

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

TYREA SIMMONS,

Complainant,

v.

STERN PROPERTIES,

Respondent.

NOTICE OF FINAL
ORDER AFTER HEARING

Case No. 10105887

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 May 24, 2007, by Martin Erazo, 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 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 27 day of June, 2007.



KUMIKI GIBSON
COMMISSIONER

TO:

Complainant
Tyrea Simmons
190 Earl Street
Rochester, NY 14611

Respondent
Stern Properties
Jean M. Sak
Business Manager
274 North Goodman Street
Rochester, NY 14607

Respondent Attorney
Theodore S. Kantor, Esq.
Bilgore, Reich, Levine, Kroll & Kantor
950 Reynolds Arcade Building, 16 East Main Street
Rochester, NY 14614-1891

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights
Joshua Zinner, Deputy Commissioner for Enforcement
One Fordham Plaza, 4th Floor
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Paul Crapsi, Jr., Esq., of Counsel
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Martin Erazo
Administrative Law Judge

Sara Toll East
Chief, Litigation and Appeals

Caroline J. Downey
Acting General Counsel

Peter G. Buchenholz
Adjudication Counsel

Mathew Menes
Adjudication Counsel

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

TYREA SIMMONS,

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v.

STERN PROPERTIES,

Respondent.

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

Case No. 10105887

SUMMARY

Complainant, a young black male, alleged that he was a victim of discrimination during his tenancy. The Division finds that Respondent discriminated against Complainant. Further, the Division finds that Respondent retaliated against Complainant when he complained of differential treatment. Complainant is entitled to relief in the form of an award for economic loss, mental anguish and punitive damages.

PROCEEDINGS IN THE CASE

On May 31, 2005, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

On August 19, 2005, the Division found after investigation that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in an unlawful discriminatory practice. (ALJ Exhibit V) The Division thereupon referred the case to public hearing.

On April 16, 2006, after due notice, Respondent and Complainant appeared at a prehearing session. (ALJ VII)

On May 19, 2006, after due notice, the case came on for hearing before Martin Erazo, Jr., an Administrative Law Judge ("ALJ") of the Division.

On August 24, 2006, Respondent raised objections to the hearing alleging that it never received notice of the probable cause. (ALJ Exhibit VI)

On August 24, 2006, Division Counsel amended the verified complaint to include charges of retaliation. (ALJ Exhibit IV)

On September 8, 2006, the Division re-issued the August 19, 2005 probable cause notice. (ALJ Exhibit V)

On September 13, 2006 and September 14, 2006, public hearing sessions were held. Complainant and Respondent appeared at the hearing. The Division was represented by former General Counsel, Gina Lopez Summa, Paul Crapsi, Jr., of Counsel. Respondent was represented by Theodore S. Kantor, Esq.

Permission to file post-hearing briefs was granted. On November 13, 2006, Division Counsel's brief was received. On November 15, 2006, Respondent's brief was received.

FINDINGS OF FACT

Notice

1. During the entire investigatory and hearing process, Respondent was served at the same address of 274 North Goodman Street, Rochester, New York, 14607. Respondent received the May 31, 2005 verified complaint. Administrative notice is taken that Respondent received notice of the July 14, 2005 investigatory conference April 19, 2006 prehearing session. (ALJ Exhibits VII, VIII) Respondent also received the hearing notice issued on May 19, 2006. (ALJ

Exhibit I) The hearing notice clearly stated that “the answer shall contain all affirmative defenses including any defense of lack of jurisdiction.”

2. On June 7, 2006, Respondent submitted a verified answer. Respondent denied discriminating against Complainant. Respondent did not raise the defense that it had not received notice of the probable cause. (ALJ Exhibit II)

3. Respondent received notice of the August 19, 2005 probable cause finding.

4. On August 24, 2006, Respondent first indicated that it had not received the August 19, 2005 probable cause determination. The issue was raised only after Respondent became aware that the Division could not locate the original master investigatory file containing the signed copy of the probable cause determination. (Tr. 165-167; ALJ Exhibit VI) Administrative notice is taken of the unsigned probable cause determination contained in the copy of the investigatory file. (ALJ Exhibit IX)

