-82)

At the hearing Respondent withdrew its affirmative defense of lack of jurisdiction based on the number of employees and conceded that it had three full time employees and an additional number of part time employees. (Tr. 7, 19)

Permission to file Proposed Findings of Fact and Conclusions of Law was granted.

On May 4, 2009, pursuant to 9 NYCRR § 465.12(d) (2), the case was re-assigned to ALJ Migdalia Parés.

On June 16, 2009, Respondent filed its Proposed Findings of Fact and Conclusions of Law. On June 22, 2009, the Division filed its Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Complainant, a female, alleges that Respondent unlawfully discriminated against her by subjecting her to unequal terms and conditions of employment because of pregnancy in violation of the NYS Human Rights Law when it reduced her work hours and terminated her employment. (A.L.J. Exh. 1)

2. Respondent, a restaurant/bar, denies unlawful discrimination. (A. L. J. Exh. 2)

3. Respondent is owned by Carol Ann Elmer ("Elmer") also known as Kay Elmer. (Tr. 15)

4. Elmer is the manager and direct supervisor of Respondent's daily operations and staff. (Tr. 15, 18)

5. In June 2004, Complainant had ten years of waitress and cook experience. (Tr. 16)

6. In July 2004 Respondent, by Elmer, hired Complainant for the part time position of bartender/waitress. (Tr. 14-16)

7. Elmer assigned Complainant responsibility for five tables and the bar every day except Fridays. (Tr. 28)

8. Complainant's work schedule was Tuesday through Friday.(Tr. 18)

9. Complainant's work hours were Tuesday to Thursday, 10:30AM to 4:30PM, a shift of six hours per day. (Tr. 18) On Fridays Complainant worked from 10:30AM to 7:30PM, a shift of 9 hours. (Tr. 17)

10. Complainant worked 27 hours weekly. (Tr. 17-18, 220).

11. Complainant's compensation consisted of $7.00 per hour plus tips. Complainant earned a weekly average of $150.00 in tips which divided into 27 hours equal an average hourly tip of $5.55. Therefore, Complainant's hourly rate of pay is calculated as $12.55 ($7.00 + $5.55) which when multiplied by 27 hours equals weekly earnings of $338.85. (Tr. 25-26, 43-46)

12. In the beginning of her shift Complainant's responsibilities were to make sure "everything was full" and ready. This meant Complainant would fill the ice machine, count the register, make salads and make coffee. (Tr. 17-18)

13. On Wednesdays, Complainant set up an eight-foot buffet table, brought out the server and filled it with ice, made the salad and brought it out. On Thursdays Complainant dismantled the buffet table and put it away. The table was not heavy but because of its length was awkward to set up. Complainant was assisted by another staff member in setting up and dismantling the large buffet table. (Tr. 30)

14. Respondent kept its beer inventory on the cellar below the restaurant bar. (Tr. 16, 31) Access to Respondent's cellar was through a set of stairs. (Tr. 16) The inventory section in the cellar was referred to as "downstairs" while the restaurant bar section was referred to as "upstairs." (Tr. 16)

15. Complainant usually did not have to go downstairs to bring beer upstairs because Respondent did not sell a lot of beer during the day. In four years of employment there was only

one day when Complainant brought six cases of beer upstairs, one case at a time. This was caused by the night bartender failing to fill up the cooler before he left his shift. Occasionally, Complainant brought up enough beer to replace the amount used because Respondent sold little beer in the daytime. (Tr. 32, 34, 81, 82)

16. Complainant's work performance over her four years of employment was satisfactory. (Tr. 39, 185)

17. During the relevant time Respondent employed the following employees (last names undisclosed in the record): Sharon, Marcia, Jamie, Dana, Adam, Kenny and Cheryl. (Tr. 19)

18. Complainant's coworkers during her work shift were Sharon and Marcia. (Tr. 19)

19. On January 2, 2008, Complainant advised Elmer that she was pregnant. (Tr. 19)

20. Complainant's doctor did not place restrictions on her ability to work during her pregnancy. (Tr. 21, 22-23)

21. Elmer conceded that Complainant did not refuse to perform her duties. (Tr. 210-11)

22. About the first week of July 2008, Elmer hired Crystal (last name unknown) as bartender/waitress. (Tr. 25-26). Crystal was not pregnant. (Tr. 36, 41) Elmer asserted that she needed at least two weeks in order to train a new employee. (Tr. 218)

