



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**
on the Complaint of

DOMINIQUE SANDERS,

Complainant,

v.

**ESNA MANAGEMENT CORP. D/B/A THE
BELVEDERE SENIOR LIVING, THE
BELVEDERE SENIOR LIVING COMMUNITY,
NOW KNOWN AS BORO PARK SENIOR LIVING
COMMUNITY LLC D/B/A THE BELVEDERE
SENIOR LIVING, THE BELVEDERE SENIOR
LIVING COMMUNITY,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10180618

Federal Charge No. 16GB602066

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 July 26, 2017, by Monique Blackwood, 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: **OCT 06 2017**
Bronx, New York


HELEN DIANE FOSTER
COMMISSIONER



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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HUMAN RIGHTS**

on the Complaint of

DOMINIQUE SANDERS,

Complainant,

v.

**ESNA MANAGEMENT CORP. D/B/A
THE BELVEDERE SENIOR LIVING,
THE BELVEDERE SENIOR LIVING
COMMUNITY, now known as BORO PARK
SENIOR LIVING COMMUNITY LLC, D/B/A
THE BELVEDERE SENIOR LIVING,
THE BELVEDERE SENIOR LIVING
COMMUNITY,**

Respondent.

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

Case No. **10180618**

Federal Charge No. 16GB602066

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her based on sex, familial status, pregnancy-related condition, and disability. Complainant also alleged that Respondent retaliated against her. Respondent denied the allegations. Complainant failed to make out a prima facie case that Respondent unlawfully discriminated against her based on pregnancy-related condition and disability. Complainant also failed to make out a prima facie

case of retaliation. Complainant sustained her burden of proof on her sex and familial status claims. Damages are awarded, and a civil fine and penalty is assessed against Respondent.

PROCEEDINGS IN THE CASE

On February 25, 2016, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent The Belvedere Senior Living with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

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

After due notice, the case came on for hearing before Monique Blackwood, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on March 29-30, 2017.

Complainant and Respondent appeared at the hearing. The Division was represented by Robert Alan Meisels, Esq., Senior Attorney. Respondent was represented by Bernard Weinreb, Esq.

Pursuant to the Division’s Rules of Practice, the caption was amended at the public hearing to correctly name Respondent as ESNA Management Corp. d/b/a The Belvedere Senior Living or The Belvedere Senior Living Community, now known as Boro Park Senior Living Community, LLC d/b/a The Belvedere Senior Living or The Belvedere Senior Living Community. *See* 9 N.Y.C.R.R. § 465.4.

Permission to file post-hearing briefs was granted. The parties did not file post-hearing briefs.

FINDINGS OF FACT

1. Complainant is female. (Tr. 9)
2. Respondent operates an assisted senior living facility. (Tr. 236-37; Respondent's Exh. 7)
3. In September 2015, Respondent hired Complainant as a kitchen aide. (Tr. 10, 62, 260-61; Respondent's Exh. 1, ALJ's Exh. 1)
4. Complainant's work schedule varied and she either worked from 7:30 am to 2:00 pm or 12:30 pm to 7:00 pm, for a total of 6.5 hours per day. Complainant was scheduled to work six days per week for a total of 39 hours per week. Complainant's starting salary was \$8.75 per hour. At the time of her employment termination, Complainant was earning \$9.00 per hour. (Tr. 10, 42-43, 77-78, 185; Respondent's Exh. 1)
5. Respondent provided Complainant with a copy of Respondent's employee handbook on December 30, 2015.¹ (Tr. 260-62; Complainant's Exh. 1)
6. Edline Severe-Joseph is Respondent's administrator. (Tr. 183)
7. Between the date of Complainant's hire in September 2015 and December 2015, Complainant was late to work on October 27, 2015, December 19, 2015, December 26, 2015, and December 30, 2015. (Tr. 72-75, 117, 120, 188; Respondent's Exh. 1)
8. In December 2015, Severe-Joseph had a conversation with Complainant and told Complainant her "lateness wasn't good." (Tr. 21, 107, 148-49)

