



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

CARIDAD RODRIGUEZ,

Complainant,

v.

WOODSTOCK HOME FURNISHINGS, INC.,  
LARRY KUPERSCHMID A/K/A LAURENCE  
KUPFERSCHMID,

Respondents.

NOTICE AND  
FINAL ORDER

Case No. 10155141

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 April 17, 2014, 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 HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER").** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One

Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

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

**ADOPTED, ISSUED, AND ORDERED.**

DATED: **JUN 27 2014**  
Bronx, New York



HELEN DIANE FOSTER  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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**CARIDAD RODRIGUEZ,**

Complainant,

v.

**WOODSTOCK HOME FURNISHINGS, INC.,  
LARRY KUPERSCHMID A/K/A LAURENCE  
KUPFERSCHMID,**

Respondents.

**RECOMMENDED FINDINGS OF  
FACT, OPINION AND DECISION,  
AND ORDER**

Case No. **10155141**

**SUMMARY**

Complainant, a former employee of Respondents, alleges she was sexually harassed by Respondent's owner, Laurence Kupferschmid. She further alleges that he retaliated against her when she rejected his advances by terminating her employment and denying her payment of two weeks of accrued vacation. Complainant established that she was harassed and is, therefore, entitled to damages. Complainant established that she was retaliated against when she was denied two weeks of accrued vacation pay and is, therefore entitled to two weeks of accrued vacation pay. Complainant has not shown that she was retaliated against, when her employment was terminated. Civil fines and penalties are assessed against Respondents for their actions.

### PROCEEDINGS IN THE CASE

On May 17, 2012, 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 Migdalia Parés, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on October 28 - 29, 2013.

Complainant and Respondent Corporation appeared at the hearing. Gold, Stewart & Benes, LLP, by Jeffrey B. Gold and by Michelle Levine Esqs., of counsel, represented Complainant. Sullivan Gardner PC by Brian Gardner and Enrico N. Gallo, Esqs, represented Respondents.

On December 18, 2013, Respondents submitted the affidavit of Richard B. Sherman, Accountant for the Respondents, and copy of the 2012 Income Tax Return and of the Quarterly Combined Wage Withholding for Respondent Woodstock Home Furnishings, Inc. The records submitted disclosed that Respondent Corporation is an S corporation. Respondents did not provide the Tax Return for Respondent Kupferschmid. Complainant's counsel did not file objections to the admission of this document. These documents are received in evidence as Respondents' Exhibit 2.

Permission to file post-hearing briefs was granted. However, neither party filed post-hearing submissions.

## FINDINGS OF FACT

1. Complainant is a textile and home service pattern designer, interior decorator and showroom designer with 23 years of experience in the field. (Tr. 48, 208)
2. Complainant is a single parent and, during the relevant time, her daughter was eight years old. (Tr. 48-49)
3. Complainant lost her job at a textile company when the company moved out of state. At the textile company Complainant had been Vice President of Design dealing with contracts worth millions of dollars. Complainant performed all design research, designed three separate lines each year, redesigned show rooms with each new line, supervised design teams, travelled nationally to make presentations of her lines to major brand store buyers and traveled abroad to oversee quality control in the factories producing her designs. Complainant worked directly with buyers showcasing the lines she designed for each season. (Tr. 48-49)
4. At the relevant time the textile industry was going through a restructuring and transfer of some of its operations either to Southern United States or overseas. Most potential jobs in Complainant's area of expertise required extensive travel for long periods of time. Extensive and prolonged travel was not an option for Complainant given that she had a young daughter. Complainant did free lance work but free lancing did not provide a steady and reliable paycheck on which to raise her child. Complainant continued to seek full time permanent employment. (Tr. 61, 62, 71-73, 87, 176)
5. During the relevant time, Respondent Larry Kuperschmid a/k/a Laurence Kuperschmid was the president and his wife, Linda Kuperschmid, was treasurer and secretary

of Respondent Woodstock Home Furnishings, Inc., an “S” corporation.<sup>1</sup> (Respondent’s Exhibit 2; Tr. 49-50,142, 270)

