DAVID A. PATERSON
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

MARY ROCCO,

Complainant,

v.

JEFFREY L. GOLDBERG, ERIC SANDERS,
JEFFREY L. GOLDBERG, P.C.,

Respondents.

NOTICE AND
FINAL ORDER

Case No. 10112394

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 March 18, 2009, by Robert M. Vespoli, 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:

- A complainant's decision to start her own business "from which [s]he might reasonably expect to derive some financial benefit [is] consonant with [her] obligation to mitigate damages." *Cornell v. T.V. Dev. Corp.*, 17 N.Y.2d 69, 75 (1966). In the instant matter, the credible evidence demonstrates that in January 2006, Complainant started her own law practice. (Tr. 341, 343, 412-13) Respondent has not proven that Complainant failed to make diligent efforts to mitigate her damages during this period. *See State Div. of Human Rights v. North Queensview Homes, Inc.*, 75 A.D.2d 819 (2d Dept. 1980) (*citing Cornell v. T.V. Corp.*, 17 N.Y.2d at 74 and *Walter Motor Truck Co. v. New York State Div. of Human Rights v. Wackenhut Corp.*, 248 A.D.2d 926 (4th Dept. 1998)). Accordingly, in addition to the damages directed in the Recommended Order, Complainant is entitled to compensation for lost wages during the period of January 2006 through the date of the hearing in this matter. In 2006, Complainant earned $15,189 and in 2007, Complainant earned $15,545. (Complainant's Exhibits 23, 24, 25). Complainant would have earned $150,000. (Tr. 13) It is noted that Complainant filed Objections to the Recommended Order on April 7, 2009, in which she argued for compensation during this period. However, no evidence was included regarding any 2008 income. Thus, an award for that period would be speculative. Accordingly, Complainant is entitled to $119,266, plus nine percent interest to accrue from January 1, 2007, a reasonable intermediate date, until the date payment is made.

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: JAN 25 2010
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

MARY ROCCO,

Complainant,

v.

JEFFREY L. GOLDBERG; ERIC SANDERS; JEFFREY L. GOLDBERG, P.C.

Respondents.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10112394**

SUMMARY

Complainant alleged that Respondents terminated her employment on June 6, 2005, because of her pregnancy and in retaliation for complaining about unlawful discriminatory practices. Although Respondents denied these allegations, the instant complaint must be sustained. Accordingly, Complainant is entitled to relief in the form of lost wages in the amount of $35,624.00 and compensatory damages for mental anguish in the amount of $20,000.00.

PROCEEDINGS IN THE CASE

On June 1, 2006, 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").

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 Robert M. Vespoli, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on December 3 and 4, 2008.

Complainant and Respondents appeared at the hearing. Complainant was represented by Tracey S. Bernstein, Esq. Respondents were represented by Susan P. Bernstein, Esq.

At the public hearing, the presiding ALJ amended the caption to add Jeffery L. Goldberg, P.C. as a Respondent. (Tr. 4-5)

Respondents' verified answer and verified amended answer were received into evidence *nunc pro tunc* as ALJ's Exhibit 8. (Tr. 7-8, 766-67; ALJ's Exh. 8) Complainant submitted an affidavit from Frank Pullano dated December 9, 2008, that was received into evidence as Complainant's Exhibit 30. (Tr. 759-60; Complainant's Exh. 30) Respondents submitted an affidavit from Constance Cannone dated December 8, 2008, that was received into evidence as Respondents' Exhibit 4. (Tr. 759-60; Respondents' Exh. 4)

FINDINGS OF FACT

1. Complainant alleged that Respondents terminated her employment on June 6, 2005, because of her pregnancy and in retaliation for complaining about unlawful discriminatory practices. (ALJ's Exh. 1)

2. Respondents denied these allegations. Respondents also asserted counterclaims alleging that Complainant was liable for conduct involving assault, harassment, blackmail, extortion, fraud, larceny, violation of attorney-client privilege and violation of the privacy rights of Respondents' clients. (ALJ's Exh. 8)

3. Complainant is a thirty-three year old female and the mother of three young children who were born during the term of her employment with Respondent law firm Jeffrey L. Goldberg, P.C. ("Firm"). (ALJ's Exh. 1) At the time of her separation from employment, Complainant held the position of associate attorney at the Firm, a position for which she was qualified. (Tr. 11) Complainant had worked for the Firm since 1997. (Tr. 10) As a law student, Complainant worked part-time as a legal intern. (Tr. 10) On March 31, 2000, Complainant began working full-time and received a starting salary of $865.38 per week. (Tr. 11)

