

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

**ASHRAF SAMAAAN, WAHEEB WASSEF, NAGEEB
WASSEF, HENNA SAMAAAN AND NASHAT
ATALLA**

Complainant,

v.

**80 LAFAYETTE ASSOCIATES AND 80
LAFAYETTE ASSOCIATES, LLC, AS
SUCCESSOR-IN-INTEREST,**

Respondent.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case Nos.

139672

139673

139674

139675


139676

PLEASE TAKE NOTICE that the attached is a true copy of the Alternative Proposed Order, issued on October 2, 2006, by Peter G. Buchenholz, Adjudication Counsel, after a hearing held before Harold H. Roberts, an Administrative Law Judge of the New York State Division of Human Rights ("Division").

**PLEASE BE ADVISED THAT, UPON REVIEW, THE ALTERNATIVE
PROPOSED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE
KUMIKI GIBSON, 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, this 30th day of March, 2007.



KUMIKI GIBSON
COMMISSIONER

TO:

Ashraf Samaan
27 West First Street
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Waheeb Wassef
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**STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS**

STATE DIVISION OF HUMAN RIGHTS
on the complaint of

**ASHRAF SAMAAAN, WAHEEB WASSEF,
NAGEEB WASSEF, HENNA SAMAAAN,
and NASHAT ATALLA,**

Complainants,

-against-

**80 LAFAYETTE ASSOCIATES, and 80
LAFAYETTE ASSOCIATES, LLC, as
successor-in-interest, and ISAAC KRUGEL,
A/K/A ISAAC KUGEL,**

Respondents.

ALTERNATIVE PROPOSED ORDER

CASE Nos.

ID-E-N-90-139672E

ID-E-N-90-139673E

ID-E-N-90-139674E

ID-E-N-90-139675E

ID-E-N-90-139676E

PROCEEDINGS IN THE CASE

On February 21, 1990, Complainants filed complaints, thereafter amended, with the State Division of Human Rights ("Division") charging Respondents with unlawful discriminatory practices in relation to employment in violation of the Human Rights Law of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaints and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon consolidated the complaints and referred the case to a public hearing.

After due notice, the case came on for a public hearing before Harold H. Roberts, an Administrative Law Judge ("ALJ") of the Division. A public hearing was held on October 28, 30 and November 4, 7, 13, 2002, March 6, June 2, September 15, 2003, and January 12, March 15 and August 11, 2004.

Complainants and Respondents appeared at the hearing. Complainants were represented by Deutsch Resnick, P.A., by Neil Deutsch, Esq., Jonathan I. Nirenberg, Esq., and Jeanette Tejada, Esq., of Counsel. Respondents 80 Lafayette Associates and Isaac Kugel were represented by Martin Kurlander, Esq., and Respondent 80 Lafayette Associates, LLC was represented by the law firm of Franklin & Gringer, P.C., by Martin Gringer, Esq. and Joshua Marcus, Esq., of Counsel.

The parties stipulated that Respondent 80 Lafayette Associates, LLC is not a successor-in-interest to 80 Lafayette Associates. Accordingly, the action against 80 Lafayette Associates, LLC is discontinued with prejudice. (A.L.J.'s Exhibit 5; Tr. 216).

Permission to file post-hearing briefs was granted. Complainants and Respondent filed briefs on October 26, 2004.

On January 6, 2005, ALJ Roberts issued a recommended Findings of Fact, Opinion, Decision and Order ("Recommended Order") for the Commissioner's consideration. Objections to the Recommended Order were filed with the Commissioner's Order Preparation Unit by Division Counsel¹ dated March 4, 2005, and by Respondent's counsel dated March 21, 2005.

It is noted that Complainant's Exhibit 2 was not admitted into the record during the public hearing. In his January 6, 2005, Recommended Order, the ALJ ruled to admit Complainant's Exhibit 2 and no party has since objected to its admission. Accordingly, Complainant's Exhibit 2 is in evidence.

FINDINGS OF FACT

1. Complainants alleged that Respondent discriminated against them in employment based on their Egyptian national origin when their employments were terminated. (A.L.J.'s Exhibit I).
2. Respondent denied discrimination. (A.L.J.'s Exhibit II).

¹ Division Counsel appeared in this matter at the request of Complainant Atalla who no longer retained private counsel after the issuance of the Recommended Order.