Parties

5. Complainant was a 29 year old black male at the time of filing. (Tr. 29; ALJ Exhibit I)

6. On February 1, 2005, Complainant signed a one year lease to rent apartment 306, at 277 North Goodman Street, Rochester, New York 14607. (Tr. 32; Respondent’s Exhibit B; ALJ Exhibit I)

7. Complainant occupied one of the 12 apartment units on the third floor. (Respondent’s E)

8. Complainant was the only young black male tenant at Respondent’s 277 North Goodman Street location. (Tr. 32-33)

9. Respondent’s employees were business manager, Jean Sak (“Sak”), office clerk, Jose Nieves (“Nieves”), and maintenance manager, Darryl Foster (“Foster”). Gary Stern (“Stern”) is owner of the property located at 277 North Goodman Street.

Noise Complaints

10. In a February 9, 2005 letter, Sak informed Complainant that "...our office received complaints from tenants in the building in which you now reside with regard to noise levels..." (Respondent's Exhibit C)

11. In a May 16, 2005 letter, Sak informed Complainant that "...our office has received yet another complaint about noise disturbances..." (Complainant's Exhibit 2) The letter stated in bold face type that "...**Stern Properties is cancelling your lease, effective May 31, 2005. In other words, you must vacate ...no later than May 31, 2005.**" (Complainant's Exhibit 2)

12. Respondent never rescinded its decision to terminate Complainant's lease. Although Respondent did not follow through with an eviction, Complainant continued his tenancy on a month to month basis, under the cloud of an eviction threat.

13. Respondent's witness, Steven Schwab ("Schwab"), was a white tenant who lived on the fourth floor. Schwab complained on four occasions about the noise on the third floor. (Tr. 233-236, 240) two of Schwab's complaints were directly lodged against Complainant. (Tr. 240)

14. Schwab admitted that he did not know for certain if the guests making noise in the hallway or parking lot were associated with Complainant's apartment. (Tr.235; 245-246)

15. Schwab stated that Respondent was "extremely thorough" in responding to complaints. Respondent always responded to a complaint "...even if it was the overnight [phone] line they would call in, particularly Jean, who is the manager, would call and follow up and sometimes Gary." (Tr. 238)

Noise by White Tenants

16. In May of 2005, Complainant lodged a noise complaint against a next door tenant, who was white, because she was "...playing her music loud..." (Tr. 34) Respondent did not address

the noise complaint. The music was not turned down. (Tr. 44) Nieves informed Complainant that they did not want "...to keep going back and forth in regards to complaints from [Complainant] and other tenants." (Tr. 34) Respondent never contacted Complainant about the status of his noise complaint against the white tenant.

17. Christine Seiler ("Seiler") and Robert Vitale ("Vitale") were white tenants who lived in Apartment 405, at 277 North Goodman Street, Rochester New York. In 2003, Sak advised them in writing that Respondent had spoken to them in the past about their "noise disturbances" and that "no further noise disturbances" would be tolerated. However, the letter did not terminate nor threaten to terminate their tenancy. (Respondent Exhibit K)

18. In 2005, Sak again advised Seiler and Vitale, in writing, about their noise levels. This letter gave them another opportunity to correct their conduct. The letter did not terminate their tenancy. (Respondent Exhibit L)

19. Tiffany Buk ("Buk") was a white tenant who lived in Apartment 409, at 277 North Goodman Street, Rochester New York. In 2006, Sak advised her about her "noise disturbances" and that "no further noise disturbances" would be tolerated. However, the letter did not terminate nor threaten to terminate her tenancy. (Respondent Exhibit K)

20. Respondent thoroughly investigated the noise allegations made against Buk. Respondent took careful consideration to detail in its 2006 letter, all the information on which it based its written warning. Respondent had "lengthy conversations" with complaining "callers." Respondent took the time to review its tenant files and match the license plate involved in the noise incident with the car owned by Buk. Respondent detailed how one caller specifically identified Buk as "oblivious" to the "loud manner" in which she carried herself. (Respondent Exhibit M)

Retaliation

21. In May of 2005, Respondent knew that Complainant was going to file a discrimination complaint. Sak, admitted that Complainant informed her in May of 2005, that he was "...going to the authorities..." because he felt that Respondent was discriminating against him. (Tr. 391) Complainant told Sak that the complaints against him were not legitimate and that he was being singled out because he was a "...young black male..." (Tr. 56-57)

22. Respondent's employees knew when Complainant had filed his discrimination complaint with the Division. Sak informed Nieves when Complainant filed the discrimination complaint. (Tr. 324-325) Nieves described Respondent's management office as a "small" office. Nieves, Sak, Stern, and Foster worked closely. They were aware that Complainant had gone to the Division.