¹ At the public hearing, Complainant testified that she wrote the wrong date of December 30, 2016 on the receipt form. (Tr. 262)

9. Severe-Joseph testified that she had approximately five or six conversations with Complainant about her lateness and absences and told Complainant “this can’t continue.” I do not credit this testimony. Severe-Joseph could not recall the dates of these conversations and said they occurred whenever Complainant came to her requesting time off from work. Severe-Joseph did not have any written record of these conversations with Complainant. (Tr. 189-90, 225, 240)

10. In January 2016, Complainant was late to work on January 14, 16, 23, and 27 to 30. (Tr. 73-74, 120; Respondent’s Exh. 1)

11. Complainant concedes the days that Respondent indicates she was late to work. (Tr. 72-74, 117, 120; Respondent’s Exh. 1)

12. On January 19, 2016, Complainant left work early and left Severe-Joseph a handwritten note explaining that she had to leave work due to a family emergency. Severe-Joseph was not at work when Complainant left her the note. (Tr. 268-71, 291, Respondent’s Exh. 5)

13. Severe-Joseph did not discipline or penalize Complainant for leaving work early on January 19, 2016. (Tr. 271-72)

14. During the public hearing, Severe-Joseph said “[Complainant] always had some issue and I really tried working with her.” (Tr. 292)

15. Severe-Joseph also said during the public hearing, referring to Complainant, “we always had a conversation about what was going on. She had concerns and...she shared information, so she did communicate with me.” (Tr. 323-24)

16. On February 12, 2016, Complainant gave Severe-Joseph a doctor’s note, which indicated that Complainant would not be able to return to work until February 17, 2016.

Complainant was absent because she had a test for tuberculosis. Complainant was not penalized for taking these days off. (Tr. 272-73, 292-94; Respondent's Exhs. 1, 6)

17. After receiving the doctor's note on February 12, 2016, Severe-Joseph decided that it was time to make "some adjustments." (Tr. 312-13)

18. Complainant returned to work on February 17, 2016. (Respondent's Exh. 1)

19. On February 22, 2016, Complainant found out she was pregnant. (Tr. 11, 80)

20. Complainant was not scheduled to work on February 22, 2016. (Tr. 233, 239-40, 254; Respondent's Exh. 1)

21. On February 22, 2016, Complainant went to work and told Severe-Joseph she was pregnant and asked to be excused from work on February 23, 2016 to go to a medical appointment. (Tr. 15-17, 81-82, 254, 256)

22. Complainant went to work on her day off to speak to Severe-Joseph about her pregnancy because she did not feel it was a discussion she should have on the telephone because it was "confidential." (Tr. 254)

23. Complainant told Severe-Joseph that she did not have health insurance and February 23, 2016 was the only available date for her medical appointment. Complainant also showed Severe-Joseph documents regarding her medical appointment on February 23, 2016 and her application for medical assistance. (Tr. 14, 16, 254, 256; Complainant's Exhs. 1, 2)

24. Severe-Joseph approved Complainant's sick leave request for February 23, 2016 and told Complainant to return to work on February 24, 2016. (Tr. 16, 24, 239; Respondent's Exh. 1)

25. On February 24, 2016, when Complainant returned to work, Severe-Joseph terminated Complainant's employment and told Complainant that it was due to excessive absences and lateness. (Tr. 18, 24, 188, 210; Complainant's Exh. 3)

26. On February 24, 2016, Severe-Joseph gave Complainant an Employee Warning Notice. This was the only written warning notice Complainant received about her lateness and absences. (Tr. 20-21; Complainant's Exh. 3)²

27. On February 24, 2016, Complainant told Severe-Joseph that she felt Severe-Joseph terminated her employment after she told her she was pregnant. (Tr. 35, 255-56)

28. During Complainant's employment with Respondent, Complainant did not tell Respondent that she wanted a different position as a reasonable accommodation. (Tr. 84)