4. The Firm's practice areas are pension law, disability law, and employment discrimination law. (Tr. 552)

5. Goldberg was supportive when Complainant's first child was born on August 29, 2002. (Tr. 12, 31-33) He did not complain about Complainant's flexible work schedule when she returned from maternity leave in November 2002. Complainant continued to receive her full salary and there was no change in her assignments or responsibilities. (Tr. 12, 33-34)

6. On Saturday, February 14, 2004, during Complainant's second pregnancy, Complainant was hospitalized for two days due to pregnancy-related complications. (Tr. 36) Complainant called Goldberg from the hospital to inform him. (Tr. 36) The next day, Goldberg called Complainant at the hospital and told her that he had hired Chester Lukaszewski because "he couldn't have babies." (Tr. 36-37)

7. Around this time, Goldberg made Complainant feel uncomfortable about her second pregnancy and her impending maternity leave. (Tr. 35-36; ALJ's Exh. 1)

8. Complainant returned to work on February 16, 2004, and worked until April 15, 2004, when she went out on her second maternity leave. (Tr. 41-42, 421; Complainant's Exh. 5) Complainant's second child was born on April 29, 2004. (Tr. 12)

9. During the spring of 2004, while Complainant was out on her second maternity leave, Goldberg began discussions with Eric Sanders regarding his prospective employment with the Firm. (Tr. 658, 713) At that time, Goldberg and Sanders discussed Complainant, her maternity leave, and the difficulty Goldberg was having with her absence. (Tr. 658) Sanders began working for the Firm on July 19, 2004. (Tr. 13-14, 713) On or about December 18, 2004, Goldberg promoted Sanders to the position of managing attorney. (Tr. 559-61, 677-78)

10. On July 19, 2004, when Complainant returned to the office from her second maternity leave, Complainant noticed a distinct change in the way Goldberg treated her. (Tr. 12, 42-43, 45-47, 49, 70-75; Complainant's Exh. 4; ALJ's Exh. 1) Between July 19, 2004 and March 9, 2005, Complainant was routinely given undesirable assignments and clerical tasks, and her direct contacts with clients and Goldberg were reduced. (Tr. 49-51, 56-59, 76, 224, 231-33; Complainant's Exh. 4; ALJ's Exh. 1)

11. In November 2004, Goldberg, Sanders and Lukaszewski noticed that Complainant was pregnant for a third time and thought she was "hiding it with big clothing." (Tr. 440, 466-67) In conversations with Lukaszewski, Goldberg and Sanders commented about the timing of Complainant's pregnancies and stated that Complainant was having "Irish twins." (Tr. 440-41, 443, 450)

12. Goldberg and Sanders felt that Complainant was taking advantage of the Firm by getting pregnant. (Tr. 440-41, 443, 449, 482-83, 488-90, 644)

13. On December 27, 2004, Complainant announced to Goldberg that she was pregnant. Goldberg replied, "[n]ot again. I need to speak to Mr. Sanders." (Tr. 105)

14. On February 17, 2005, Goldberg and Sanders met with Complainant, and they revoked her company car, cell phone and credit card. (Tr. 112-15, 127-29, 651-52, 684; Complainant's

Exh. 6) Other employees at the Firm kept these benefits until August 5, 2005. (Tr. 130-31, 432-44, 511-12, 651-52, 687; Complainant's Exh. 27)

15. At the February 17 meeting, Complainant pointed out that she had been working full-time hours. Neither Goldberg nor Sanders refuted this assertion. (Tr. 112-15, 127-29, 754; Complainant's Exh. 6)

16. Goldberg and Sanders provided conflicting, implausible testimony about when they became aware of Complainant's third pregnancy. Sanders testified that he was completely unaware of this pregnancy until February 17, 2005, less than one month before Complainant gave birth to her third child on March 15. (Tr. 14, 721-24) However, Sanders discussed with Lukaszewski and Goldberg his suspicion that Complainant was pregnant in November 2004. (Tr. 440, 443, 450, 466-67)

17. Goldberg initially contended that he was unaware of Complainant's third pregnancy until February 2005, two weeks prior to her maternity leave. (Complainant's Exh. 16) However, Goldberg admitted during cross-examination that he knew about Complainant's pregnancy in late December 2004. (Tr. 611-12, 640-41)