3. Respondent is a partnership that owned and managed an eighteen story office building located at 80 Lafayette Street in New York City. Respondent purchased the building in 1986. (A.L.J.'s Exhibit 1; Respondent's Exhibit 36; Tr. 95, 245).

4. All Complainants but Waheeb Wassef alleged that their employments were affirmatively terminated in 1989. Complainant Waheeb Wassef alleged that in 1993, he was constructively discharged when his work assignments were "constantly changed" and when he was directed to work as a "cleaning lady." Complainant Nashat Atalla likewise alleged that his job duties were constantly changed and that he was directed to work as a cleaning lady, but he was affirmatively discharged on September 7, 1989. (A.L.J.'s Exhibit I).

5. Complainant Ashraf Samaan received a letter of termination on May 10, 1989, stating that his employment was terminated due to numerous warnings regarding his work performance and for being away from his post. (A.L.J.'s Exhibit I).

6. Complainant Nageeb Wassef alleged that on July 3, 1989, he was fired from his position as building superintendent when he returned from an approved leave and was told that his services were no longer needed. He was replaced by a non-Egyptian employee. Likewise, Complainant Henna Samaan alleged that she was fired from her position on June 5, 1989, because there was no work for her, but that she was replaced by a non-Egyptian employee. (A.L.J.'s Exhibit I).

7. Nageeb Wassef was hired in April of 1974. He became the superintendent in 1979. He supervised thirty to forty employees and was authorized to hire and fire them. Nageeb Wassef hired each Complainant. Nageeb Wassef was the daytime supervisor and Simone Sisti was the nighttime supervisor. (Tr. 239, 241, 298, 548)

8. After Respondent's purchase of the building, Nageeb Wassef no longer had the discretion to hire and fire employees, but could only do so with Respondent's permission. Isaac Kugel became the Building Manager and Nageeb Wassef's boss. Kugel served in that position until 1994. (Tr. 49, 97, 243, 245).

9. Between May of 1989 and May of 1991, Kugel reduced Respondent's staff by approximately ten employees. Many of the maintenance and security people whose positions were terminated were not replaced. (Tr. 56-57, 109, 248).

10. Right after Kugel became Building Manager, Nageeb Wassef informed him that he was taking four weeks of vacation. (Tr. 59-61, 68, 250-251, 253).

11. For a period of time, while Nageeb Wassef was on leave, Kugel took over as superintendent. (Tr. 90-91, 105).

12. During Nageeb Wassef's leave, Kugel made numerous changes. He installed working locks on the building, which previously had no functioning locks. Nageeb Wassef's office door locks were changed, as were the locks to the tool lockers. The front door locks to the building were also changed. (Tr. 71-72, 87-89).

13. During Nageeb Wassef's leave, Kugel fired Ashraf Samaan. (Tr. 97, 750).

Ashraf Samaan

14. Ashraf Samaan was hired as a security guard in December of 1986 by Nageeb Wassef, his uncle. Kugel terminated Ashraf Samaan's employment in May of 1989 for being absent from his post on April 30 and May 4, 1989, and for being at his post without his uniform. Kugel fired Ashraf Samaan after he visited the building and discovered it unguarded. (Respondent's Exhibit 19; Tr. 121-122, 125, 128, 131-132, 169, 254, 748-750).

15. Ashraf Samaan claimed that he was not scheduled to work on April 30 because it was Easter and that he was at his post on May 4. He also claimed that he was never criticized or disciplined, never left his post without permission, never failed to show up for scheduled shifts and never failed to wear his uniform. He alleged that Sam Mizzi had been left in charge in Nageeb Assef's absence and that two days before the termination, Mizzi said to him, "finally Nageeb went on vacation and we're trying to get rid of all the Egyptians around." (Tr. 122, 128, 131-132, 143, 148, 169).

16. The credible evidence shows that Kugel was in charge during Nageeb Wassef's leave. Sam Mizzi was employed by Respondent as a handyman. Nageeb testified that when he went on vacation, Mizzi substituted for him as superintendent. Mizzi, however, credibly testified that he never substituted for Nageeb. Only after Nageeb resigned, did Mizzi become superintendent. (Complainants' Exhibit 7; Tr. 78, 90-91, 105, 262, 546, 769, 771, 784).

17. Despite Ashraf Samaan's claim that he was never criticized, Respondent produced a letter dated April 3, 1989, from Nageeb Wassef which stated that Ashraf Samaan had:

... been notified on numerous occasions that you must be at your post and wear your uniform at all times when you are on duty. We have spent a considerable amount to purchase your uniform and we expect it to be used.