29. On February 24, 2016, Complainant's paycheck for \$508 did not arrive at Respondent's office. Severe-Joseph agreed to mail the paycheck to Complainant, but Complainant told Severe-Joseph that she would return to pick up the paycheck and she did not. (Tr. 32-34, 37-38; Complainant's Exh. 6)

30. On February 25, 2016, Complainant filed the instant complaint with the Division. (ALJ's Exh. 1)

31. On February 26, 2016, Complainant called Severe-Joseph and asked if her paycheck was in the office, and Severe-Joseph responded that it was. Complainant asked Severe-Joseph if someone could bring Complainant's paycheck to her and Severe-Joseph said no. Complainant then asked Severe-Joseph to mail her the paycheck and Severe-Joseph said she would. (Tr. 33-34)

32. Several hours later, on February 26, 2016, Severe-Joseph called Complainant and informed Complainant that her paycheck was not in the office and it was "cashed." (Tr. 33-34)

33. Severe-Joseph sent Complainant a copy of the cancelled paycheck and told Complainant to file a police report. Respondent also told Complainant that Chase Bank had to

² Complainant's Exhibit 3, the Employee Warning Notice is incorrectly dated January 24, 2016. The correct date is February 24, 2016. (Tr. 289)

investigate the matter. A representative from Chase Bank told Complainant that Respondent had to investigate the matter. (Tr. 29, 32-34, 213)

34. Complainant never received the paycheck for her last wages with Respondent of \$508. (Tr. 34; Complainant's Exh. 6)

35. Complainant applied for unemployment insurance benefits but was denied. (Tr. 41, 45, 124)

36. When Respondent terminated Complainant's employment, Complainant felt "upset," "a little stressed," and "depressed" and testified at the public hearing that she still feels this way. (Tr. 45, 49-50)

37. Complainant did not seek mental health treatment. (Tr. 52, 58)

38. Complainant had no financial assistance. The father of Complainant's child was not in her life. Complainant had to think about how she was going to raise her child and how she was going to pay rent, since she had no income. (Tr. 45)

39. In March 2016, Complainant moved into a shelter because she could not afford to pay rent in an apartment she shared with someone else. Complainant described this as a "bad situation" in which she felt "upset" and "embarrassed." (Tr. 47-48, 51)

40. Complainant searched for jobs from February 26, 2016 to May 19, 2016 at a Back to Work program. The Back to Work program provides assistance with job search, resumes, and interviews. (Tr. 38-39, 44, 59-61; Complainant's Exh. 7)

41. During her pregnancy, in May 2016, Complainant suffered from swollen feet and bleeding. (Tr. 38, 150)

42. Complainant was unable to work and was placed on bed rest from June 1, 2016 until the birth of her baby on October 11, 2016. (Tr. 9, 43, 99; Complainant's Exh. 8)

43. On January 15, 2017, Complainant returned to the Back to Work program and was scheduled to begin work on April 11, 2017. (Tr. 43-44, 60-61)

44. During the 12 weeks and one day from February 24, 2016 (the day Complainant's employment was terminated) to May 19, 2016 (the last day Complainant searched for employment), Complainant would have earned \$351 per week from Respondent, for a total of \$4,270.50.

45. During the 12 weeks and 2 days from January 15, 2017 (the day Complainant returned to the Back to Work program and resumed her job search) to April 11, 2017 (the day Complainant was scheduled to start working), Complainant would have earned \$351 per week, for a total of \$4,329.

46. The amount Complainant would have earned working with Respondent but for her employment termination is \$4,270.50 plus \$4,329, for a total of \$8,599.50.

OPINION AND DECISION

Sex and Familial Status Discrimination

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a) states that it shall be "...an unlawful practice ... [f]or an employer ... because of the ... sex ... familial status...of any individual, to ... discharge from employment such individual or to discriminate against such individual ...” Pregnancy discrimination is a form of sex discrimination. *Elaine W. v. Joint Diseases N. Gen. Hosp., Inc.*, 81 N.Y.2d 211, 597 N.Y.S.2d 617 (1993); *Brooklyn Union Gas Co. v. New York State Human Rights App. Bd.*, 41 N.Y.2d 84, 390 N.Y.S.2d 884 (1976).

Familial status is defined as (a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen

years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals, or (2) the designee of such parent. Human Rights Law § 292.26

Complainant may establish a prima facie case of discrimination by demonstrating that she is a member of a protected class, she was qualified for her job, and she was terminated or suffered an adverse employment action under circumstances giving rise to an inference of discrimination. *Rainer N. Mittl, Ophthalmologist, P.C. v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 330, 763 N.Y.S.2d 518, 520 (2003). If Complainant establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate non-discriminatory reason for its actions. Thereafter, Complainant must demonstrate that the reasons offered by Respondent are merely a pretext for unlawful discrimination. *Ferrante v. American Lung Ass'n.*, 90 N.Y.2d 623, 665 N.Y.S.2d 25 (1997).

Complainant has established a prima facie case of unlawful sex and familial status discrimination. Complainant, a female who was pregnant during her employment with Respondent, is a member of several protected classes. Complainant was qualified for her position as a kitchen aide as she was hired by Respondent in September 2015. Complainant suffered an adverse employment action when Respondent terminated Complainant's employment on February 24, 2016, just two days after Complainant told Severe-Joseph that she was pregnant. The termination of Complainant's employment did occur under circumstances that give rise to an inference of unlawful discrimination because Respondent terminated Complainant's employment two days after learning that she was pregnant.

Respondent's legitimate and nondiscriminatory reasons for terminating Complainant's employment was excessive lateness and absence. Complainant concedes that she was late to

work and that in December 2015, Severe-Joseph mentioned Complainant's lateness to her. The only written warning notice Complainant received regarding excessive lateness and absence was on February 24, 2016 when Respondent terminated her employment.

Complainant has demonstrated that Respondent's reasons were a pretext for unlawful discrimination. After Severe-Joseph mentioned Complainant's lateness to her in December 2015, Complainant continued to have time and attendance problems. Complainant was late to work on January 14, 16, 23, 27 to 30, 2016 and requested to leave work early on January 19, 2016, due to a family emergency. On February 12, 2016, Complainant gave Severe-Joseph a doctor's note indicating she would not return to work until February 17, 2016. Severe-Joseph decided that it was time to make "some adjustments," after Complainant gave her this doctor's note. However, Complainant's employment with Respondent continued until February 24, 2016, when her employment was terminated after she told Severe-Joseph that she was pregnant and had a medical appointment regarding her pregnancy on February 23, 2016. *New York State Office of Mental Health v. New York State Division of Human Rights*, 75 A.D.3d 1023, 906 N.Y.S.2d 181 (3rd Dept. 2010) (Complainant's employment was terminated the same day Complainant submitted a doctor's note regarding his knee and ankle injury). The evidence establishes that Respondent unlawfully discriminated against Complainant based on her pregnancy and familial status. Therefore, Complainant's claims of unlawful discrimination based on sex and familial status are sustained.

Disability Discrimination

To make out a prima facie case of disability discrimination based upon an employer's failure to provide a reasonable accommodation, Complainant must show that: 1) she was an individual who had a "disability" within the meaning of the Human Rights Law;

2) Respondent had notice of the disability; 3) with reasonable accommodation Complainant could perform the essential functions of the position; and 4) Respondent refused to make such accommodations. *Pimental v. Citibank, N.A.*, 29 A.D.3d 141, 811 N.Y.S. 381 (1st Dept. 2006).

A pregnancy-related condition is defined by § 292.21(f) of the Human Rights Law. A pregnancy-related condition is a medical condition related to pregnancy or childbirth. Pregnancy-related conditions are to be treated the same as any temporary disability.