6. Respondent Corporation was doing business from a warehouse building located at 115 Route 303, Tappan, New York. (Tr. 168)

7. Respondent Kupferschmid held the deed to the building/warehouse and rented it to Respondent Corporation. (Respondent’s Exhibit 2; Tr. 198, 270)

8. Respondent Corporation provided offices to both Respondent Kupferschmid and his wife, Linda Kupferschmid. Both offices were located in the building/warehouse. (Tr. 47-48, 135)

9. Respondent Kupferschmid and his wife, Linda Kupferschmid, were owners of several “S” corporations, including one known as “Coastal.” Linda Kupferschmid was the treasurer and Vice President of both Coastal and of Respondent Corporation. (Tr. 101, 102-03, 133, 196-97)

10. Respondent Kupferschmid spent the majority of his time managing other S corporations that he owned, including Coastal, which was located in the Bronx. (Tr. 78-79, 101, 102-03, 133, 245, 247)

11. Respondents did not have an anti-discrimination or anti-harassment policy. (Tr. 44, 149-150, 257)

12. In August 2010, Respondent Kupferschmid hired Complainant as Vice President of design for Respondent Corporation at an annual salary of \$60,000.00. (Tr. 47)

13. During the relevant time Respondent also employed Debbie Edwards as Vice President for Sales, Jose De Jesus as warehouse manager and Arlene Shoenstein as bookkeeper. (Respondent’s Exhibit 2; Tr. 142, 150, 163, 194)

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<sup>1</sup> Under the Internal Revenue Code (23 U.S.C. § 1361) an “S” corporation is one which elects to pass corporate income, losses, deductions and credits through to their shareholders for federal tax purposes.

14. Shoenstein's duties included, in relevant part, keeping track of time and attendance of employees for payroll purposes. (Tr. 141)

15. From August, 2010 to February, 2011, Respondent Kupferschmid met with Complainant on a monthly basis for status reports on the textile line's design, manufacturing and marketing. After these meetings Respondent Kupferschmid repeatedly asked Complainant to meet him out of the office where they could talk, to go out to dinner with him, or to take a ride with him in his car to his other business located in the Bronx. (Tr. 78-79, 245, 247)

16. Complainant always refused Respondent Kupferschmid's invitations. Respondent Kupferschmid would always respond that it was a shame that she would not go out with him. (Tr. 245, 247)

17. In early January 2012 Respondent Kupferschmid was winding down business operations of the Coastal Corporation and began to spend more time working at Respondent Corporation. (Tr. 196-97)

18. In early January 2012 Respondent Kupferschmid held a meeting with all four of Respondent Corporation employees and advised them that if sales did not increase he would have to lay off employees. (Tr. 163, 190-91, 194, 205, 220).

19. On February 6, 2012, Respondent Corporation by Respondent Kupferschmid terminated the employment of Edwards. (Tr. 163, 190, 205).

20. In or about February 2012 Respondent Kupferschmid escalated his advances by engaging in a daily ritual of going into Complainant's work office to make unwelcome gestures and comments of a sexual nature. Respondent Kupferschmid requested hugs from Complainant, would brush up against her, grab her, hug her and touch and rub her shoulders. Complainant always pushed Respondent Kupferschmid away from her and would tell him to

stop. Complainant would then leave the area and go outside upset and crying until she composed herself to return to her work. (Tr. 58, 68-70, 196-97, 215, 232)

21. In order to prevent Respondent Kupferschmid from grabbing her or touching her, Complainant began to sit down when ever he came to her office. Kupferschmid then began to call Complainant into his office to talk about work. Once Complainant was in his office he immediately changed the work related conversation to make comments of a sexual nature. (Tr. 81, 82-83, 210-13, 215, 232)

