

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

MARCE S. SEVILLA,

Complainant,

v.

KEVIN M. GOTTLIEB, D/B/A/ THE CASH
CORNER

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10119299

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 January 22, 2009, by Thomas J. Marlow, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

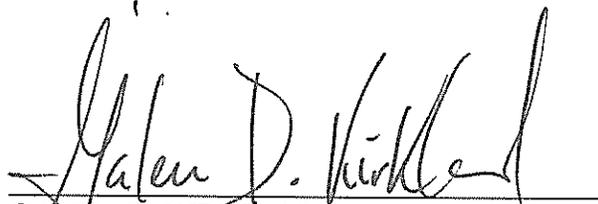
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **APR 24 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

MARCE S. SEVILLA,

Complainant,

v.

**KEVIN M. GOTTLIEB, D/B/A/ THE CASH
CORNER,**

Respondent.

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

Case No. 10119299

SUMMARY

Complainant alleged that Respondent discriminated against her because of her race by ordering her, her children, and a friend to leave the store, The Cash Corner, because they were Hispanic and speaking in Spanish. The evidence supports a finding of unlawful discrimination. Accordingly, Complainant is entitled to relief in the form of compensatory damages for mental anguish and humiliation in the amount of \$2,500.00.

PROCEEDINGS IN THE CASE

On July 31, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to public accommodation 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 Thomas J. Marlow, an Administrative Law Judge (“ALJ”) of the Division. A public hearing was held on September 17, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Lawrence J. Zyra, Esq. Respondent was represented by C. Louis Abelove, Esq.

At the public hearing, on the record, the complaint was amended to reflect the correct name of Respondent: Kevin M. Gottlieb, d/b/a The Cash Corner.

The Division and Respondent filed proposed findings of fact and conclusions of law after the conclusion of the public hearing.

FINDINGS OF FACT

1. Complainant is Hispanic. (ALJ’s Exhibit 1; Tr. 20-21, 23, 25, 30-31)
2. On May 18, 2007, Complainant, with her son, Carlos, who was 13 years old, her daughter, Celegna, who was five years old, and Complainant’s friend, Yadira Torres (“Torres”), went to Respondent’s store, known as The Cash Corner, to purchase a video game for Carlos to take to a “game night” at a local church. (ALJ’s Exhibit 1; Tr. 16-18, 63)
3. Respondent buys and sells a variety of used items in the Cash Corner, including video games and jewelry. Respondent also sells new items. Respondent has worked at The Cash Corner for about 15 years, since he was eight years old when his father owned the store.

Respondent's father passed away in March of 2007; at that time, Respondent became the owner of the store. (Tr. 21, 95-96)

4. After a few minutes in the store, Complainant was talking to Carlos in Spanish about what kind of game would be appropriate to take to church when Respondent approached them saying, "English! English! English!" in a loud, demanding manner. (ALJ's Exhibit 1; Tr. 19-22, 25-26, 65-66) When Respondent was close to them, he asked, "Do you speak English?" Complainant responded, "Yes," and then continued to speak to Carlos in Spanish. (ALJ's Exhibit 1; Tr. 22, 65-66)

5. When Complainant continued to speak to her son in Spanish, Respondent said to Complainant, her children, and Torres, "Get out of my fucking store!" (ALJ's Exhibit 1; Tr. 22-24, 65-68) Pursuant to this demand, Complainant, her children, and Torres left the store. (Tr. 26)

6. Respondent testified that he spoke to Complainant, her children, and Torres when they entered the store and that they ignored him. (Tr. 103-05) Respondent also testified that Complainant became rude with him and he told her to leave the store. (Tr. 107-08)

7. I did not find Respondent credible. His testimony, at times, was contradictory and evasive, and he often appeared temperamental. (Tr. 105, 107, 117-18, 120-28, 133-34, 143-49, 154-55)

8. Complainant, her children, and friend made Respondent feel uncomfortable. He "... didn't know what their intentions were for being in the store." (Tr. 175) Respondent thought, "They could be trying to take something. They could probably do harm to me. I guess all those things I always keep in the back of my mind." (Tr. 175)

9. Because of Respondent's actions, Complainant felt badly, hurt and disrespected. (Tr. 29)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an owner or proprietor of a place of public accommodation, directly or indirectly, to refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges thereof, because of that person's race. *See* Human Rights Law § 296.2(a). The store known as The Cash Corner is a place of public accommodation under the Human Rights Law. *See* Human Rights Law § 292.9.