18. On March 2, 2005, Complainant met with Goldberg and complained to him that she was being penalized and retaliated against for getting pregnant again. Notably, Goldberg did not deny Complainant's allegation. He apologized for revoking Complainant's car, cell phone and credit card, he assured her that there was no problem with her work and he said he would have to discuss her situation with Sanders. (Tr. 135-36; Complainant's Exh. 6)

19. On March 9, 2005, the day before Complainant's third maternity leave began, Complainant met with Goldberg. Goldberg did not address Complainant's complaints and told her that she should "go have babies." (Tr. 139; Complainant's Exh. 4; ALJ's Exh. 1)

20. On May 5, 2005, when Complainant called Goldberg and asked him what he intended to do about her complaints of discrimination, Goldberg was evasive and refused to address her concerns. (Complainant's Exh. 6)

21. Respondents terminated Complainant's employment when she returned from maternity leave on June 6, 2005. (Tr. 162-67)

22. Goldberg averred that he did not have prior knowledge of Complainant's intention to return to work on June 6, 2005. (Tr. 571-72, 619) However, this claim is not credible.

23. On June 1, 2005, Complainant left a telephone message for Goldberg with Jennifer Riehl, a paralegal with the Firm, stating, "I've tried numerous times to contact you. Dr. says OK for Monday [June 6, 2005]." (Complainant's Exh. 29) After taking this message, Riehl put it in Goldberg's message box, which is standard procedure for conveying telephone messages at the Firm. (Tr. 509) After his initial denial, Goldberg admitted during cross-examination that he probably received this message. (Tr. 571-72, 618-19, 697-98)

24. On May 19, 2005, Goldberg signed a disability form related to Complainant's maternity leave which stated that Complainant was a full-time employee and that Complainant's physician authorized her to return to work on June 6, 2005. (Tr. 704; Complainant's Exh. 15)

25. Goldberg told Lukaszewski and Sanders that Complainant would be returning to work on June 6, 2005. (Tr. 452)

26. Respondents asserted that Complainant's employment was not terminated on June 6, 2005. (Tr. 572, 619, 632, 712) However, this assertion is contradicted in the record.

27. On June 6, 2005, Complainant returned to work from her maternity leave and found that a new attorney was occupying her office, that all of her personal belongings had been packed

into shopping bags and boxes, and that she could no longer log into her computer. (Tr. 163-65, 453, 511-13)

28. That day, Complainant met with Goldberg and Sanders, and Sanders informed Complainant that her employment was terminated. (Tr. 166)

29. Lukaszewski corroborated Complainant's testimony that Respondents terminated her employment at the June 6 meeting. Goldberg discussed the termination of Complainant's employment with Lukaszewski shortly after the meeting. (Tr. 455-56) Goldberg told Lukaszewski that Complainant was "let go" and that Complainant asked a lot of questions and took a lot of notes at the meeting. (Tr. 455)

30. At the time of her discharge, Complainant's weekly salary was $1,442.31. (Tr. 13)

31. Complainant collected unemployment benefits in 2005 and 2006 totaling $10,530.00. (Complainant's Exhibits 22-23)

32. Complainant made efforts to find employment by attending unemployment seminars, posting her resume on a career website, and checking job listings in the *New York Times* and the *New York Law Journal*. (Tr. 337-41, 375-76)

33. In January 2006, Complainant started her own law practice, which continued through the date of the hearing. (Tr. 341, 343-44, 412-13)

34. The record is devoid of evidence showing that Complainant looked for comparable employment between January 2006 and late June 2008. (Tr. 376-77)

35. Complainant felt humiliated, embarrassed and distraught over the loss of her job. (Tr. 216, 326) This experience adversely affected her marriage and interfered with her relationship with her newborn child. (Tr. 215-17)

OPINION AND DECISION

The record establishes that Respondents unlawfully discriminated against Complainant because of her pregnancy by terminating her employment on June 6, 2005.

It is unlawful for an employer to discriminate against an employee on the basis of sex. 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 she is a member of a protected group, that she was qualified for the position she held, that she suffered an adverse employment action, and that Respondents' actions occurred under circumstances giving rise to an inference of 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 ultimate burden rests with Complainant to show that Respondents' proffered explanations are a pretext for unlawful discrimination. *See Ferrante v. American Lung Ass'n,* 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

In the instant case, Complainant has established a prima facie case of discrimination. As a pregnant female, Complainant is a member of a protected class. *See Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 330, 763 N.Y.S.2d 518, 520 (2003). Complainant informed Respondents about her pregnancy on December 27, 2004, and Complainant was qualified for the position she held when Respondents terminated her employment on June 6, 2005.

The circumstances surrounding the termination of Complainant's employment give rise to an inference of discrimination. The record establishes that Goldberg and Sanders harbored discriminatory animus toward Complainant because of her pregnancy. They felt that Complainant was taking advantage of the Firm by getting pregnant and commented that

Complainant was having "Irish twins." When Complainant formally announced her pregnancy to Goldberg, he was disappointed that Complainant was pregnant again and told her he would have to discuss this issue with Sanders. Less than two months later, Goldberg and Sanders rescinded Complainant's company car, cell phone and credit card while other employees at the Firm kept these benefits until August 5, 2005. Finally, just before Complainant went out on maternity leave, she complained to Goldberg that she was being penalized and retaliated against because of her pregnancy. Goldberg, an experienced attorney practicing in the area of employment discrimination law, did not deny these pointed allegations and did nothing to address them. Rather, he told Complainant to "go have babies."

The burden of production then shifts to Respondents to show that Complainant's discharge was motivated by legitimate, nondiscriminatory reasons. Respondents have failed to meet this burden.

Although Respondents averred that they did not terminate Complainant's employment, the record supports a contrary conclusion. Goldberg and Sanders rescinded Complainant's company car, cell phone and credit card roughly three weeks before she went out on maternity leave. Upon Complainant's return from maternity leave on June 6, 2005, a new attorney was occupying Complainant's office, Complainant's personal effects had been packed and she was no longer able to log into her computer. Furthermore, Lukaszewski corroborated Complainant's allegation that Respondents terminated her employment at the June 6 meeting.

Respondents initially took the incredulous position that they did not know Complainant was pregnant until February 2005, less than one month before Complainant gave birth. However, the record firmly establishes that Complainant formally announced her pregnancy to Goldberg in December 2004. Moreover, Goldberg, Sanders and Lukaszewski noticed that

Complainant was pregnant in November 2004.

Respondents also contended that they did not know when Complainant was returning from her maternity leave. However, Complainant maintained telephone contact with Goldberg during her leave. On June 1, 2005, Complainant left a telephone message for Goldberg stating that she would return to work on June 6, 2005. Although Goldberg initially denied this, he later admitted that he probably received this message. Furthermore, on May 19, 2005, Goldberg signed a disability form authorizing Complainant to return to work on June 6, 2005. Finally, Goldberg told Lukaszewski and Sanders that Complainant would be returning to work on June 6, 2005.

Respondents' proffered explanations for Complainant's discharge are not credible. It is well settled that "a [complainant'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." *Id.* at 331, 763 N.Y.S.2d at 521 (citations and internal quotation marks omitted). In the case at bar, the Division finds that Respondents unlawfully discriminated against Complainant because of her pregnancy by terminating her employment on June 6, 2005.

The record also establishes that Respondents retaliated against Complainant because she complained about pregnancy discrimination. The Human Rights Law prohibits an employer from retaliating against an employee for having filed a complaint or opposed discriminatory practices. Human Rights Law § 296.7.

Complainant bears the burden of establishing a prima facie retaliation claim by showing that she engaged in protected activity, Respondents were aware that she participated in this activity, she suffered an adverse employment action, and there is a causal relationship between

the protected activity and the adverse action. Once Complainant has met this burden, Respondents have the burden of coming forward with legitimate, nondiscriminatory reasons in support of their actions. Complainant then must show that the reasons presented are a pretext for unlawful retaliation. *See Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3d Dept. 1999).

Complainant has established a prima facie case of retaliation. The record shows that in March 2005, just before she went out on maternity leave, Complainant complained to Goldberg about pregnancy discrimination in the workplace. Goldberg did not deny Complainant's allegations, and he took no remedial action. On May 5, 2005, Complainant called Goldberg and asked him what he intended to do about her complaints of discrimination. Respondents terminated Complainant's employment one month later when she returned to work on June 6, 2005. The temporal proximity between these events gives rise to an inference of causation. *See Gorman-Bakos v. Cornell Coop. Extension*, 252 F.3d 545, 554 (2d Cir. 2001) (reviewing cases that found temporal proximity to indicate a causal connection for time periods ranging from twelve days to eight months).