22. Respondent Kupferschmid frequently told Complainant that his “penis was bruised and achy” and that “while his penis no longer worked anymore, his hands worked great.” Complainant interpreted Respondent Kupferschmid’s comments to mean that he could pleasure her with his hands. (Tr. 81, 82-83, 210-13, 215, 232)

23. Whenever Respondent Kupferschmid began to make unwelcome comments of a sexual nature Complainant immediately left the area. (Tr. 60-61, 70, 214, 219)

24. When Complainant turned around to leave the area Respondent Kupferschmid would grab her buttocks. (Tr. 214, 216, 219)

25. Respondent Kupferschmid grabbed Complainant’s breasts and buttocks on multiple occasions. (Tr. 61, 215-17, 219)

26. Complainant’s office was a distance from the other offices and Respondent Kupferschmid’s unwelcome conduct always occurred when no one else was nearby. (Tr. 229-231)

27. Complainant did not welcome or encourage Respondent Kupferschmid’s advances, invitations, sexually charged comments or physical contact, told him to “stop touching her,” and

avoided him as much as possible to prevent his unwelcome conduct. (Tr. 70, 219, 238, 250-51, 256)

28. Every time Respondent Kupferschmid made unwelcome comments or touched Complainant she would leave the office crying and upset and would be outside of the building crying until she was able to calm herself. (Tr. 104-05, 106, 112, 176, 187-88)

29. On multiple occasions Respondent Kupferschmid saw Complainant passing his office as she headed to the restroom and he would get up from his chair to follow her. On one occasion when Complainant was wearing a dress Respondent Kupferschmid grabbed her thigh and slid his hand toward her crotch. Complainant managed to quickly pull away from him. (Tr. 216-17)

30. Complainant ran out of the office crying hysterically and was, extremely upset, angry and depressed that he had touched her thigh and tried to touch her crotch. (Tr. 243, 255-56)

31. Shoenstein corroborated that Complainant was very upset and complained to her about Respondent Kupferschmid's unwelcome physical contact and that she did not feel comfortable around him. (Tr. 135, 170, 172-74, 185-89, 229-232)

32. Shoenstein told Complainant, "That's how he is and let's see what we can do to avoid him." (Tr. 75)

33. Shoenstein assisted Complainant to avoid Respondent Kupferschmid by being around her whenever he came to the office. Shoenstein allowed Complainant to use the front office computer so that she would not be alone in the back office when Respondent Kupferschmid was around. Shoenstein would tell Complainant when she was leaving the office and Complainant would then call De Jesus if Respondent Kupferschmid came to the office. Sometimes Shoenstein and De Jesus were unavailable to assist Complainant to avoid Respondent Kupferschmid. (Tr. 75-77, 86, 101-03, 112, 115, 133, 135, 229-233, 250-51)

34. The system the employees devised to ensure Complainant was not alone with Respondent Kupferschmid, while not always effective, made it a “little easier at least knowing they were helping me get through it. “ (Tr. 75-77, 86, 101-03, 112, 115, 133, 135, 229-233, 250-51)

35. Complainant felt helpless and trapped as she needed her job. As a single parent quitting was not an option. (Tr. 61, 62, 71-73, 87, 176)

36. Complainant felt compelled by her family and financial circumstances to tolerate as much as possible because she was working for a steady paycheck. (Tr. 61, 62, 71-73, 87, 176)

37. Respondent Kupferschmid was aware that Complainant’s family obligations limited her employment opportunities in a changing industry. (Tr. 61, 62, 71-73, 87, 176)

38. On March 28, 2012, Respondent Kupferschmid asked Complainant to update him on an upcoming design presentation she was going to make to TJ Max, Inc., a national retailer. At the end of the presentation Respondent Kupferschmid again asked Complainant to meet him outside the office. (Tr. 80-82, 129, 137, 220-21)