In May 2016, Complainant suffered from swollen feet and bleeding due to her pregnancy. Complainant was not employed with Respondent during this time. While employed with Respondent, Complainant did not tell Respondent about a pregnancy-related condition or temporary disability. Pursuant to 9 N.Y.C.R.R. § 466.11(j)(4), an employer is required “to move forward to consider accommodation once the need for accommodation is known or requested.” Complainant did not demonstrate that Respondent refused to make such accommodation. Complainant has not established a prima facie case of disability discrimination based upon an employer’s failure to provide a reasonable accommodation and this claim is dismissed.

Retaliation

At the public hearing, the Division raised retaliation as a claim. The pleadings are conformed to the proof to consider a claim of retaliation. *See* 9 N.Y.C.R.R. § 465.12(f)(14).

Pursuant to N.Y. Exec. Law, art. 15 (the “Human Rights Law”), it is an unlawful discriminatory practice for an employer to retaliate or discriminate against any person because he or she has opposed any practices forbidden under the Human Rights Law, or because he or she has filed a complaint, or assisted in any proceeding under the Human Rights Law. Human Rights Law § 296.7.

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) the respondent was aware that she participated in the protected activity; (3) she suffered from an adverse employment action; and (4) there is a causal connection between the protected activity and the adverse employment action. *Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3rd Dept. 1999). In a retaliation case, “an adverse employment action is one which ‘might have dissuaded a reasonable worker from making or supporting a charge of discrimination.’” *Mejia v. Roosevelt Island Med. Assoc.*, 31 Misc.3d 1206 (A) (Sup. Ct. N.Y. Co. 2011) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)), *aff’d*, 95 A.D.3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed*, 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013).

Once a complainant has met this burden, the respondent has the burden of coming forward with legitimate, nondiscriminatory reasons in support of its actions. *Pace* at 104, 692 N.Y.S.2d at 224. If the respondent meets this burden, the complainant must then show that the reasons presented are a pretext for unlawful retaliation. *Id.*

Complainant alleged that Respondent retaliated against her when she did not receive her paycheck for \$508. Complainant engaged in protected activity when she filed the instant complaint with the Division on February 25, 2016. There was no evidence presented as to when Respondent became aware of the protected activity. Complainant presented no evidence of unlawful retaliatory animus or acts on the part of anyone associated with Respondent. Complainant did not make out a prima facie case of retaliation, therefore, this claim is dismissed.

Damages

“A complainant in a discrimination matter ‘ordinarily has a duty to exercise diligence to mitigate his or her damages by making reasonable efforts to obtain comparable employment.’” *Palmblad v. Gibson*, 63 A.D.3d 844, 845, 881 N.Y.S.2d 139, 140 (2nd Dept. 2009). “The

burden of proving a lack of diligent efforts to mitigate damages and showing the extent to which efforts would have diminished damages is on the employer.” *Goldberg v. N.Y. State Div. of Human Rights (Rocco)*, 85 A.D.3d. 1166, 1167, 927 N.Y.S.2d 123, 125 (2nd Dept. 2011).

Complainant was scheduled to work 39 hours per week and earned \$9.00 per hour. Complainant’s employment was terminated on February 24, 2016. Complainant made reasonable efforts to obtain employment from February 26, 2016 until May 19, 2016. Complainant did not receive unemployment insurance benefits. Complainant was on bed rest from June 1, 2016 until the birth of her baby on October 11, 2016. Complainant returned to the Back to Work program on January 15, 2017 and searched for jobs. Complainant was scheduled to begin working on April 11, 2017. Complainant lost wages in the sum of \$4,270.50 between February 24, 2016 to May 19, 2016, and \$4,329 from January 15, 2017 to April 11, 2017, for total lost wages of \$8,599.50. Complainant is entitled to \$8,599.50 in total back pay damages.

Complainant is also entitled to an award for mental anguish and humiliation. A complainant is entitled to recover compensatory damages for mental anguish caused by a respondent's unlawful conduct. In considering an award for 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. *Id.* at 1168, 927 N.Y.S.2d at 125.