Complainant raised an issue of unlawful discrimination in alleging that Respondent denied her the accommodations, advantages, and privileges of The Cash Corner because of her race by first demanding that she speak in English in the store and then ordering that she leave the store when she continued to speak in Spanish to her son.

After evaluating the testimony of Complainant and Torres, I find that their testimony was credible. The evidence establishes that they were in The Cash Corner for the legitimate reason to buy a video game for Complainant's son to take to a "game night" at a local church. The evidence further establishes that Complainant is Hispanic and was speaking in Spanish in the store and this upset Respondent. Having Hispanic people in his store speaking Spanish caused Respondent to think that they might be trying to steal something or do him harm. Respondent demanded that they speak in English and when Complainant continued to speak in Spanish to her son, Respondent rudely ordered them out of the store.

Respondent attempted to rebut the credible evidence of unlawful discrimination by claiming that it was Complainant who was rude to him, causing him to tell her to leave the store. In his testimony, however, he contradicted himself and was evasive. During his testimony, Respondent often appeared temperamental. After evaluating the testimony of Respondent, I do

not credit his testimony.

The proof shows that Respondent rudely ordered Complainant, her children, and Torres out of the store because they were Hispanic. Respondent had concerns about their intentions, concerns that had no basis other than their race. Respondent was rude in demanding that they speak in English and his rudeness became unlawful discrimination moments later when he demanded that they leave after Complainant continued to speak in Spanish to her son. Respondent may not have mentioned Complainant's race when speaking to her, but that does not insulate his unlawful discriminatory behavior as the law does not require a finding that Respondent referred to Complainant's race to determine that he unlawfully discriminated against Complainant because of her race. *See Hudson Transit Lines, Inc. v. State Human Rights Appeal Bd.*, 47 N.Y.2d 971, 419 N.Y.S.2d 960 (1979).

Complainant is entitled to recover compensatory damages caused by the unlawful discriminatory conduct of Respondent. *See Human Rights Law § 297.4(c)(iii)*. It is well-settled that an award of compensatory damages to a person aggrieved by an illegal discriminatory act may include compensation for mental anguish and humiliation, which may be based solely on the complainant's testimony. *See Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981). Complainant testified credibly that, as a result of Respondent's discriminatory behavior, she felt badly, hurt and disrespected. Since Complainant did not elaborate on the severity of her anguish or set forth any other consequences attributed to Respondent's behavior, an award of \$2,500.00 for mental anguish and humiliation will effectuate the goals and objectives of the Human Rights Law and is reasonably related to the wrongdoing, supported by the evidence, comparable with other awards for similar injuries, and, therefore, justified in this case. *See Cosmos Forms, Ltd. v. State Div. of Human rights*, 150 A.D.2d 442,

541 N.Y.S.2d 50 (2d Dept. 1989); *Steinberg v. UN Plaza Diner Corp. d/b/a Nations Café*, DHR Case No. 2302311 (May 27, 2005).

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 the complaint be, and hereby is, sustained; and it is further

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

1. Within sixty days from the date of the Final Order in this matter, Respondent shall pay to Complainant the sum of \$2,500.00 as compensatory damages for the mental anguish and humiliation suffered by Complainant as a result of the unlawful act of discrimination for which the Respondent is liable. Respondent shall also pay interest to Complainant on this award, at a rate of nine percent per annum, from the date of the Commissioner's Order until the date payment is made.
2. The aforesaid payment shall be in the form of a certified check made payable to the order of Marce S. Sevilla and delivered to her address at 1117 Erie Street, 1st Floor, Utica, New York 13502, by certified mail, return receipt requested.
3. Respondent shall simultaneously furnish written proof of said payment to Barbara Buoncristiano, Director of Compliance, New York State Division of

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

4. Respondent shall cooperate with the Division during any investigation into his compliance with the directives contained in this Order.

DATED: January 22, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge