NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

SHARI POTTER,

Complainant,

v.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent.

NOTICE AND FINAL ORDER

Case No. 10100987

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 February 4, 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") WITH THE FOLLOWING AMENDMENT:

- The amount recommended for Complainant's back pay damages is adopted. However, the amount recommended for Complainant's emotional distress damages is not adopted herein. Instead, Complainant is awarded $15,000. Such an amount is reasonably related to the wrongdoing, comparable to awards for

similar injuries and supported in the record. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 575 N.Y.S.2d 957 (3d Dept. 1991).

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: JUL 17 2009
Bronx, New York
JULY 17, 2009

Galen D. Kirkland
GALEN D. KIRKLAND
COMMISSIONER

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DIVISION OF HUMAN RIGHTS

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on the Complaint of

SHARI POTTER,

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NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10100987**

SUMMARY

Complainant claims that Respondent subjected her to unlawful discriminatory actions because of sex and age. Respondent denied unlawful discrimination. The claim of age discrimination is sustained and Complainant is awarded relief as set forth below. Complainant failed to meet the prima facie case of sex discrimination and this claim should be dismissed

PROCEEDINGS IN THE CASE

On August 17, 2004, 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 Migdalia Parés, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on June 4 - 5, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Robert Alan Meisels, Esq. Respondent was represented by New York City Department of Law by Andrea Mendez, Esq., and Rippi Gill, Esq., Assistant Corporation Counsels.

On July 11, 2007, attorney Meisels submitted additional exhibits and requested that they be included as part of the record. Meisel's letter and the attached exhibits are marked as Complainant's Exhibits 41, 42 and 43. Respondent filed objections to the introduction of these additional exhibits. Respondent's objections are hereby marked as Respondent's Exhibit 9. In the interest of having a complete record Complainant's Exhibits 41, 42, 43 and Respondent's Exhibit 9 are received in evidence.

Permission to file post-hearing submissions was granted. Attorneys for the Division and for Respondent filed timely post-hearing submissions.

FINDINGS OF FACT

1. Complainant, a female, was born on August 22, 1955. (Complainant's Exh. 1; Tr. 29)

2. Complainant has a Bachelor of Science degree as a Physician's Assistant from City College of the City University of New York and a Master of Health Administration degree from New School for Social Research. The degree program in hospital administration included a number of computer courses. (Complainant's Exh. 17; Tr. 51)

3. Respondent is a corporation which provides citywide health services through a network of hospitals and clinics in the City of New York including, in relevant part, Bellevue,

Metropolitan, Lincoln, Gouverneur, Coler-Goldwater, Woodhull Hospitals, and Bushwick Clinic. (Tr. 303)

4. Complainant worked for Respondent from 1988 to February, 2004 when her employment was terminated. At the time of her termination, Complainant was employed as a Senior Management Consultant in the Management Information System (MIS") department of Bellevue Hospital. Complainant was earning an annual salary of $73,000.00. (Tr. 182-83)

5. The pay roll title of Senior Management Consultant title is only given to those employees who have experience or certifications in certain computer applications or computer programming. (Tr. 370-72)

6. Complainant also had the functional job title of application support coordinator. (Tr. 369)

7. While employed with Respondent at three of its major medical facilities, Woodhull. Metropolitan and Bellevue, Complainant performed duties as a clinical manager and as an information system ("IS")project manager responsible for the transition from a manual clinical IS to an automated system for its physicians and nurses. (Complainant's Exh. 3, 4, 6, 17, 19; Tr. 42-53)

8. Complainant collaborated with computer programmers with whom Respondent contracted in order to create the automated system. (Complainant's Exhibits. 3, 4, 6, 17, 19; Tr. 42-53)

9. Complainant developed an expertise in clinical management, project management in the development and implementation of clinical IS and in training physicians on all aspects of the system including upgrades. (Complainant's Exhibits 3, 4, 6, 17, 19; Tr. 42-53)

10. Complainant developed system content, monitored testing, implemented systems, developed training manuals, coordinated troubleshooting and gave advice to the programmers. (Complainant's Exhibits. 3, 4, 6, 17, 19; Tr. 42-53)

11. At Bellevue Hospital, Complainant's additional duties were to work with all medical professional staff to ascertain which aspects of the computer system needed to be enhanced or included in a new computer program that would link several hospitals into one computer network. (Complainant's Exhibits. 3, 4,19; Tr. 47)

12. Complainant received satisfactory performance evaluations. (Tr. 53-54, 71-72)

13. On September 25, 2001, Respondent hired Joan Zieniewicz, born on May 15, 1958, as a Senior Consultant MIS at an annual salary of $92,500.00. Zieniewicz also worked at Bellevue Hospital's MIS department. Zieniewicz had an Associate's degree in nursing, a Bachelor's Degree in Science and had already completed 30 credits towards a Master of Medical Informatics degree at Columbia University. She also published an article in the Journal of Medical Infomatics. (Complainant's Exhibits. 18, 23; Tr. 82, 85)

14. Zieniewicz had many years of experience as both a professional nurse and nurse administrator. Prior to coming to Bellevue, Zieniewicz was responsible for electronic medical record systems and their upgrade, staff supervision and the training of nurses on computer systems at major hospitals such as Columbia Presbyterian. (Complainant's Exhibits. 18, 23; Tr. 82, 85)

15. On August 2, 2002, Respondent issued Operating Procedure 20-39 (OP 20-39). This was a policy and procedure review process of managerial decisions affecting the status or salary of management employees. (ALJ Exh. 8; Tr. 370)

16. OP 20-39 had four exceptions to the review process: 1) background investigations of corporate employees; 2) review of a performance appraisal; 3) salary policy and; 4) actions that were the result of a budget reduction, downsizing and/or loss of grant funding. (ALJ Exh. 8)

17. In January, 2003, Respondent hired Mary McKenna as Chief Information Officer to assist in the consolidation of the multiple data centers across hospitals into two data centers, and to establish corporate contracts with computer application vendors. One of the data centers was referred to as South Manhattan Health Network, ("SMHN"). SMHN was comprised of Bellevue Hospital, Coler-Goldwater Hospital, a long-term care facility and Gouverneur Nursing, Diagnostics and Treatment Center. (Tr. 55, 303)

18. During the relevant time Respondent contracted Tekmark Global Solutions, LLC, ("Tekmark") to upgrade and assist in the implementation of the windows based program for SMHN. (Complainant's Exh. 30, Respondent's Exh. 6 ; Tr. 82, 88)

19. In 2003, McKenna removed the responsibility of interaction between medical staff and outside contractors from Complainant and from Zieniewicz. Contractors were now going to interact directly with physicians and nurses.

20. In 2003 McKenna decided to create a training department and began the process of recruiting new employees who would perform the training functions that Complainant and Zieniewicz were still performing. The plan for a new training department was not disclosed to the staff.

21. In July, 2003, Tekmark hired Jorge Luis Mora, born on September 21, 1967, as a temporary employee. Mora's rate of pay was $23.00 an hour for a 35 hour week which amounted to $805.00 a week or an annual salary of $41,756.00. Tekmark assigned Mora to work at Bellevue's MIS department. Mora's responsibilities included performing the computer training

of the nursing staff. Respondent directed Complainant to train Mora on the nursing training module portion of the electronic system. (Complainant's Exh. 30, Respondent's Exh. 6 ; Tr. 82, 88)

22. On September 22, 2003 Respondent hired Raisa (Rachel) Medvedskaya, female, born on December 31, 1980, for the position of Senior Management Consultant at Bellevue Hospital's MIS department at an annual salary of $65,000.00. Medvedskaya's duties included coordinating training activities and managing staff in the new training department. (Complainant's Exhibits. 20, 21)