23. After May of 2005, Respondent disposed of Complainant's laundry by discarding it in the dumpster. (Tr.173) Respondent admitted that Complainant's laundry was thrown away. (Tr. 349-352) Respondent's policy was to dispose of clothes left in the laundry "...beyond 1 or 2 days..." (Respondent Exhibit D)

24. Complainant's clothes were thrown away on the same day that Complainant's girlfriend washed his clothes and placed them in the dryer. (Tr. 93) Respondent was aware that Complainant's girlfriend, Jessica Hernandez, was drying Complainant's clothes. Respondent discarded his clothes when she went to obtain quarters to "finish doing the laundry." (Tr.93-94) There is no evidence that the laundry of any tenant had been similarly discarded.

25. In June of 2005, Complainant sought to obtain an indoor parking location. Complainant's inquiries were ignored. He had to make several phone calls to Respondent in order to receive an answer about his parking concerns. (Tr. 63-65) Respondent admitted that

Complainant had to call them “more than once.” (Tr. 318-319)

26. In July of 2005, Respondent placed a note on Complainant’s car window indicating that the “vehicle will be towed if not moved.” (Complainant Exhibit 5) Respondent admitted placing the note on Complainant’s car window.

27. Respondent explained that the note was placed on the vehicle because it looked suspicious and they did not know who owned the vehicle. Respondent admitted that Complainant’s vehicle was properly parked. (Tr.76-78, 311-313) Respondent admitted that they did not do any investigation to determine who owned the vehicle. Respondent did not check the tenant files in order to match the license plate.

28. In September of 2005, Complainant’s garbage disposal broke down. The unit was attached to Complainant’s kitchen sink. Respondent fixed the disposal unit but refused to clean up the mess made during the repair or caused by the broken unit. Respondent did not return the objects initially located under the sink to their original location. Rags and other objects were left in the sink. (Complainant Exhibit 8)

29. Respondent ignored Complainant’s complaint about the mess that was left by the garbage disposal unit. This incident caused Complainant to leave Respondent’s apartment unit. (Tr. 99-100)

Damages

30. Complainant felt that his noise complaint against a white tenant was “disregarded” (Tr. 34-35)

31. When Complainant informed Respondent that he was treated differently because he was a young black male, Respondent answered “oh that’s not the case...that’s not happening.” (Tr. 58, 431) Complainant felt his concerns were “downplayed.” (Tr. 56-58)

32. Complainant testified that Respondent's threat to tow his vehicle made him feel "ridiculed," "targeted," and "persecuted." (Tr. 81)

33. Complainant felt "hopeless" when he attempted to resolve his parking requests with Respondent. (Tr. 65) Complainant had to make several phone calls to receive answers to his parking concerns.

34. Complainant felt "humiliated" and "targeted" when Respondent disposed of laundry in the garbage dumpster. (Tr. 90-95) Complainant spent \$200 dollars to replace his clothes. (Tr. 98)

35. Complainant did not report to Respondent several incidents of vandalism made to his property because his experience indicated that it was "pointless to complain." (Tr. 90) The incidents included a wad of gum left on his mailbox, an offensive note left on his vehicle that called him a "pig", and a scratch mark to his vehicle in Respondent's parking lot. (Tr. 67, 84, 89)

36. In September 2005, Complainant vacated Respondent's apartment when Respondent did not clean up after the repair of the garbage disposal unit. (Tr. 99-100) Complainant paid \$60 for the one day rental of a moving vehicle and \$150 to hire movers. (Tr. 109)

37. Complainant had paid Respondent \$800 a month in rent. Complainant moved into a rental unit where he paid \$300 a month. (Tr. 125)

OPINION AND DECISION

Notice

I find that Respondent received notice of the August 19, 2005 probable cause determination.

Respondent received, at the same address, the notice of the May 31, 2005 verified complaint, the notice of the July 14, 2005 investigatory conference, the notice of the April 19, 2006 prehearing session and the May 19, 2006 hearing notice. Respondent's June 7, 2006 verified answer did not raise a notice issue about the probable cause. Respondent first raised the notice issue during an August 24, 2006 preliminary conference session, only after becoming aware that the Division could not locate the original master investigatory file. The original file contained the signed copy of the probable cause determination.

In any event, the Division cured any alleged procedural defect when it re-served the probable cause determination prior to the start of the September 13, 2006 hearing.

Disparate Treatment

It shall be an unlawful discriminatory practice for "the owner...assignee, or managing agent of, or other person having the right to...rent...a housing accommodation...or any agent employee thereof...to discriminate against any person because of race...color...sex, age...in the terms, conditions or privileges of...rental...of any housing accommodation or in the furnishing of facilities or services in connection therewith." Human Rights Law §296.5(a)(2).

In order to establish a prima facie case of unlawful discrimination Complainant must demonstrate that: (1) he was a member of a protected class; (2) he was qualified to rent the facility; (3) he suffered an adverse housing action in the provision of services or facilities and (4) the adverse housing action occurred under circumstances giving rise to an inference of unlawful discrimination. *Duleavy v. Hilton Hall Apartments Co., LLC, et.al.*, 14 A.D.3d 479, 789 N.Y.S.2d 164 (2nd Dept. 2005).

If Complainant establishes a prima facie case of housing discrimination, the burden shifts to Respondent to produce evidence that the adverse housing decision resulted from a legitimate

non-discriminatory reason. If Respondent articulates a legitimate non-discriminatory reason for the adverse housing action, the burden again shifts to Complainant. Complainant must show that a discriminatory reason more likely motivated Respondent or that Respondent's tendered explanation was unworthy of credence. Under the Human Rights Law, the burden of proving discrimination always remains with Complainant. *Hirschmann v. Hassapoyannes*, 811 N.Y.S.2d 870 (Sup. Ct. 2005).

Complainant established a prima facie case of unlawful discrimination.

First, Complainant was a member of a protected class status. He was a young black male. Second, Complainant demonstrated that he was qualified to rent Respondent's apartment. Respondent entered into a one year lease with Complainant. Third, during the course of his tenancy, Complainant suffered adverse housing actions. Respondent terminated Complainant's lease because of noise complaints. Fourth, Complainant demonstrated that similarly situated white tenants were treated differently. Complainant charged that when he lodged a noise complaint against a white tenant "no action was taken." Allegations of noise complaints made against Complainant were immediately addressed. This difference in treatment gave rise to an inference of unlawful discrimination.

Respondent articulated a business reason for its actions. Respondent argued that it acted against Complainant based on the noise complaints made by other tenants. Respondent believed Complainant was disturbing the quiet enjoyment of the premises. Respondent stated that it had earlier warned Complainant about Complainant's noise disturbances. Respondent also argued that Respondent did not follow through with an actual eviction.

Complainant demonstrated that Respondent's articulated business reason was a pretext for unlawful discrimination. Although Complainant was not evicted, Complainant continued his

tenancy on a month to month basis, under the cloud of an eviction threat. Complainant was deprived of the terms and privileges given to white tenants. White tenants accused of causing too much noise were given more opportunities to correct their behavior. Their leases were not terminated.

The evidence shows that white tenants, Seiler and Vitale, had twice been warned in writing about their noise levels. These letters warned them of possible consequences if they did not correct their conduct. However, neither letter terminated their lease. They were given more opportunities to correct their behavior as compared with Complainant.

The evidence also shows that Respondent took action against Complainant with a lower threshold of information, as compared with the white tenant, Tuk. Respondent's warning letter to Tuk detailed all of the steps taken to confirm that Tuk was cause of noise disturbances. Respondent did not terminate Tuk's lease. In comparison, the letters to Complainant did not give any similar detail. On the contrary, Respondent relied on the complaints of a white tenant, Schwab, who was uncertain if Complainant had actually caused noise disturbances.

In May of 2005, Complainant lodged his own noise complaint against a white tenant. Respondent did not address Complainant's noise complaint. In comparison, the noise complaints made by Schwab were addressed immediately. Schwab, testified that Respondent's reaction to complaints was "extremely thorough" and immediate.

In another instance, Complainant had to make several calls in order to receive a response to his parking concerns. Conversely, Schwab testified that Respondent's response to calls was prompt and attentive.

Complainant demonstrated that Respondent's articulated business reason was unworthy of credence.

Retaliation

Complainant alleged that after he complained about discrimination, Respondent retaliated against him. Human Rights Law §296.7 states in pertinent part that “it shall be an unlawful discriminatory practice...for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he...has opposed any practices forbidden under this article or because he...has filed a complaint, testified or assisted in any proceeding under this article.”

In order to establish a prima facie case of retaliation, Complainant must show that he engaged in protected activity, that Respondent was aware that he had engaged in the protected activity, that Complainant suffered an adverse housing action, and that there is a casual connection between Complainant’s engagement in the protected activity and his adverse treatment by Respondents. *Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3rd Dept. 1999).

Complainant established a prima facie case of retaliation.

First, Complainant engaged in protected activity when he filed a discrimination complaint with the Division in May of 2005. Second, Respondent was aware he had engaged in the protected activity. Respondent admitted knowing that Complainant was “going to the authorities.” Respondent admitted that Complainant informed them that he felt Respondent discriminated against him. In addition, all of Respondent’s employees were aware when he actually filed his complaint. Respondent employees testified that it was a small office and they were all aware that Complainant had filed a discrimination complaint. Third, Complainant demonstrated that after he filed a complaint, he suffered adverse housing actions. Specifically, Respondent discarded all of his laundry and treated him poorly when Complainant requested that

Respondent clean up a mess left during the repair of a defective garbage disposal. Fourth, there is a casual connection between the adverse housing action and the filing of the discrimination complaint. Respondent discarded Complainant's clothes although it was aware that Complainant was in the process of washing and drying his clothes. There was no evidence presented at hearing that this kind of extreme measure had previously been taken against any other tenant who left his or her laundry unsupervised. Respondent's act of discarding Complainant's laundry was outside of their ordinary business practice. There was only one credible explanation for Respondent's acts of discarding Complainant's clothes and not cleaning up the mess caused by the repair of the garbage disposal. Respondent retaliated against Complainant because he was "going to the authorities." Respondent's retaliatory conduct forced Complainant to leave Respondent's apartment unit.

I find that Respondent discriminated against Complainant in the terms and conditions of his tenancy, by treating him differently than white tenants, and retaliating against him for filing a complaint with the Division. The evidence supports the conclusion that Respondent considered Complainant's status as a young black male. "...[T]hose who discriminate unlawfully are not likely to do so in an open, plainly appearing fashion...there is likely to be covert resort to obscure the substantial cause." *Pace College v. Commission of Human Rights of the City of New York*, 38 N.Y.2d 28, 377 N.Y.S.2d 471 (1975). "Discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive. It is accomplished usually by devious and subtle means." *300 Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 N.Y.2d 176, 408 N.Y.S.2d 54 (1978)

Damages

The Human Rights Law attempts to restore a complainant to a situation comparable to the one he would have occupied, had no unlawful discrimination occurred. Complainant is entitled to damages for his economic loss and for the emotional distress and humiliation caused by Respondent's discriminatory treatment. Human Rights Law §297.4(c)

Complainant is entitled to a total of \$410 for out of pocket losses. Complainant spent \$200 to replace the clothes discarded by Respondent. Complainant paid \$60 for the one day rental of a moving vehicle and \$150 to hire movers.

Complainant credibly testified to his reaction to respondent's discriminatory conduct. Respondent's termination of his lease and threat to evict him made him feel "belittled" and "helpless." Complainant felt his noise complaint against a white tenant was "disregarded." Complainant felt "hopeless" when he attempted to resolve his parking requests with Respondent. Respondent's threat to tow his vehicle made complainant feel "ridiculed," "targeted," and "persecuted." Complainant felt "humiliated" when respondent disposed of laundry in the garbage dumpster.

Respondent's actions also had a chilling effect on Complainant's ability to equally exercise the privileges of tenancy as compared with white tenants. Complainant did not report to Respondent several incidents of vandalism made to his personal property. His experience indicated that it was "pointless to complain." In one particular instance, Complainant chose only to report to the police when his car was vandalized in the tenant parking lot.

Given the degree and the length of time that Complainant endured suffering and humiliation, an award of \$20,000 for emotional distress is appropriate. This award is reasonably related to respondent's discriminatory conduct and will effectuate the purposes of the Human Rights Law of making Complainant whole.

Respondent's retaliatory acts of discarding Complainant's clothes and refusing to clean up the mess caused by the repair of the garbage disposal unit were particularly outrageous. Section 297 (4)(c)(iv) of the Human Rights law permits the Division to award punitive damages up to \$10,000 in cases of housing discrimination. In light of the Division's broad mandate to full "[t]he extremely strong statutory policy of eliminating discrimination," a punitive award of \$10,000 will serve to effectuate the purposes of the Human Rights Law. *State Division of Human Rights v. Gruzdaitis et. al.*, 265 A.D.2d 904; 696 N.Y.S.2d 330 (4th Dept. 1999)

Section 297 (4)(c)(vi) of the Human Rights law permits the Division to asses civil fines and penalties, in cases of housing discrimination only, "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."

There are several factors that determine if civil fines and penalties are appropriate: the nature and circumstances of the violation; whether the Respondent had previously been adjudged to have committed unlawful housing discrimination; Respondent's financial resources; the degree of Respondent's culpability, and the goal deterrence. A penalty of \$10,000 is appropriate in this matter given the nature of the violations and the goal of deterrence. Respondent purposely treated Complainant differently because he was a young black male. Respondent subsequently retaliated when Complainant engaged in the protected activity of filing a complaint with the Division. Respondent's discriminatory activity had the particular effect chilling effect on Complainant's ability to equally exercise the privileges of tenancy as compared with white tenants. Respondent's retaliatory acts of discarding Complainant's clothes and refusing to

clean up the mess caused by the repair of the garbage disposal unit were particularly egregious. Respondent's retaliatory actions caused Complainant to vacate the apartment unit. *Matter of 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)*

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, its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any employee in the terms and conditions of employment; and it is further

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

1. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant the gross sum of \$410, as damages for out of pocket loses.
2. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay to Complainant the sum of \$20,000 as compensatory damages for mental anguish and humiliation he suffered as a result of Respondent's unlawful discrimination against him. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondent, in accordance with CPLR §5002 and §5004.
3. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay

to Complainant the sum of \$10,000 as punitive damages for Respondent's unlawful discrimination against him. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondent, in accordance with CPLR §5002 and §5004.

4. The payments shall be made by Respondent in the form of certified checks, made payable to the order of Tyrea Simmons and delivered by certified mail, return receipt requested, to Caroline Downey, Acting General Counsel of the Division, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

5. Within thirty days of the date of the Commissioner's Final Order, Respondent shall pay to the New York State Office of the State Comptroller the sum of \$10,000 as a civil fine and penalty for Respondent's unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondent, in accordance with CPLR §5002 and §5004.

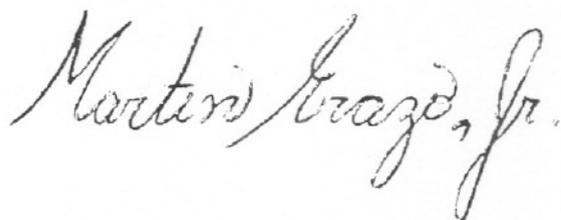
6. The payment of the civil fine and penalty shall be made by Respondent in the form of a certified check, made payable to the order of the New York State Office of the State Comptroller and delivered by certified mail, return receipt requested, to 110 State Street, Albany, New York 12244. A copy of the certified check shall be delivered by certified mail, return receipt requested, to Caroline Downey, Acting General Counsel of the Division, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

7. Within thirty days of the Final Order, Respondent shall establish policies regarding the prevention of unlawful discrimination. These policies shall include the formalization of a reporting mechanism for employees and tenants in the event of discriminatory behavior or treatment; development and implementation of a training program in the prevention of unlawful

discrimination in accordance with the Human Rights Law . Training shall be provided to all employees. A copy of the policy shall be provided to Caroline Downey, Acting General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

8. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: May 24, 2007
Buffalo, New York

A handwritten signature in cursive script that reads "Martin Erazo, Jr." The signature is written in dark ink and is positioned above the typed name.

Martin Erazo, Jr.
Administrative Law Judge