39. Complainant rejected Respondent Kupferschmid’s advances and told him that “it was never going to happen.” (Tr. 80-82, 129, 137, 220-21)

40. Complainant observed that Respondent Kupferschmid’s demeanor immediately changed, in that he appeared angry, turned around and left the office. (Tr. 80-82, 129, 137, 220-21)

41. The very next morning, March 29, 2012, Respondent Kupferschmid told Complainant that it was a shame that she would not meet him outside the office and that her employment was terminated. (Tr. 80-82, 129,)

42. Shoenstein made payroll calculations for Complainant and advised Respondent Kupferschmid that she was entitled to receive two weeks of vacation pay. 141-42, 236-36)

43. On the day that Complainant came to collect her last paycheck, Respondent Kupferschmid refused to pay her the two weeks of vacation pay. (Tr. 236, 242)

44. Complainant objected to Respondent's Kupferschmid's refusal to pay her the two weeks of vacation and asked him what records was he relying on to determine that she was not entitled to two weeks of vacation pay. (Tr. 141, 232, 237-38, 242)

45. Respondent Kupferschmid never explained or showed Complainant the records he asserted proved she was not entitled to two weeks of vacation pay. (Tr. 141, 232, 237-38, 242)

46. During the public hearing Respondents did not provide the payroll records which would support their assertion that Complainant was not entitled to two weeks of vacation pay. I draw an adverse inference of fact that Respondents did not provide Complainant's payroll records as they would show that she was owed two weeks of vacation pay when Respondent Kupferschmid terminated her employment.

47. Complainant was angry and humiliated when Respondent Kupferschmid denied her payment of the two weeks of accrued vacation. (Tr. 141, 232, 237-38, 242)

48. Respondent Corporation asserted that, on March 29, 2012, Complainant was laid off due to its financial condition. Complainant was not replaced. Complainant admitted that Respondent Corporation was in financial difficulties at the time of her employment termination. Complainant admitted that, in January, 2012, Respondent Kupferschmid advised all four employees that Respondent Corporation would be letting go of employees. Complainant admitted that her employment would have been eventually terminated due to Respondent's

financial condition but that it would not have happened on the day after she rejected Respondent Kupferschmid's unwelcome advances. (Tr. 141, 232, 237-38, 242)

49. On December 18, 2013, Respondents submitted the affidavit of Richard B. Sherman, Accountant for the Respondents, together with a copy of the 2012 Income Tax Return for Respondent Woodstock Home Furnishings, Inc., and a copy of its Quarterly Combined Wage Withholding. However, the 2012 Income Tax Return for Respondent Kupferschmid was not included in the submission. (Respondents' Exhibit 2)

50. The documents showed that Respondent Corporation had at least four employees during the relevant time, Debbie Edwards, Jose De Jesus, Arlene Shoenstein and Complainant. (Respondent's Exhibit 2)

51. Respondent Kupferschmid passed away before the public hearing commenced. (ALJ Exhibit 3; Tr. 52, 97, 179, 197)

52. After Respondent Kupferschmid passed away, Respondent Corporation's Vice President and Treasurer, Linda Kupferschmid, took over the management and operations of the business. (ALJ Exhibit 3; Tr. 179)

53. Linda Kupferschmid works at Respondent Corporation from 8:30AM to 4:40PM. (Tr. 197)

54. Shoenstein explained that Linda Kupferschmid, is now her boss, is managing the business operations and that she has all the payroll and related corporate business and finance documents in her possession. (Tr.52, 97)

55. Linda Kupferschmid makes all decisions regarding the Corporation with De Jesus and Shoenstein reporting directly to her. (Tr.52, 97)

## OPINION AND DECISION

Pursuant to the Human Rights Law, it is an unlawful discriminatory practice for an employer “because of the ... sex...of any individual to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” Human Rights Law § 296.1 (a).