23. On October 24, 2003 Respondent hired Mora for a permanent position as a Senior Management Consultant at an annual salary of $57,333.33. As a result, Mora stopped being a temporary employee of Tekmark. Mora's job description describes his position as "Trainer Clinical Information Systems ("CIS")". Mora was responsible for the training tasks associated with the implementation and ongoing support of the new windows based clinical information system applications. (Complainant's Exhibits. 30, 32, 34; Respondent's Exh. 6 ; Tr. 82, 88)

24. From November, 2003, to January, 2004, Respondent began providing training to Mora, Medvedskaya and Amaran on the upgrades to IS as it was going from a DOS based system to a Windows based system. In order for Complainant to keep abreast of all the new changes she had to go to the training. Complainant asked to attend the training but she was denied the opportunity to receive the training on the new upgrades to the system and on the new windows based training modules. (Tr. 93-98)

25. As part of the responsibilities associated with the integration of the computer network, Complainant helped design the type of information and fields on the computer screen that would allow the medical staff to conform the professional medical standards for diagnosis, medical

record retention and billing purposes into an automated system. (Complainant's Exhibits. 3, 4, Tr. 47-70, 80)

26. Respondent trained Hephzibah Amaran, born on February 17, 1969, on the new windows based data base design development. (Complainant's Exh. 41; Respondent's Exhibit. 5; Tr. 154-55, 381)

27. In December, 2003, Complainant was working on a special computer application project related to the billing system used by physicians, and training physicians at Bellevue on the medical electronic system. (Tr. 61-62)

28. Until December, 2003, Zieniewicz had complete responsibility for training Bellevue's nursing staff on the electronic medical record system. (Complainant's Exhibits. 18, 23; Tr. 82, 85)

29. On December 30, 2003, McKenna submitted to Mary Thompson, Chief Operating Officer, a document entitled "PS Budget Adjustments and Realignments ("PS BAR" (ALJ Exh. 8; Respondent's Exh. 8)

30. PS BAR recommended: 1) clinical information services staff realignment and reorganization; 2) Recommending Information Services staff salary increases; 3) recommending resolution of unbudgeted positions; and 4) recommending other vacancy control board actions. McKenna recommended that the positions held by Complainant and Zieniewicz be eliminated. McKenna also recommended that the responsibilities for project management, training and customer support be outsourced. (ALJ Exh. 8; Respondent's Exh. 8)

31. None of McKenna's recommendations fell under the exceptions to Respondent's OP 20-39. (ALJ Exh. 8; Respondent's Exhibit 8)

32. In support of the information services "staff realignment" and "reorganization" McKenna advised Thompson that ". . . using the computerized patient record and introduction of new or upgraded systems will require support staff to have a combination of an excellent understanding of clinical workflow and practices, Information Systems ("IS") project management and preferably some experience with database development." (Respondent's Exhibit 8)

33. Complainant and Zieniewicz met the criteria McKenna described by having a combination of an excellent understanding of clinical workflow practices, (IS) project management, experience with database development and many years of experience training nurses and physicians. (Complainant's Exhibits. 3, 4,18, 19; Tr. 47)

34. McKenna explained that the function of the new database development, training and customer support were already being outsourced because only "several" members of the Clinical IS staff at Bellevue had received training in the new updated systems. The "several" employees that were trained were not "able to assume the responsibility of a database analyst." (Respondent's Exh. 5)

35. Complainant testified credibly that she was not one of the staff members trained in the new windows systems programs. In her memorandum, McKenna did not disclose the names and titles of the "several" employees that were trained in the new system but were unable to assume the responsibility of database analyst. (Complainant's Exh. 41; Respondent's Exh. 5; Tr. 154-55)

36. In January, 2004, Amaran, Mora, and Medvedskaya began to be involved in training activities. (Tr. 366)

37. In January, 2004, McKenna assigned Medvedvskaya, age 26, to train the physicians at Bellevue on the electronic system. Complainant was told that Medvedvskaya was brought in to assist her with the task of training the physicians. (Tr. 81-82, 85-7)