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 she would have had to produce under an analogous provision." *Batavia Lodge v. N.Y. State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). Indeed, "[m]ental injury may be proved by the complainant's own

testimony, corroborated by reference to the circumstances of the alleged misconduct." *New York City Transit Authority v. N.Y. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *New York State Department of Correctional Services v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3rd Dept. 1996).

After Respondent terminated Complainant's employment, Complainant was "upset," "a little stressed," and "depressed" and still felt this way at the public hearing. Complainant did not seek mental health treatment. Complainant had no financial assistance. The father of Complainant's child was not in her life. Complainant had to think about how she was going to raise her child and how she was going to pay rent, since she had no income. In March 2016, Complainant moved into a shelter because she could not afford to pay rent. Complainant described this as a "bad situation" in which she felt "upset" and "embarrassed." There was no evidence presented as to the amount of time Complainant lived in a shelter. An award of \$15,000 for emotional distress is appropriate and would effectuate the purposes of the Human Rights Law. *Rivera v. Argyle Realty Associates*, DHR Case No. 2304680 (June 22, 2007), *aff'd* *Argyle Realty Associates v. N.Y. State Div. of Human Rights (Rivera)*, 65 A.D.3d 273, 882 N.Y.S.2d 458 (2nd Dept. 2009); *Potter v. New York City Health and Hospitals Corp.*, DHR Case No. 10100987 (January 30, 2009).

Civil Fines and Penalties

Human Rights Law § 297 (4)(c)(vi) permits 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.”

Human Rights Law § 297 (4)(e) requires that “any civil penalty imposed pursuant to this subdivision 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.”

There are several factors that determine if civil fines and penalties are appropriate: the goal of deterrence; the nature and circumstances of the violation; the degree of respondent’s culpability; any relevant history of respondent’s actions; respondent’s financial resources; other matters as justice may require. *119-121 East 97th Street Corp, et. al., v. New York City Commission on Human Rights, et. al.*, 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept. 1996)

A civil fine of \$10,000 is appropriate in this matter. Respondent unlawfully discriminated against Complainant based on her sex and familial status. Severe-Joseph, Respondent’s administrator, terminated Complainant’s employment after Complainant told her she was pregnant. Severe-Joseph’s conduct negatively impacted Complainant’s housing, financial and emotional well-being. The civil fine serves as an inducement for Respondent to comply with the Human Rights Law and presents an example to the public that the Division vigorously enforces the Human Rights Law. *Ormsby v. City of Niagara Falls, Walker, Grandinetti*, DHR Case No. 10166975 (September 1, 2015).

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division’s Rules of Practice, it is hereby

ORDERED that Respondent, and its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and it is further

ORDERED that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order;

1. Within sixty days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of \$8,599.50 as damages for back pay. Interest shall accrue on this back pay award at the rate of nine percent per annum from September 21, 2016, a reasonable intermediate date, until the date payment is actually made by Respondent.

2. Within sixty days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of \$15,000 without any withholdings or deductions, as compensatory damages for mental anguish suffered by Complainant as a result of Respondent's unlawful discrimination against her. Interest shall accrue on the award at the rate of nine percent per annum from the date of the Commissioner's Order until the date payment is actually made by Respondent.

3. The aforesaid payments shall be made by Respondent in the form of two certified checks made payable to the order of Complainant, Dominique Sanders, and delivered by certified mail, return receipt requested, to Robert Meisels, Esq., Senior Attorney at New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, NY 10458.

4. Within sixty days of the date of the Commissioner's Order, Respondent 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 office of Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th floor, Bronx, New York, 10458. Interest shall accrue at the rate of nine percent per annum on any amount paid after sixty days from the date of said Final Order until payment is made.

5. Respondent shall furnish written proof to the New York State Division of Human Rights, Compliance Unit, One Fordham Plaza, 4th floor, Bronx, New York 10458, of their compliance with the directives contained in this order.

DATED: July 26, 2017
Bronx, New York

Monique Blackwood
Monique Blackwood
Administrative Law Judge