I have once again received a letter from the Management in this matter; therefore, I am putting you on notice that unless you perform your duties properly, at your post and in uniform, we will have no choice but to dismiss you from our employment.

Nageeb Wassef
Superintendent

18. Ashraf Samaan denied that he received the letter and Nageeb Wassef denied that he sent it. The letter is unsigned. Nonetheless, in conjunction with Kugel's credible testimony, the Division determines that the letter is authentic and was given to Ashraf Samaan by Nageeb

Wassef. Monir Samaan, Ashraf Samaan's father, testified that Ashraf was indeed warned for not being at his post. (Tr. 298, 492, 503).

19. Furthermore, Kugel credibly testified that he visited the lobby of the building and found it unguarded and that Ashraf Samaan had been warned in the past. (Respondent's Exhibit 4; Tr. 748).

20. After he received Kugel's termination letter, Ashraf Samaan filed a grievance and the union brought his claim to arbitration. The arbitrator found that Respondent "clearly showed that the guard position was vacant on a number of occasions when grievant was scheduled to be on duty ... [and Respondent a]lso submitted evidence that grievant was warned about leaving his post and his failure to wear his uniform." The arbitrator additionally found that Complainant "apparently signed out and left a few hours before his shift ended. The sign up sheet [nonetheless] indicating he worked a full shift." (Respondent's Exhibit 1; Tr. 170-172).

21. When Nageeb Wassef returned from vacation, he discovered that Ashraf Samaan had been fired. He was upset about the state of affairs and requested and was granted another three weeks vacation, without pay. During his second leave, Kugel terminated Henna Samaan's employment. (Tr. 59-61, 68, 250-251, 253-254, 258).

Henna Samaan

22. Complainant Henna Samaan was hired in or about February of 1989 to work as a cleaner on the ninth floor of 80 Lafayette Street. Henna Samaan's testimony regarding her employment history with Respondent contradicts her complaint. Henna Samaan testified that she worked full-time. However, her complaint with the Division stated that she "worked part-time as a replacement for absent workers." She did indeed work a full-time schedule for at least five consecutive weeks in March and April of 1989, when she received paychecks for 37.5 hours of

work per week. However, there is no evidence to indicate that she was officially a full-time employee. (A.L.J.'s 1; Complainants' Exhibit 3; Tr. 301-302, 345, 395-396, 399 750).

23. Henna Samaan was a member of a group of temporary workers who were fired because their services were no longer needed. After working six months, her employment was terminated on June 5, 1989, by her supervisor Simone Sisti. When she asked Sisti why she was fired, she was allegedly told, "it's okay, don't get upset, it's because Mr. Kugel doesn't like Egyptians." There is no other evidence to suggest that Kugel was in any way biased toward Egyptians. Indeed, Nageeb Wassef himself testified that Kugel was not biased against Egyptians. It is noted that Nageeb Wassef hired Henna Samaan while Kugel was Building Manager and Kugel had no objections to her hire. Accordingly, the Division does not credit that this statement was made by Sisti. (Tr. 293-294, 346-347, 349-350, 355, 382, 750).

24. On June 5, 1989, Kugel gave Henna Samaan a letter terminating her "part-time employment." Consistent with Kugel's testimony, the letter stated that Henna Samaan was being terminated because her services were no longer needed. (Respondent's Exhibit 6).

25. She was told that she was replaced by another woman, but she did not know her national origin. Monir Samaan testified that she was replaced by an Hispanic woman named Patricia. On further examination, however, Monir Samaan was unable to recall which floor Henna Samaan was responsible for cleaning and whether or not her alleged "replacement" was assigned to the same floor. Nor could he testify as to how many cleaners Respondent actually employed. Thus, it is apparent that he was unaware of sufficient facts to know that Patricia was hired to replace Henna Samaan. (Tr. 352-353, 493, 508).

Nageeb Wassef

26. On July 1, 1989, on his return from vacation, Nageeb Wassef found the building locks changed, including the lock to his office. He found his clothing gone. He testified that he was told to call Kugel before starting work. Kugel allegedly told him, "I can handle the building without you. If I need you, I will call you." Kugel credibly denied that he made such statement. (Tr. 73, 246, 260).

27. Though Nageeb Wassef claimed that his employment was terminated, he testified that he would not have left if Ashraf and Henna Samaan had not been terminated. (Tr. 69-70, 320-321).

