

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

SARA D. PRESWORSKY,

Complainant,

v.

NEW YORK METHODIST HOSPITAL,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10111665

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 December 18, 2008, by Lilliana Estrella-Castillo, 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 AMENDMENTS:

- Due to typographical error, the interest accrual date is incorrect. The Respondent shall pay interest to Complainant on the \$10,000 award, at a rate of nine percent per annum, from the date of the Commissioner’s Order until the date payment is made.

- Because Respondent discriminated against Complainant based on her religion, the decree in the Recommended Order that Respondent transmit a memorandum to its employees regarding retaliation is not adopted in this Final Order. The remainder of the Recommended Order is adopted and issued as the Final Order herein.

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **FEB 18 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

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HUMAN RIGHTS

on the Complaint of

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Respondent.

RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER

Case No. 10111665

SUMMARY

Respondent violated the Human Rights Law when it failed to take any reasonable steps to accommodate Complainant's religious observances.

PROCEEDINGS IN THE CASE

On May 10, 2006, 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 Rosalie Wholstatter, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on August 27, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Aaron Woskoff, Senior Attorney, of Counsel. Respondent was represented by Dennis S. Buchanan.

On October 8, 2008, the case was reassigned to ALJ Lilliana Estrella-Castillo, after ALJ Wholstatter left state service.

On October 24, 2008, ALJ Estrella-Castillo issued a recommended order, but unbeknownst to her on September 19, 2008, the Chief Administrative Law Judge had granted the parties an extension to October 28, 2008, to file their post-hearing submissions. Thereafter, ALJ Estrella-Castillo recalled the recommended order and granted the parties an opportunity to make their post-hearing submissions.

The parties' submissions, proposed findings of fact and conclusions of law, were received, considered and where appropriate, adopted.

FINDINGS OF FACT

1. Complainant is Jewish and a Sabbath observer. (Tr. 45-46; ALJ Exhibit 1)
2. The Jewish Sabbath begins one hour before sundown each Friday and continues until one hour after sunset each Saturday. (Tr. 46)
3. On March 24, 2003, Complainant became employed by Respondent as a nurse in its Mother/Baby Unit. (Tr. 44)
4. Respondent accommodated Complainant's religious observance of the Sabbath and other holy days. (Tr. 54, 63)
5. In June 2005, Complainant applied for a position in the Labor/Delivery Unit. (Tr. 71, 129; Complainant's Exhibit 5)

6. Complainant was interviewed for the nursing position in the Labor/Delivery Unit, and was told that she met all the qualifications for the position, but would not be granted the position because of her religious observance of the Sabbath. (Tr. 73-74)

7. Complainant was very interested in working in the Labor and Delivery Unit because she wanted to become a nurse-midwife and she considered this transfer to be critical to her career development. (Tr. 45)

8. In an effort to convince Respondent to grant her the position in the Labor and Delivery Unit, Complainant offered to work Sundays and Holidays, in exchange for Fridays and Saturdays off. (Tr. 75) Complainant also informed Respondent that she was willing to switch shifts, work some nights and some days, or work per diem. (Tr. 75, 77-78)

9. Respondent rejected all of Complainant's suggestions. (Tr. 75, 77-78)

10. Respondent admitted unlawful employment discrimination. (Tr. 5, 91-98; Respondent's Exhibit 1)

11. Respondent admitted that it discriminated against Complainant when it refused to grant Complainant the nurse position in the Labor and Delivery Unit in 2006 because she is a Sabbath observer. (Tr. 5, 91- 98)

12. Respondent failed to take any reasonable steps to accommodate Complainant's religious observances, and when Complainant tried to engage Respondent in exploring alternatives, Respondent rejected all suggestions, without considering any of them. (Tr. 76-77) ,

13. As a result of the unlawful discrimination Complainant felt devastated and as if "everything was taken away from [her]" because Respondent rejected her for the nurse position in the Labor and Delivery Unit because of her religious observances. (Tr. 75, 77)

14. Complainant could not sleep, was sad, upset and irritable, all of which caused tension in her marriage. (Tr. 77-78, 144)