The burden of production then shifts to Respondents to show that their actions were motivated by legitimate, nondiscriminatory reasons. Respondents have failed to meet their burden. In light of Complainant's prima facie case and Respondents' inconsistent and incredulous explanations for Complainant's discharge, the Division finds that Respondents unlawfully retaliated against Complainant by terminating her employment. *See Mittl* at 331, 763 N.Y.S.2d at 521.

Respondents asserted counterclaims alleging that Complainant was liable for conduct involving assault, harassment, blackmail, extortion, fraud, larceny, violation of attorney-client

privilege and violation of the privacy rights of Respondents' clients. Respondents' counterclaims are not actionable in these proceedings and are summarily dismissed.

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 substantial evidence and be comparable to awards for similar injuries. *State of New York v. New York State Div. of Human Rights*, 284 A.D.2d 882, 884, 727 N.Y.S.2d 499, 501 (3d Dept. 2001).

In the instant case, Complainant is entitled to compensation for back pay. Respondents paid Complainant a salary of $1,442.31 per week when her employment was terminated on June 6, 2005. Complainant made reasonable efforts to seek comparable employment after her discharge. However, Complainant abandoned her job search when she started her own practice in January 2006. *See Palmisano v. New Venture Gear, Inc.*, DHR Case No. 5752007 (June 28, 2006). Accordingly, Complainant's back pay award should be calculated from the time she was wrongfully discharged on June 6, 2005, until January 2006, a period of approximately 32 weeks.

Complainant would have earned approximately $46,154.00 during this 32 week period. Complainant's unemployment benefits ($10,530.00) are offset against the amount Complainant would have earned from Respondents during this time period. Therefore, Complainant is entitled to $35,624.00 in damages for back pay.

Complainant is also entitled to recover compensatory damages for mental anguish caused by Respondents' unlawful conduct. 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.

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 v. New York 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).

In the case at bar, Complainant credibly testified that, as a result of Respondents' unlawful discriminatory conduct, she felt humiliated, embarrassed and distraught. At a time when she should have been experiencing great joy, Complainant was experiencing emotional trauma that adversely affected her familial relationships, particularly with her spouse and her newborn child. Accordingly, the Division finds that an award of $20,000.00 for mental anguish is consistent with similar cases and will effectuate the remedial purposes of the Human Rights Law. *See State of New York v. New York State Div. of Human Rights*, 284 A.D.2d 882, 727 N.Y.S.2d 499 (3d Dept. 2001); *Georgeson & Co., Inc. v. Stewart*, 267 A.D.2d 126, 700 N.Y.S.2d 9 (1st Dept. 1999); *New York City Health & Hospitals Corp. v. New York State Div. of Human Rights*, 236 A.D.2d 310, 654 N.Y.S.2d 310 (1st Dept. 1997); *State Div. of Human Rights v. Demi Lass Ltd.*, 232 A.D.2d 335, 648 N.Y.S.2d 925 (1st Dept. 1996).

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, and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and it is further

ORDERED that Respondents 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, Respondents shall pay to Complainant the sum of $35,624.00 as damages for back pay. Interest shall accrue on the award at the rate of nine percent per annum from September 26, 2005, a reasonable intermediate date, until the date payment is actually made by Respondents.

2. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to Complainant the sum of $20,000.00 without any withholdings or deductions, as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of Respondents' 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 Respondents.

3. The aforesaid payments shall be made by Respondents in the form of two certified checks made payable to the order of Complainant, Mary Rocco, and delivered by certified mail, return receipt requested, to her attorney, Tracey S. Bernstein, Esq., 928 Broadway, Suite 1000, New York, New York 10010. Respondents shall furnish written proof to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of their compliance with the directives contained within this Order.

4. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall promulgate policies and procedures for the prevention of unlawful discrimination in accordance with the Human Rights Law. These policies and procedures shall include the establishment and formalization of a reporting mechanism for employees in the event of discriminatory behavior or treatment, and shall contain the development and implementation of a training program in the prevention of unlawful discrimination in accordance with the Human Rights Law. Training shall be provided to all employees. A copy of these policies and procedures shall be provided, simultaneously, to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

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

DATED: March 18, 2009
Hempstead, New York

Robert M. Vespoli

Robert M. Vespoli
Administrative Law Judge