38. On February 19, 2004, Respondent told Zieniewicz and Complainant that their employment was being terminated due to budget cuts, and that there was no money to pay their salaries. (Complainant's Exh. 2; Tr. 56-61, 82)

39. During the February 19, 2004 meeting Brenda Ruth Chapman, Respondent's Director of Human Resources ("HR"), handed Complainant a letter in which she stated that Complainant was being terminated "due to budget reduction and restructuring." (Complainant's Exh. 2)

40. The letter of termination did not make reference to a new training department. (Complainant's Exhibit 2)

41. In the same letter Chapman stated that since Complainant's termination was "the result of a budget reduction, this matter is not deemed to be subject to review pursuant to OP 20-39." (Complainant's Exh. 2)

42. McKenna's testimony during the hearing contradicted both her memorandum to HR requesting salary increases, and the written document Chapman issued to Complainant which referred to budget cuts as a reason for termination. During the hearing McKenna stated that Complainant was terminated because she did not know data base design. I find that the assertion that data base design was the most important criteria is contradicted by her memorandum to HR in which she indicated that the "introduction of new or upgraded systems will require support staff to have a combination of an excellent understanding of clinical workflow and practices, IS project management and preferably some experience with database development." (Complainant's Exhs. 3, 4,18, 19; Respondent's Exh. 8; Tr. 47, 381)

43. Since the only employees that were trained were not "able to assume the responsibility of a database analyst," Mora, Medvedskaya and Amaran, were also not able to assume the responsibility of a database analyst. (Respondent's Exh. 5)

44. Mora, age 37, Medvedskaya, age 26 and Amaran, age 35 were not terminated. (Tr. 56-61)

45. McKenna hired seven more persons born after 1968 or later for the position of Senior Management Consultant at Bellevue Hospital's MIS department at annual salaries that ranged from $50,000 to $95,000.00. (Complainant's Exh. 22)

46. In 2004, Complainant had earnings of $47,769.00, and received unemployment benefits of $10,530.00. This shows mitigation in the amount of $58,299.00. Had Complainant remained employed with Respondent she would have earned $73,000.00 in salary. Therefore, in 2004 Complainant lost $14,701.00 in wages. (Complainant's Exhibits. 8, 9, 14)

47. On July 7, 2005, Complainant found employment at a higher salary than she was earning with Respondent. Had Complainant remained employed with Respondent from January to July 7, 2005, a period of 27 weeks, she would have earned $37,903.84. (Complainant's Exhibits. 12, 14)

48. Complainant's combined lost wages for 2004 and 2005 are $52, 604.84. (Complainant's Exhibits. 8, 9, 12, 14)

49. Complainant testified credibly that Respondent's termination of her employment made her feel depressed, upset, anxious and humiliated. Complainant also felt isolated from her family and friends for months. The termination of Complainant's employment affected her ability to pay creditors causing her credit rating to suffer and her wages to be garnished. Complainant had to move out of her home and the quality of life for herself and her family was greatly diminished.

Complainant suffered from anxiety for months while she remained unemployed. Complainant testified credibly that her bills accumulated, collection agencies started calling and she experienced months of worry, sleepless nights and weight loss. (Tr. 98-108)

OPINION AND DECISION

Complainant claimed that Respondent unlawfully discriminated against her when it terminated her employment because of her age and her gender. Under Executive Law §296 (1) (a), it is an unlawful discriminatory practice for an employer "because of the . . . age . . . or sex. . . . of any individual . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment." The Division has generally adopted the analytical framework established by the United States Supreme Court in *McDonnell Douglas v. Green,* 411 U.S. 792, 93 D. Ct. 1897, 36 L.Ed. 2d 668 (1973) and *Texas Department of Community Affairs v Burdine,* 450 U.S. 248 (1981). *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) (citing *McDonnell Douglas*); *Burlington Industries Inc. v. New York City Human Rights Commission,* 82 A.D. 2d 415, 441 N. Y.S. 2d 821 (1st Dept. 1981), aff'd 58 N.Y.2d 983, 460 N. Y. S. 2d 920(1983).

Using this framework, Complainant has the burden to establish a prima facie case of discrimination by showing: 1) that she belongs to a protected class; 2) she had satisfactory performance; 3) she was qualified for the position; and 4) she was subjected to an adverse employment action under circumstances giving rise to an inference of discrimination. Complainant's burden to establish the prima facie case is, however, "not onerous" and has been characterized as "de minimus." *Texas Department of Community Affairs.* 450 U.S. at 253; *Dunadee v County of Monroe,* 729 N.Y.S. 2d 605, 609 (2001); *Dister v Continental Group, Inc.*

859 F. 2d 1108, 1114 (2d Cir. 1988) If the Complainant succeeds in establishing the prima facie case, the burden shifts to Respondent to articulate legitimate, non-discriminatory reasons for the employment decisions it made. *Pace College* at 39; *Reeves v Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097, 2106, 147 L. Ed. 105 (2001). Complainant is then afforded the opportunity to prove by a preponderance of the evidence that the reasons offered by Respondent are a pretext for its unlawful discrimination. *Pace College*, 38 N.Y. 2d at 40; *Reeves*, 120 S. Ct. at 2106.

Complainant met her burden of establishing a prima facie case of age discrimination. First, Complainant is in a protected class because of her age. Second, Complainant was qualified for the position as a Senior Management Consultant. Third, Complainant rendered satisfactory employment. Finally, Complainant showed adverse employment actions under circumstances giving rise to an inference of age discrimination. For instance, not everyone in the department had attended data training except for Amaran. Also, McKenna admitted in the memorandum to HR that even those employees who had completed MIS training were not able to assume data base functions. Further, Complainant showed that Respondent did not terminate younger employees in the same title. Finally, Complainant showed that Respondent continued to hire staff for the MIS department.

Respondent proffered legitimate non-discriminatory business reasons for the adverse actions against Complainant. Respondent explained that it terminated Complainant because of budget cuts, and because the MIS department needed individuals who had a combination of an excellent understanding of clinical workflow practices, IS project management and some experience with database development and because it created a new training department.

Complainant showed that Respondent's legitimate non-discriminatory business reason was a pretext. Complainant established that there were no budget cuts. Respondent produced no

documents supporting a directive to cut expenses. The act of calling the termination "a budget cut" shows pretext because it evaded the review process of OP 20-39. Respondent was simultaneously terminating Complainant's employment while requesting higher salaries for employees in the MIS department. Furthermore, Respondent denied Complainant the opportunity of attending training in the new system while allowing younger employees to attend and be prepared for the introduction of the new system.

McKenna never referred to the memorandum she sent to HR as a "budget cutting measure," or as a response to budget cuts. Rather, the record evidence shows that she was requesting staff salary increases. However, the termination letter addressed to Complainant refers to budget cuts and specifically states that, because it is a budget cut, Complainant is not entitled to a review under OP 20-39. The record evidence supports the conclusion that there were no budget cuts. Referring to Complainant's termination as "a budget cut" prevented upper management from reviewing Complainant's termination under OP 20-39. Therefore, I conclude as a matter of law that Respondent unlawfully terminated Complainant's employment in violation of the Human Rights Law.

Complainant failed to establish a prima facie case of sex discrimination. Complainant showed that she was in the protected class since she is female. Second Complainant established that she had rendered satisfactory performance. Third, Complainant established that she was qualified for the position. However, Complainant failed to establish that she suffered an adverse employment action under circumstances giving rise to an inference of sex discrimination. The record does not support Complainant's allegation that her gender was a factor in the decision to terminate employment. The record evidence shows that Respondent retained other females in the MIS department.