28. Despite Nageeb Wassef's claim, the evidence indicates that he was not entitled to severance pay available only for terminated employees. In a letter he wrote to Kugel to inquire about the severance pay that he believed he was owed, he wrote "I understand how busy you are, but do you recall the time you offered me money that was to be given at the time of *my resignation*." (emphasis added). Furthermore, Kugel credibly testified that his employment was not terminated. (Respondents' Exhibit 3; Tr. 68, 71, 75).

29. Sam Mizzi, the building's handyman, eventually replaced Nageeb Wassef as superintendent. (Tr. 78).

Waheeb Wassef

30. Waheeb Wassef, Nageeb Wassef's brother, was hired in 1976 as a handyman. His work was often criticized by Simone Sisti, his supervisor. Mizzi also criticized his work though he was a fellow handyman and not his supervisor. (Tr. 298, 404-405, 418).

31. Waheeb Wassef alleged that Sisti would spill a pail of water in the bathroom everyday and tell him to clean it up. (Tr. 408, 420).

32. When Kugel became the Building Manager, he fired Waheeb Wassef because Respondent no longer needed two handymen. Waheeb Wassef, thereafter, filed a union grievance and after arbitration, was reinstated the following year as a porter. (Tr. 410, 444, 446, 449-450).

33. While working as porter, he received two letters of warning, both stating that he was repeatedly told that he was not performing his assigned duties properly and that each was a last warning. The second letter indicated that when he was told by his supervisor to improve the cleanliness of his work, Waheeb Wassef replied, "If you want it done, do it yourself." He denied the statements made in the warning letters. (Respondent's Exhibits 10, 11; Tr. 459-461).

34. Mizzi credibly testified that Sisti complained to him that Waheeb Wassef did not do his job. (Tr. 777).

35. Though in his complaint Waheeb Wassef alleged that he was told to work as a "cleaning lady," he admitted during the hearing that he was never told that he would work as a cleaning lady. (ALJ's Exhibit I; 462-463).

36. Complainant Nashat Atalla explained that Respondent employed people in three different job classifications: handyman, porter and cleaning lady. It was the porters' job to clean the toilets. Cleaning ladies dust and mop. The handyman does repair work. It is apparent from the record that Complainants understood that "cleaning lady" was a job classification that therefore could be held by either a man or a woman. (Tr. 568-569).

37. Furthermore, though he alleged that he was constructively discharged when his job duties were constantly changed, he admitted that his work as a porter was the same every day. (Tr. 467-468).

38. He alleged that Sisti "hated [him] because he didn't agree that [his] brother becomes (sic) a supervisor. That's it. They hated me for that. Everybody, every one of them." (Tr. 420).

39. Waheeb Wassef received a warning letter from Sabino Vessia, a temporary supervisor, on August 30, 1989, threatening dismissal for improper performance of his duties. He received a similar letter from supervisor Simone Sisti on November 8, 1989. By certified letter of November 9, 1993, Respondent terminated Waheeb Wassef for threatening physical harm to his supervisor, Sisti. (Complainants' Exhibit 5; Respondents' Exhibits 10-11).

40. Contrary to his claim that he was constructively discharged, Kugel fired him in 1993 for threatening to hit his supervisor. He denied having threatened the supervisor. Nageeb Wassef testified that he understood that Waheeb Wassef had been terminated. (Tr. 300, 407, 421).

Nashat Atalla

41. Nashat Atalla was hired in 1986 or 1987 as a porter. After Nageeb Wassef was fired, Atalla's performance was criticized often by Mizzi and Manny Grixti. In 1989, Grixti gave him a letter saying that he had not been doing his job well. Mizzi would say to him, "you very good in everything except you are Egyptian." Sam Mizzi was not his supervisor, but his co-worker. Atalla did not complain to Nageeb Wassef about Mizzi's comments because he believed they were said in jest. (Tr. 538-539, 545, 548-551).

42. By September of 1989, Mizzi was indeed Atalla's supervisor because by then he had replaced Nageeb Wassef as superintendent. (Tr. 554).

43. In his testimony, Atalla recounted the circumstances of his termination as follows: He had been feeling ill, so on September 7, 1989, he went to see Mizzi to request a disability form. When he entered Mizzi's office, Atalla noticed an envelope addressed to him sitting on Mizzi's desk. At that time, Mizzi warned him that he would be terminated if he took the envelope.