### Complainant’s Employer

Respondent Kupferschmid was an employer under the Human Rights Law since he had an ownership interest and authority to make and carry out his decisions. *Patrowich v. Chemical Bank*, 62 N.Y. 2d 541, 43 N.Y.S. 2d 659 (1984). The record supports a conclusion that Respondent Kupferschmid had the type of authority that classifies him as an employer under the Human Rights Law.

The term “employer” under the Human Rights Law does not include an employer with fewer than four employees, Human Rights Law §292.5. To determine whether a respondent has four or more employees, the Division considers all of those employed during the calendar year in which the discrimination allegedly occurred and the preceding calendar year. Temporary and part-time workers are included, but the Division does not count “causal” employees. *Dembek v. Clemson Park Condominium*, DHR Case No. 10118173 (March 22, 2010). In making this determination, the Division utilizes federal precedent under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Under Title VII, a business is considered an “employer” if it has the minimum number of employees “for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.” 42 U.S.C. §2000e (b). Adapting the standard for the Division’s

purposes, Respondent Corporation will be considered an employer under the Human Rights Law if it had four or more employees for 20 weeks or more during 2012 (the year in which Complainant's employment was terminated and subjected to sexual harassment) or 2011, the calendar year preceding the alleged discrimination.

During the period from the beginning of August 13, 2011 through the end of December 31, 2011, a 20 week period preceding the alleged discrimination, Respondents had at least four employees, Debbie Edwards as Vice President for Sales, Jose De Jesus as warehouse manager, Arlene Shoenstein as bookkeeper and Complainant as Vice President of Design. Therefore, Complainant's employer had at least four employees during the time relevant to this complaint and the Division may adjudicate same.

#### Sexual Harassment: Hostile Work Environment

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an individual in compensation or in terms, conditions or privileges of employment because of that person's sex or in retaliation for having complained of discrimination. Human Rights Law §§ 296.1(a) & 296.7.

Sexual harassment is a form of sex discrimination. In order to sustain a claim of sexual harassment, Complainant must demonstrate that she was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4<sup>th</sup> Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Here, Complainant is female and, thus, a member of a protected class. The record demonstrates that since her employment began in August 2010, the owner and supervisor of Respondent Corporation, an "S" corporation, subjected her to repeated unwelcome requests to go out with him. The record further demonstrates that, starting in January 2012, the unwelcome conduct escalated. On numerous occasions during an approximately three-month period during Complainant's employment, the owner and supervisor of Respondent Corporation subjected her to crude sexual remarks, invited her on numerous occasions to go out with him, touched Complainant in an intimate manner without her consent and, on numerous occasions, touched her breasts and buttocks. Respondent Kupferschmid persisted in this behavior even after Complainant had asked him to stop. This behavior created a hostile work environment that was frequent, pervasive and severe enough to alter Complainant's working conditions demonstrated by the fact that she was reduced to tears every time she suffered the humiliation of being subjected to the unwelcome touching of her body. Respondent Kupferschmid's actions constitute a hostile work environment under the Human Rights Law.

#### Retaliation

It is an unlawful discriminatory practice for an employer to retaliate or discriminate against an employee because she has opposed any practices forbidden under the Human Rights Law or because she has filed a complaint, testified or assisted in any proceeding under the Human Rights Law. Human Rights Law § 296(7).

In order to establish a prima facie case of retaliation, a complainant must show that: (1) she engaged in activity protected by Human Rights Law § 296; (2) respondent was aware that she participated in the protected activity; (3) she suffered an adverse employment action; and, (4) there is a causal connection between the protected activity and the adverse action. *Pace v. Ogden*

*Svcs. Corp.*, 257 A.D.2d 101, 103, 692 N.Y.S.2d 220, 223 (3d Dept. 1999) (citing *Fair v. Guiding Eyes for the Blind*, 742 F. Supp. 151, 154 (S.D.N.Y. 1990); *Matter of Town of Lumberland v. New York State Div. of Human Rights*, 229 A.D.2d 631, 66, 644 N.Y.S.2d 864 (3d Dept. 1996)).

Complainant demonstrated that she engaged in protected activity when she opposed Respondent Kupferschmid's unwelcome proposal to go out. Respondent Kupferschmid, as the owner and decision maker for Respondent Corporation was directly involved in this action and had knowledge that Complainant opposed his discriminatory practice. Complainant suffered adverse employment actions when Respondent Kupferschmid terminated her employment and denied her two weeks of accrued vacation. There is a causal connection between Respondent Kupferschmid's adverse actions having been close in time to Complainant's rejection of his advances the day before.

Respondents presented legitimate, nondiscriminatory reasons for Complainant's termination. Respondent's financial situation was known by all employees and in early January, of 2012, Complainant knew that Respondents were going to implement employee layoffs due to financial constraints. Respondents terminated the employment of another employee in February 2012. Complainant admitted that Respondents would have eventually terminated her employment due to its fiscal situation. Complainant's assertion that she would still be working with Respondent is based on speculation and not supported by the record since Respondent did not replace her or the other employee, which it dismissed in February, 2012. Therefore, this claim is dismissed.

Respondents' legitimate business explanation that Complainant was not entitled to pay equaling two weeks of accrued vacation is not supported by the record. Respondent failed to

present documentary evidence which showed that Complainant was not entitled to this amount. Respondent's own bookkeeper, who was in charge of time and attendance records, confirmed that she personally reviewed Complainant's payroll records and confirmed that she was owed this amount. Therefore, this claim is sustained.

Complainant's salary was \$60,000.00 annually and divided by 52 weeks results in a weekly salary of \$1,153.85, multiplied by two weeks results in a payment due to Complainant in the amount of \$2,307.69.

### Mental Anguish

As a result of the Respondents' discriminatory actions, Complainant is entitled to recover damages from Respondents owing to her emotional distress. Since the inception of her employment Complainant was subjected to unwelcome repeated requests for dates. During her last three months of employment, the offensive conduct escalated as Complainant repeatedly rejected the unwelcome advances. Complainant suffered stress, anxiety and extreme humiliation from the harassment she received. Complainant was also subjected to a long stream of offensive verbal comments, repeated requests for dates, and repeated unwelcome physical touching of an intimate nature. These unwelcome and offensive actions made Complainant feel "uncomfortable," "scared," "angry," "humiliated" and on many occasions reduced her to tears. Complainant needed her job and felt trapped. Respondents' denial of her accrued vacation upon her employment termination further humiliated Complainant.

The New York State Court of Appeals has stated that "distress follows such bias and exclusion as night follows day." *300 Gramatan Avenue Associates v. New York State Division of Human Rights*, 45 N.Y.2d 176, 408 N.Y.S.2d 54, 59 (1978). Complainant is therefore entitled to \$15,000.00, which is reasonably related to the harm she suffered and will effectuate the purpose

of the Human Rights Law. *Kowalewski v. New York State Division of Human Rights*, 26 A.D.3d 888, 809 N.Y.S. 2d 347 (4<sup>th</sup> Dept. 2006); *Bayport-Blue Point School District v. State Division of Human Rights*, 131 A.D. 2d 849, 517 N.Y.S. 2d 209 (2d Dept. 1987). (see *New York State Div. of Human Rights v. Stoute*, 36 A.D.3d 257, 826 N.Y.S.2d 122 (2d Dept. 2006) (award of \$10,000 for mental anguish resulting from sexual harassment without physical contact), *West Taghkanic Diner II, Inc. v. New York State Div. of Human Rights*, 105 A.D.3d 1106, 962 N.Y.S.2d 748 (3d Dept. 2013) (award of \$20,000 for retaliatory termination, and sexual harassment with physical contact).

#### Civil Fines and Penalties

Human Rights Law § 297.4 (c) (vi) authorizes the Division to assess civil fines and penalties, “in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.” Any such civil penalty “shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” Human Rights Law § 297.4 (e). In determining the amount of a civil penalty, the Division should consider the goal of deterrence, the nature and circumstances of the violation, the degree of the respondent’s culpability, any relevant history of the respondent’s actions, the respondent’s financial resources, and other matters as justice may require. *Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. New York State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009).

A civil fine is appropriate in this matter. Respondents did not have in place anti harassment and anti discrimination policies. Respondent Kupferschmid's discriminatory words, personal touching of Complainant and denial of her vacation pay were deliberate, and resulted in extreme humiliation to her. Evidence adduced at the hearing indicated that Respondent Kupferschmid's financial resources included ownership of real property and improvements, in the form of the warehouse building and ownership of several S corporations. Respondents' accountant did not submit the individual 2012 Income Tax Return for Respondent Kupferschmid. Because of the closely held nature of the corporate Respondent and its complete domination by Respondent Kupferschmid and now by his wife, Linda Kupferschmid, I find that civil fines and penalties for the remaining corporate Respondent are necessary to deter future misbehavior. Considering these factors, a civil fine in the amount of \$10,000 will be appropriate to deter Respondent Corporation and owners from future discriminatory behavior and will present an example to the public that the Division vigorously enforces the Human Rights Law.

### **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; 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 days of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$15,000, without any withholdings or deductions, as compensatory

damages for mental anguish and humiliation she suffered as a result of its sexual harassment.

Interest shall accrue on this award at the rate nine percent per year, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

2. Within 60 days of the date of the Commissioner's Order, Respondents shall pay the sum of \$2,307.69 as back wages subject to standard withholdings. Interest shall accrue on the award at a rate of 9 per cent per annum from April 13, 2013, a reasonable intermediate date, until the date payment is actually made by Respondents.

3. The aforementioned payments shall be made in the form of a certified check, made payable to the order of Complainant, Caridad Rodriguez, and delivered by certified mail, return receipt requested, to her attorneys, Jeffrey B. Gold and Michelle Levine, Esqs., Gold, Stewart & Benes, LLP, 1854 Bellmore Avenue, Bellmore, NY 11710.

4. Respondents shall simultaneously furnish written proof of their compliance with the directives contained in this Order by certified mail, return receipt requested to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4<sup>th</sup> floor, Bronx, NY 10458.

5. Within sixty days of the date of the Commissioner's Order, Respondents shall pay the sum of \$10,000 as a civil fine and penalty, by certified check made out to the "State of New York" and delivered by certified mail, return receipt requested, to the offices of the New York State Division of Human Rights at One Fordham Plaza, 4th floor, Bronx, New York 10458, attention: Caroline Downey, General Counsel. Interest shall accrue on this assessment at a rate of nine per cent per year from the date of this Order until payment is made.

6. Within sixty days of the date of the Commissioner's Order, Respondent Woodstock Home Furnishings, Inc., shall establish policies and procedures for the prevention of unlawful

discrimination and harassment in accordance with the Human Rights Law. These policies and procedures shall include an official anti-discrimination and harassment policy and a formalized reporting mechanism for employees who believe they have been discriminated against. The policies shall also contain the development and implementation of a training program relating to the prevention of unlawful discrimination in accordance with the Human Rights Law. Training and a copy of the policies shall be provided to all employees. A copy of the policies and procedures shall be provided, within sixty days of the date of the Commissioner's Final Order, to Barbara Buoncristiano, Order Compliance Unit of the New York State Division of Human Rights, at her office at One Fordham Plaza, 4<sup>th</sup> floor, Bronx, NY 10458.

7. Respondents shall cooperate with the representatives of the Division during any investigation into their compliance with the directives of this Order.

DATED: April 17, 2014  
Bronx, New York



Migdalia Parés  
Administrative Law Judge