23. About the first week of July 2008, Elmer told Complainant that "she would be done by July 10, 2008." (Tr. 26, 36, 41)

24. In July 2008 Complainant was starting her eighth month of pregnancy and had no plans or reasons to stop working. Complainant's pregnancy did not prevent her from performing the essential functions of her job. (Tr. 26, 34, 36, 41, 210-11)

25. Complainant told Elmer that "If my doctor did not restrict me, my doctor did not take me out of work [you have] no right to take me out of work." (Tr. 34)

26. The first week of July 2008, Elmer reduced Complainant's work schedule by three hours. (Tr. 25-26, 29, 43-46)

27. The week of July 7, 2008 to July 13, 2008, Complainant worked ten and one half hours. This is a reduction of sixteen and one half hours. (Tr. 219, 221-22)

28. The week of July 14, 2008 to July 20, 2008, Complainant worked twenty two and one half hours. (Tr. 223) This is a reduction of four and one half hours. (Tr. 223)

29. The week of July 21, 2008 to July 27, 2008, Complainant worked seventeen hours. (Tr. 224) This is a reduction of ten hours. (Tr. 224)

30. The week of July 28, 2008 to August 3, 2008, Complainant worked thirteen and three quarter hours. This reflected a reduction of thirteen and one quarter hour. (Tr. 224)

31. The total wages and tips that Complainant lost as a result of the reduction of hours equals $592.97 [$37.65 (3 hours) + $207.07 (16.50 hours) + $56.47 (4.50 hours) + $125.50 (10 hours) + $166.28 (13.25 hours) = $592.87]. Tr. 25-26, 29, 43-46, 219-224)

32. Complainant was upset about the reduction of hours and its corresponding effect of diminishing her earnings. (Tr. 31, 71)

33. Elmer conceded that she reduced Complainant's work hours. (Tr. 199-203, 205, 210, 218, 220) Elmer conceded that she was unable to explain the reduction in Complainant's work schedule from 27 to 10 and one half hours. (Tr. 221-22) I do not credit Elmer's testimony that she reduced Complainant's work hours for her safety and the safety of her unborn child. (Tr. 213-14)

34. I do not credit Elmer's testimony that she told Complainant that she was reducing her hours because working was too stressful. (Tr. 213-14) I do not credit Elmer's testimony that she

cut Complainant's hours because she could not perform the work. (Tr. 36-41, 205) Complainant performed all her duties during the hours that were assigned to her. (Tr. 210)

35. Respondent assigned to Crystal hours that, until then, had been part of Complainant's work schedule. (Tr. 36, 41) I do not credit Elmer's testimony that she cut Complainant's work hours to determine whether Crystal had the skills to perform as a bartender and waitress. Nothing in the record indicates that the work hours of Complainant's coworkers, Marcia and Sharon were similarly cut and reassigned to Crystal. (Tr. 36, 41)

36. In mid July 2008, Elmer gave Complainant a two week notice that her last work date would be August 1, 2008. (Tr. 36, 38, 41, 197, 209, 215-17)

37. Elmer asserted that she terminated Complainant's employment because her work performance was unsatisfactory. However, Elmer contradicted her prior testimony when she conceded that she never received customer complaints about Complainant's work performance. (Tr. 208)

38. I do not credit Elmer's testimony that she terminated Complainant's employment because the narrow halls and steep stairs in the restaurant were dangerous for Complainant. (Respondent's Exh. 3; Tr. 189-93, 199)

39. I do not credit Elmer's testimony that she terminated Complainant because one co-worker complained to her about one occasion when she obtained beer from downstairs for Complainant. (Tr. 189-93, 197)

40. Complainant made diligent efforts to obtain subsequent employment without success from the date of her termination August 1, 2008 to August 31, 2008, a period of four weeks. Complainant lost four weeks of earnings at the weekly rate of $338.85 for a total of $1, 355.40.

During this four week period Complainant received unemployment benefits at the rate of $133.75 for a total of $535.00. (Complainant's Exhibit 2; Tr. 46-48, 55-62)

41. On September 1, 2008, Complainant had her baby and was unable to work until October 31, 2008, a period of eight weeks.(Complainant's Exhibit 3; Tr. 42, 49-53, 74-75)

42. Complainant continued to make diligent efforts to obtain subsequent employment without success from November 1, 2008 to November 18, 2008, a period of three weeks. Complainant lost three weeks of earnings at the weekly rate of $338.85 for a total of $1,016.55. During this three week period Complainant received unemployment benefits at the rate of $133.75 for a total of $401.25 (Complainant's Exhibit 2; Tr. 46-48, 55-62)

43. On November 19, 2008, Complainant began employment at The Elm Street Café making a higher income than when working with Respondent. (Tr. 55-62)

44. Complainant's employment termination caused her to feel "stressed," worried about her bills backing up, her blood pressure went up and she experienced feelings of "anxiety" and depression. (Tr. 67-71, 93)

45. Complainant was unable to take medicine for any of her symptoms until after the birth of her child. (Tr. 67-71, 93)

46. One week after Complainant left the hospital she was able to take the prescription medication Zoloft for her depression and anxiety for a period of two weeks. Complainant stopped the medicine due to its side effects. (Tr. 67-71, 93)

47. Complainant continues to take prescription medication to control the high blood pressure. (Tr. 67-71, 93)

OPINION AND DECISION

The Human Rights Law states "[i]t shall be an unlawful practice ... [f]or an employer ... because of the ... sex ... of any individual, to ... discharge from employment such individual or to discriminate against such individual ... ." N.Y. Exec. Law, Art. 15 §296.1. Pregnancy discrimination is a form of sex discrimination. *Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003); *Elaine W. v. Joint Diseases N. Gen. Hosp., Inc.*, 81 N.Y.2d 211, 597 N.Y.S.2d 617 (1993); *Brooklyn Union Gas Co. v. New York State Human Rights App. Bd.*, 41 N.Y.2d 84, 390 N.Y.S.2d 884 (1976).

A complainant may establish a prima facie case of discrimination because of pregnancy by demonstrating that she is a member of a protected class, that she satisfactorily performed her job duties, and that she was discharged under circumstances which give rise to an inference of discrimination. *Anthony v. Nemec*, 225 A.D. 2d 883, 884, 638 N.Y.S.2d 529 (3d Dept. 1996).

Here, Complainant established a prima facie case of discrimination. During the relevant time Complainant, a female, was pregnant and therefore was in the protected class. Complainant had satisfactory work performance. Complainant suffered an adverse employment action when Respondent lessened her work hours and terminated her employment. Finally, Complainant suffered the adverse action in a manner which gives rise to an inference of unlawful discrimination in that Respondent lessened Complainant's work hours and gave them to an employee who was not pregnant; Respondent also replaced Complainant with an employee who was not pregnant when Complainant was able to work.

If the complainant establishes a prima facie case, the burden shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. *Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 665 N.Y.S.2d 25 (1997). The ultimate burden rests with the Complainant

to show that the Respondent's explanations are a pretext for unlawful discrimination. *Pace College v. Commission on Human Rights of the City of New York,* 38 N.Y. 2d 28, 39-40, 377 N.Y. S. 2d 471 (1975) (citing *McDonnell Douglass Corp. v. Green,* 411 U.S. 792 (1973)).

In the present case, Respondent proffered that it had legitimate business reasons for its adverse actions against Complainant. As to the reduction of Complainant's work hours Respondent explained that it needed to assess the bartending and wait skills of Crystal. As to the termination of Complainant's employment, Respondent explained that it received one customer complaint and one co-worker complaint, that it assumed that Complainant would be unable to perform her duties because of her pregnancy and Respondent's architectural barriers made physical maneuvering around the restaurant a potential threat to Complainant's personal safety.

Respondent having presented business reasons for its adverse actions against Complainant, the burden shifts to Complainant to demonstrate that the reasons offered by the respondent are merely a pretext for unlawful discrimination. *Ferrante v. American Lung Ass'n,* 90 N.Y.2d 623, 665 N.Y.S.2d 25 (1997).

Respondent's proffered explanations for its business decisions lacked credibility. As to reducing Complainant's work hours in order to accommodate the assessment of Crystal's skills Respondent did not present evidence that this was the only method to assess an employee's skills. Respondent did not lessen the work hours of the other employees who worked alongside Complainant, Sharon and Marcia. Nor did Respondent schedule Crystal to work another worker's schedule during the hours that Complainant was not scheduled to work. Therefore, I find that this reason was a pretext for unlawful discrimination.

As to Complainant's work performance, Elmer gave inconsistent testimony. Elmer conceded that no one complained to her about Complainant's work performance, and then

asserted that there was one complaint alleging Complainant was slow which was not communicated to Complainant. This fact discredits this explanation as a compelling reason to terminate Complainant's employment after four years of satisfactory employment. Therefore, I find that this reason was a pretext for unlawful discrimination.

As to the co-worker's complaint, the record showed that the co-worker did not have the same work shift as Complainant. Complainant worked the day shift when beer sales were not as high, and therefore, did not have to be replacing cases of beer. Furthermore, if the night bartender did not refill the refrigerator before leaving Complainant had to restock the bar which required her to go downstairs to obtain supplies. In similar fashion, if Complainant did not have a chance to restock the bar before leaving for the day the next person on duty would have to go downstairs to obtain replacement supplies. There is no proof that Complainant was required to bring "cases of beer" upstairs as opposed to bringing a few bottles at a time. Complainant credibly testified how she occasionally would bring up a few beers at a time. Complainant did not request an accommodation to perform this function. Therefore, I find that this explanation was a pretext to mask unlawful discrimination.

As to architectural barriers that made physical maneuvering around the restaurant a potential threat to Complainant's personal safety the record shows that architectural barriers affected the ability of all employees to maneuver around each other in narrow and confined spaces. Therefore, this explanation was a pretext to mask unlawful discrimination.

Elmer's conclusion that Complainant would be unable to perform her duties because of her pregnancy was not based on medical evidence. In fact, the record shows that Complainant had a healthy pregnancy and would have been able to work right up to the day she gave birth. Therefore, this explanation is a pretext to mask unlawful discrimination.

The Division concludes that Respondent's asserted justifications for its actions are false. This conclusion, together with Complainant's prima face case of discrimination, establishes that Respondent unlawfully discriminated against Complainant when it reduced her work hours in the month of July 2008 and when it terminated her employment effective August 1, 2008. The Court of Appeals has stated that "a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated. *Mittl* at 331, 763 N.Y.S. 2d at 521 (citations and internal quotation marks omitted).

Damages

The Division is granted broad discretionary powers to redress an injury by way of an award of reasonable compensatory damages. *Imperial Diner, Inc., v. State Human Rights Appeal Bd.*, 52 N.Y. 2d 72, 79, 436 N.Y.S. 2d 231, 235 (1980). However, the award must bear a reasonable relationship to the wrongdoing, be supported by the substantial evidence and be comparable to other awards for similar injuries. *State of New York v. N.Y. State Div. of Human Rights.* 284 A.D. 2d 882, 884 727 N.Y.S 2d 499, 501 (3rd Dept. 2001).

In the instant case, Complainant is entitled to compensation for back pay. In July 2008, Respondent's reduction of Complainant's work hours resulted in an earnings loss of $592.87. Therefore, Complainant is entitled to $592.87 in back pay damages for the period of July 1, 2008 to August 1, 2008 when her work hours were reduced.

Complainant is entitled to a pre-determination interest award on the above back pay awards at a rate of nine per cent per annum, from July 15, 2008, a reasonable intermediate date, until the date of the Commissioner's Final Order. *See Aurecchione v. New York State Division of Human Rights,* 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002).

As a result of the termination Complainant lost earnings from August 1, 2008 to August 31, 2008, a period of four weeks at the weekly rate of $338.85 for a total loss of earnings in the amount of $1, 355.40. During this same four week period Complainant received unemployment benefits at the rate of $133.75 for a total of $535.00. Unemployment benefits of $535.00 are deducted from the total earnings loss of $1,355.40 to equal a back pay loss of $820.40. Therefore, Complainant is entitled to $820.40 in back pay damages for the period of August 1, 2008 to August 31, 2008.

Complainant is entitled to a pre-determination interest award on the above back pay award of $820.40 at a rate of nine per cent per annum, from October 1, 2008, a reasonable intermediate date, until the date of the Commissioner's Final Order. *See Aurecchione v. New York State Division of Human Rights,* 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002).

Complainant was unavailable to work from September 1, 2008 to October 31, 2008, a period of eight weeks and therefore is not entitled to back pay damages for this period.

Complainant continued to make diligent efforts to obtain subsequent employment without success from November 1, 2008 to November 18, 2008, a period of three weeks. Complainant lost three weeks of earnings at the weekly rate of $338.85 for a total of $1,016.55. During this same three week period Complainant received unemployment benefits at the rate of $133.75 for a total of $401.25. Unemployment benefits of $401.25 are deducted from the total earnings loss of $1,016.55 to equal a back pay loss of $615.30. Therefore, Complainant is entitled to $615.30 in back pay damages for the period of November 1, 2008 to November 18, 2008.

Complainant is entitled to a pre-determination interest award on the above back pay award of $615.30 at a rate of nine per cent per annum, from November 9, 2008, a reasonable intermediate date, until the date of the Commissioner's Final Order. *See Aurecchione v. New*

York State Division of Human Rights, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002).

Complainant is entitled to recover compensatory damages for mental anguish caused by Respondent's discriminatory conduct. When considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure than an award is reasonably related to the wrongdoing, supported in the record and comparable to other awards for similar injuries. *State Division of Human Rights v. Muia*, 176 A.D. 2d, 1142, 1144, 575 N.Y.S. 2 957, 960 (3rd Dept, 1991). Because of the "strong antidiscrimination policy: of the Human Rights Law, a complainant seeking an award for pain and suffering "need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous provision." *Batavia Lodge No. 196, etc., v. N.Y. State Div. of Human Rights,* 35 N.Y. 2d 143, 147, 359 N.Y. S 2d 25, 28 (1974). Indeed, "[m]ental injury may be proved by the Complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct. " *New York City Transit Auth. v. State Division of Human Rights,* 78 N.Y. 2d 207, 216, 573 N.Y.S. 2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *N.Y. State Dep't of Correctional Servs. V. N. Y. State Div. of Human Rights,* 225 A.D. 2d 856, 859, 638 N.Y.S. 2d 827, 830 (3rd Dept. 1996).

In the present case, Complainant credibly testified that she suffered from high blood pressure, depression and anxiety as a result of the reduction of her work hours and subsequent termination from employment. However, Complainant was unable to use medication because of the pregnancy. After the birth of her child, Complainant was unable to take antidepressants for another week. Complainant subsequently took antidepressants for a two week period but abandoned the medicine due to its side effects. Complainant continues to take the high blood pressure medicine. At a time when Complainant should have been experiencing great joy she

was sad, worried and experiencing anxiety, stress and high blood pressure. Therefore, Complainant should recover for her emotional suffering. Accordingly the Division finds that an award of $10,000.00 for mental anguish is consistent with similar cases and will effectuate the remedial purposes of the Human Rights Law. *Woehrling v. N.Y.S. Div. of Human Rights,* 56 A.D. 3d 1304, 867 N.Y. S. 2d 641) (4th Dept. 2008) ($10,000.00 award for mental anguish due to pregnancy discrimination).

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 discriminatory practices in employment, 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 days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of $592.87 as damages for back pay for the period of July 1, 2008 to July 31, 2008. Interest shall accrue on this award at the rate of nine percent per annum accruing from July 15, 2008, an intermediate date, until the date payment is actually made by Respondent.

2. Within sixty days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of $820.44 as damages for back pay for the period of August 1, 2008 to August 31, 2008. Interest shall accrue on this award at the rate of nine percent per annum accruing from August 15, 2008, an intermediate

date, until the date payment is actually made by Respondent.

3. Within sixty days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of $ 617.55 as damages for back pay for the period of November 1, 2008 to November 18, 2008. Interest shall accrue on this award at the rate of nine percent per annum accruing from November 9, 2008, an intermediate date, until the date payment is actually made by Respondent.

4. Within sixty days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of $10,000.00 without any withholdings or deductions, as compensatory damages for the mental anguish 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 the date payment is actually made by Respondent.

5. The aforesaid payments shall be made by Respondent in the form of two certified checks made payable to the order of Complainant, Carrie A. Oursler, at her home address of 38 State Street, Tully, New York 13159 and delivered by certified mail, return receipt requested.

6. Respondent shall simultaneously furnish written proof of the aforesaid payments to the General Counsel's Office, Attention Barbara Buoncristiano, at her office address at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

7. Within sixty (60) days from the date of the Final Order, Respondent shall create an anti-discrimination policy and shall transmit a memorandum to all of its employees, agents, and officers, notifying them that it has a policy of non-

discrimination based on, among other reasons, a woman's pregnancy.

8. Respondent shall simultaneously furnish copies of the aforesaid memoranda to the General Counsel's Office, attention Barbara Buoncristiano, at her above address.

9. Respondent shall furnish written proof of its compliance with the directives contained in this Order.

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

DATED: June 30, 2009
Bronx, New York

Migdalia Parés
Administrative Law Judge