Nonetheless, Atalla picked up the envelope and opened it. The envelope contained two nearly identical warning letters, one addressed to Atalla and the other to Waheeb Wassef. (Respondent's Exhibit 14; Tr. 557-558, 587, 783).

44. The two letters are dated August 13, 1989 and August 30, 1989. They are identical in language except that the letter to Nashat contains an additional sentence.² (Complainants' Exhibit 6; Respondents' Exhibit 10).

45. Following that incident, on September 7, 1989, Atalla was fired. Atalla credibly asserted that when Mizzi fired him, Mizzi stated "I don't want all those fucking Egyptians working in the building," Nageeb Wassef testified that he had heard that Mizzi was biased against Egyptians. It is noted that Kugel also admitted that there was tension between Mizzi and the Egyptian employees. It is clear from the record that Mizzi harbored animus against Egyptians and that Kugel was aware of this fact. (Tr. 79, 294-295, 554, 569-570).

46. Atalla called Kugel to report the incident, but Kugel told him there was nothing he could do about it. (Tr. 561).

47. Atalla's termination letter was signed by Mizzi as superintendent. It asserted that Atalla had done three things to warrant dismissal: (1) he used force on Mizzi, (2) he stole building property, and (3) he entered the management office without permission. (Complainants' Exhibit 7).

48. Atalla admitted taking the letter, but claimed that the letter was addressed to him. Atalla credibly denied having ever used force against Mizzi, who was seated at a desk throughout the encounter. Furthermore, he testified that the manager's office was separate from the area where

² Both letters read, "Dear Waheeb [or Nashat]: For the last month you have repeatedly been told that you have not been performing your assigned duties properly. You have been told many times that you are responsible for the cleanliness of the areas that you are told to clean. These warnings did not seem to make any improvement in the way you do your job. [. . .] Please take this letter as the last warning to you before we are forced to terminate your employment with us."

Mizzi sat, and that he never attempted to enter that office. (Respondents' Exhibit 14; Tr. 557, 565-568).

49. Atalla testified that he felt "a lot of pressure" as a result of Respondent's actions and that he felt "no good." (Tr. 549)

50. After he was fired, who looked for subsequent employment to no avail. He continued to pay his union dues for a year and looked for jobs through the union. He also searched for jobs in the newspaper. Though he could not recall specifics, he credibly testified that he applied for several of jobs through the newspaper as a handyman in the downtown area. He also recalled that he applied for a job as a doorman in a building on Sutton Place. He applied for a job as a handyman or porter in a building at 333 Second Avenue and he applied to a company called Allied Company as a cleaning person or as a porter. He also applied for a job with the City of New York at 40 Worth Street as a Technician. He testified that he stopped looking for work after 1996 and the parties stipulated that he was not entitled to back pay after December 31, 1995. (Tr. 608-610, 681-686, 701).

51. Atalla earned \$471 gross per week with Respondent. (Respondent's Exhibit 25).

52. It is noted that Monir Samaan testified that he was pulled aside by Manny and told, "I don't know why they want to fire you. I have nothing against you." When the building was closed and sold, however, Monir Samaan, who was also Egyptian, was one of the last people left employed. (Tr. 487, 786).

DECISION AND OPINION

Complainants alleged that Respondent discriminated against them based on their Egyptian national origin when each of their employments were terminated. After reviewing the record and evidence presented in this matter and in consideration of the ALJ's credibility

determinations, the Division determines that Respondent discriminated only against Complainant Nashat Atalla. Respondent did not discriminate against the remaining Complainants and thus, Nashat Atalla's complaint is sustained and the remaining complaints are dismissed.

The Human Rights Law prohibits an employer from discriminating against its employees because of the employees' national origin. Human Rights Law § 296.1(a).

In order to prevail, Complainants must establish a prima facie case of discrimination by demonstrating that they were member's of a protected class and subjected to adverse treatment because of their class membership. If Complainants succeed in establishing a prima facie case, Respondent must articulate legitimate, non-discriminatory reasons for the actions it took. Complainants then must demonstrate that Respondent's given reasons were merely a pretext for unlawful discrimination. 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).