The Human Rights Law provides various remedies to restore victims of unlawful discrimination to the economic position that they would have held had their employers not subjected them to unlawful conduct. *See* Human Rights Law § 297.4.c (i)-(iv); *Ford Motor Co. v. E.E.O.C.*, 458 U.S. 210 (1982). Awards of back pay compensate a complainant for any loss of earnings and benefits sustained from the date of the adverse employment action until the date of the verdict. *Iannnone v. Frederic R. Harris, Inc.*, 941 F. Supp. 403 (S.D.N.Y. 1996). Besides 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. New York State Div. of Human Rights,* 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dep't. 1989). That award may be based solely on a complainant's testimony. *Id.* Finally, an award of pre-determination interest of nine percent per annum, accruing from a reasonable intermediate date, complements the back pay award and is appropriate. *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 back wages in the amount of $52, 604.84. *Ante* at ¶37. Complainant is also entitled to pre-determination interest of nine percent on this amount at the rate of nine (9) per cent per annum from November 26, 2004, a reasonable intermediate date, until the date payment is actually made by Respondent.

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 that the award is reasonably related to the wrongdoing, supported in the record and comparable to awards for similar injuries. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991). 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 Div. 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 (3d Dept. 1996).

Here, Complainant credibly testified that she suffered emotional distress as a result of being discharged by Respondent. This included humiliation, stress, trouble sleeping, loss of concentration, depression, trouble eating, weight loss, losing enjoyment of life activities, the inability to get out of bed and isolating herself from friends and family. These symptoms lasted for several months subsequent to her discharge. Complainant continued to experience anxiety which lasted much longer as she dealt with the legal and financial ramifications of her credit card debts and the need to move out of her home. The quality of life for Complainant and her family continued to be affected by the loss of her employment. Complainant had to move her family when it became impossible to continue to finance her home. Accordingly, the Division finds that an award of $50,000.00 for mental anguish is consistent with similar cases and will effectuate the remedial purposes of the Human Rights Law. *See, e.g., R & B Autobody & Radiator, Inc. v. N.Y. State Div. of Human Rights*, 31 A.D.3d 989, 819 N.Y.S.2d 599 (3d Dept. 2006); *New York City Health & Hospitals Corp. v. N.Y. State Div. of Human Rights*, 236 A.D.2d 310, 654 N.Y.S.2d 310 (1st Dept. 1997); *Consolidated Edison Co. of New York, Inc. v. N.Y. State Div. of Human*

Rights, 77 N.Y.2d 411, 568 N.Y.S.2d 569 (1991). *New York State Department of Correctional Services v. McCall,* 109 A.D.2d 953, 486 N.Y.S.2d 443 (3d Dep't 1985); *Buffalo Athletic Club v. New York State Division of Human Rights,* 249 A.D.2d 986, 672 N.Y.S.2d 210 (4th Dep't. 1998)

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 of sex discrimination, and the same hereby is, dismissed.

ORDERED, that Respondent, 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 (60) days of the date of the Commissioner's Order, Respondent shall pay to Complainant, Shari Potter, as back pay, an award in the amount of $52,604.84. Interest shall accrue on the award at the rate of nine percent per annum from November 26, 2004, a reasonable intermediate date, until the date payment is actually made by Respondent.

2 Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay to Complainant Shari Potter, the sum of $50,000.00, without any withholdings or deductions as compensatory damages for the mental anguish she suffered as a result of Respondent's unlawful discrimination against her. Interest shall accrue on the award at the rate of nine percent per annum from the date of the Commissioner's Order until payment is actually made by Respondent.

2. The aforesaid payments shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Shari Potter, and delivered by certified mail, return receipt requested, to the N.Y.S. Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Fl., Bronx, N.Y. 10458. Respondent shall furnish written proof to the N.Y.S. Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Fl., Bronx, New York 10458, of its compliance with the directives contained in this Order;

3. Respondent shall establish in its workplace both anti-discrimination training and procedures. Respondent shall provide proof of the aforementioned to the Division upon written demand.

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

DATED: January 30, 2009

Bronx, New York

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Migdalia Parés
Administrative Law Judge