15. As a result of the stress, Complainant gained about one hundred pounds. Complainant's weight increased to 280 pounds, because she would overeat to make herself feel better. (Tr. 81, 101-02, 105, 142; Complainant's Exhibit 8)

16. Complainant was also diagnosed with temporomandibular joint disorder ("TMJ") because, as a result of the stress, she would grind her teeth. (Tr. 81, 107-09, 142)

17. On August 7, 2006, after Complainant filed a complaint with the Division, Respondent granted Complainant a transfer to the Labor and Delivery Unit, with a religious accommodation. (Tr. 7-8) Thereafter, after having worked in the Labor and Delivery Unit, Complainant changed her plans and is no longer interested in becoming a mid-wife. (Tr. 114)

18. Complainant testified that some co-workers, whom she did not identify, made comments regarding her work schedule which allowed her to have Fridays and Saturdays off, while the co-workers had to work those days. Complainant agreed that the alleged comments were made because of what her co-workers felt was a more favorable work schedule and not because of any religious animosity directed towards Complainant because she is Jewish. (Tr. 118, 125, 127)

OPINION AND DECISION

It is an unlawful discriminatory practice for any employer "to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath..., unless, after engaging in a

bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue hardship on the conduct of the employer's business. . . ." Human Rights Law § 296.10

Complainant is Jewish and a Sabbath observer. Complainant applied for a nurse position in Respondent's Labor and Delivery Unit. Respondent found that Complainant was qualified for the position, but refused to grant her the position because of Complainant's religious observance of the Sabbath. Respondent violated the Human Rights Law because it failed to engage in a "bona fide effort" to reasonably accommodate Complainant's sincerely held religious observance.

Complainant suffered humiliation and mental anguish as a result of Respondent's unlawful discrimination. Complainant suffered many sleepless nights, was sad, upset and irritable, which also caused tension in her marriage. Complainant felt devastated because her dream of becoming a nurse-midwife was taken away from her because of her religious requirements. (However, after having worked in the Labor and Delivery Unit, Complainant is no longer interested in becoming a mid-wife). The stress also caused Complainant to have physical manifestations, such as weight gain, and a diagnosis of TMJ.

An award of \$10,000.00 for emotional distress, pain and suffering, humiliation and mental anguish, will effectuate the purposes of the Human Rights Law. *Bayport-Blue Point School District v. State Division of Human Rights*, 131 A.D.2d 849, 517 N.Y.S.2d 209 (1987), (Where the court held that Complainant's testimony was sufficient to support an award of \$5,000 for mental anguish). In the instant complaint, Complainant's testimony regarding her mental anguish was corroborated by two witnesses.

Finally, all of Complainant's other arguments were considered and found to be without merit.

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

ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall not unlawfully retaliate against Complainant for having exercised her right to file a complaint with the Division of Human Rights; it is further

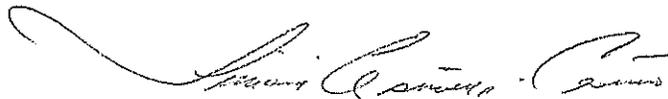
ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative actions to effectuate the purposes of the Human Rights Law:

1. Within 60 days of receipt of the Final Order of the Commissioner, Respondent shall pay to Complainant the sum of \$10,000.00 without any withholdings or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of Respondent's unlawful discrimination.
2. Interest shall start to accrue within 60 days of receipt of the Final Order of the Commissioner, until such payment is made.
3. The aforesaid payments shall be made by Respondent in the form of a check made payable to the order of Complainant and delivered by certified mail, Return Receipt Requested, to Complainant, with copies to General Counsel, New York

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

4. Respondent shall transmit a memorandum to its employees, agents and officers, notifying them that it has a policy of non-discrimination based on religion.
5. Respondent shall also transmit a memorandum to its employees, agents and officers, notifying them that retaliation for filing a complaint, testifying or assisting in any proceeding under the Human Rights Law is forbidden.
6. Respondent shall furnish written proof of its compliance with the directives herein contained, and shall cooperate with representatives of the General Counsel and the Division during any investigation into the compliance with the directives of this Order.

DATED: December 18, 2008
Bronx, New York



Lilliana Estrella-Castillo
Administrative Law Judge