Ashraf Samaan

The credible evidence shows that Ashraf Samaan was terminated for being away from his post and for failing to wear his uniform. Though Ashraf Samaan claimed that he had never been criticized nor away from his post, the credible evidence shows that he indeed received a letter of criticism for being away from his post and that Kugel witnessed him away from his post. Additionally, after his claim was brought to arbitration, the arbitrator found that he had left his post vacant "on a number of occasions" and that he had been warned of such and warned for not wearing his uniform. Ashraf Samaan offered no evidence connecting his termination to his national origin. Accordingly, the Division dismisses his claim against Respondent.

Nageeb Wassef

Nageeb Wassef failed to demonstrate that he suffered from an adverse action. Though he claimed that he was terminated, the credible record demonstrates that he, in fact, resigned his position. He testified that he would not have left if Ashraf and Henna Samaan had not been fired. Further, in a letter to Kugel inquiring about severance pay, he indicated that he had resigned. Moreover, there is no evidence linking his job loss with his national origin. In fact, Nageeb Wassef testified that he never had any indication from Kugel that he had any problem with Egyptians. Accordingly Nageeb Wassef's complaint is hereby dismissed.

Henna Samaan

Though Henna Samaan claimed that after being terminated because she was no longer needed, she was replaced by a non-Egyptian employee, the evidence is far from clear that this, in fact, was the case. Monir Samaan testified that she was replaced by an Hispanic woman named Patricia, but he could not identify which floor either Henna Samaan or Patricia had been assigned to clean, nor did he know how many cleaners Respondent employed. His testimony that she was replaced, therefore, is far from probative. The credible evidence demonstrates that she was a part-time, replacement employee and that when her services were no longer needed, she was terminated. Accordingly, her complaint is hereby dismissed.

Waheeb Wassef

Waheeb Wassef claimed that he was constructively discharged, but the evidence is clear that he was affirmatively terminated. Because he was subjected to derogatory comments related to his national origin prior to having his employment terminated, he has established a prima facie case of discrimination.

Respondent, however, has articulated legitimate, non-discriminatory reasons for the termination. Waheeb Wassef was terminated after several warnings for poor job performance. The credible evidence shows that his work was often criticized. Furthermore, Wassef admitted that he was fired because Sisti "hated [him] because he didn't agree that [his] brother becomes (sic) a supervisor. That's it. They hated me for that. Everybody, every one of them." This controverts his claim that Respondent harbored animus towards him because of his national origin. Wassef failed to show that Respondent's articulated reason for his termination was a pretext for discrimination. Accordingly, his claim against Respondent is dismissed.

Nashat Atalla

Nashat Atalla has established a prima facie case of discrimination. The credible record shows that when he was terminated by his then supervisor, Mizzi, he was told by Mizzi "I don't want all those fucking Egyptians working in the building." Though Respondent has articulated legitimate, non-discriminatory reasons for the termination, namely that Atalla stole property, the credible record demonstrates that this was a pretext for discrimination. Atalla merely took a letter clearly addressed to his attention. The Division does not credit Mizzi's claim that any force was used against him. Mizzi did not deny that he made derogatory comments upon terminating his employment and the record is clear that Mizzi harbored animus towards Egyptians. This was acknowledged by Nageeb Wassef and Kugel and supported by the testimony of the other witnesses. Because he was Atalla's supervisor at the time of the termination, Respondent is, therefore, liable for his actions. See Father Belle Community Ctr. v. New York State Div. of Human Rights, 221 A.D.2d 44, 642 N.Y.S.2d 739 (4th Dept. 1996); State Div. of Human Rights ex rel. Greene v. St. Elizabeth's Hosp., 66 N.Y.2d 684, 496 N.Y.S.2d 411 (1985). Accordingly, Atalla's claim is sustained.

As a result of Respondent's discrimination, Complainant Atalla is entitled to an award of back pay, less any wages earned. "[A] complainant ordinarily has a duty to exercise diligence to mitigate his or her damages by making reasonable efforts to obtain comparable employment." (citations omitted) Rio Mar Restaurant v. New York State Div. of Human Rights, 270 A.D.2d 47, 704 N.Y.S.2d 230 (1st Dept. 2000), appeal denied 95 N.Y.2d 763, 715 N.Y.S.2d 376 (2000). Atalla credibly testified that he made diligent efforts to obtain employment after the termination. "Respondents bear the burden of proving that the complainant did not make a diligent effort to mitigate damages" State Div. of Human Rights v. North Queensview Homes, Inc., 75 A.D.2d 819, 427 N.Y.S.2d 483 (2d Dept. 1980) (citing Cornell v T. V. Dev. Corp., 17 N.Y.2d 69, 74 (1966) and Walter Motor Truck Co. v New York State Human Rights Appeals Bd., 72 A.D.2d 635, 421 N.Y.S.2d 131 (3rd Dept. 1979)). In this case, Respondent did not meet its burden.

Atalla diligently searched for alternative employment from the date of his termination, September 7, 1989, until December 31, 1995, a period of 327 weeks. He had earned \$471 per week with Respondent. Respondent, therefore, is liable to Atalla for \$152,604.00 in back wages.

Furthermore, Complainant is entitled to pre-determination interest at a rate of nine percent per annum on his gross back pay award from November 19, 1992, a reasonable intermediate date, until the date of this Order. Aurecchione v. New York State Div. of Human Rights, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002).

Additionally, Complainant is entitled to post-determination interest at a rate of nine percent per annum on his gross back pay award from the date of this Order until the date payment is made. New York State Div. of Human Rights v. Marcus Garvey Nursing Home, 249 A.D.2d 549, 550, 672 N.Y.S.2d 130 (2d Dept. 1998);

In addition to 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. State Div. of Human Rights, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989). Such compensation may be based solely on a complainant’s testimony. Id. at 442; see also Cullen v. Nassau County Civil Serv. Comm’n, 53 N.Y.2d 492, 442 N.Y.S.2d 470 (1981). It must, however, be reasonably related to Respondent’s discriminatory conduct. Quality Care v. Rosa, 194 A.D.2d 610, 599 N.Y.S.2d 65 (2d Dept. 1993); School Bd. of Educ. of the Chapel of the Redeemer Lutheran Church v. N.Y.C. Commission on Human Rights, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2d Dept. 1992). Complainant has been aggrieved by Respondent’s unlawful conduct and is entitled to compensation for his mental anguish.

As a result of being terminated by Respondent, Complainant testified that he felt “a lot of pressure” and that he felt “no good.” Under the circumstances an award to \$5,000 for the emotional distress he suffered as a result of the discriminatory treatment is appropriate and is reasonably-related to Respondent’s discriminatory conduct. See Ebasco Servs. v. New York State Div. of Human Rights, 234 A.D.2d 80, 651 N.Y.S.2d 297 (1st Dept. 1996).

Additionally, Complainant is entitled to post-determination interest at a rate of nine percent per annum on his mental anguish award from the date of this Order until the date payment is made. New York State Div. of Human Rights v. Marcus Garvey Nursing Home, 249 A.D.2d 549, 550, 672 N.Y.S.2d 130 (2d Dept. 1998).

Order

On the basis of the foregoing Findings of Fact, Decision and Opinion, and pursuant to the provisions of the Human Rights Law, it is

ORDERED that, pursuant to the agreement between the parties and the memorandum presented by the Division, Isaac Krugel a/k/a Isaac Kugel, be dismissed as a Respondent in this case, it is also

ORDERED that, pursuant to the stipulation of the parties, 80 Lafayette Associates, LLC be dismissed as a Respondent in this case as to the complaints of Complainants, it is further

ORDERED that the complaint of Nashat Atalla that his employment was unlawfully terminated based on his national origin be sustained; it is

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

1. Within sixty days of the date of this Order, Respondent shall pay to Complainant the sum of \$152,604.00 as damages for back pay for the period between September 7, 1989, and December 31, 1995. Interest shall accrue on the award at the rate of nine percent per annum from November 19, 1992, a reasonable intermediate date, until the date payment is actually made by Respondent.
2. Within sixty days of the receipt of this Order Respondent shall pay to Complainant \$5,000.00 without any withholding or deductions, as compensatory damages for the mental pain and humiliation Complainant suffered as a result of the unlawful discriminatory conduct. Respondent shall also pay interest on this amount at the rate of nine percent per annum from the date of this Order until date of payment.
3. The aforesaid payment shall be made by Respondent in the form of two certified checks each made payable to the order of Complainant and delivered to him by registered mail, return Receipt Requested, with copies to Gina M. Lopez Summa, General Counsel, of the

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

4. Respondent shall furnish written proof of its compliance with the directives herein contained, and shall cooperate with representatives of the Division during any investigation into the compliance with the directives of this Order.


5. It is further ORDERED that the remaining Complainants' complaints be, and the same hereby are, dismissed.

OCT - 2 2006

DATED:

BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS



PETER G. BUCHENHOLZ
Adjudication Counsel