

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

In the Matter of the Application of
HDMJ RESTAURANT, INC.

TRIAL/IAS, PART 31
NASSAU COUNTY

Petitioner.

Sequence No.: 001
Index No.: 013959/07
XXX

For a Judgment under New York State
Executive Law §298 to reverse and/or modify
the Final Order After Hearing of the Respondents
which determined that the Petitioner had
unlawfully discriminated and retaliated against
Ms. Germelia Joseph based on gender, national
origin, disability and race.

- against -

THE NEW YORK STATE DIVISION OF
HUMAN RIGHTS and KUMIKI GIBSON,
COMMISSIONER, NEW YORK STATE
DIVISION OF HUMAN RIGHTS.

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Respondents.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Petition and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	

Petitioner's application for an order pursuant to Executive Law §298 to reverse and/or modify the final order after hearing of respondents' which determined that petitioner had unlawfully discriminated and retaliated against its former employee, Germellia Joseph, based on gender, national origin, disability and race is granted as set forth below.

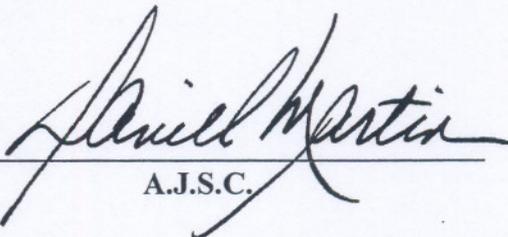
Petitioner seeks the relief set forth above on the grounds that 1) petitioner was not given notice of the date of the April 12, 2007 hearing upon which the determination of Administrative Law Judge Thomas S. Protano dated May 18, 2007 and which was adopted by order of the

Commissioner, New York State Division of Human Right was made; 2) said determination was arbitrary and capricious in that it was excessive and not supported by the facts adduced at hearing; and 3) back wages were awarded in error.

At the outset, based upon petitioner's submissions, the court finds that it has adequately demonstrated that it was not given sufficient notice of the hearing date before the Administrative Law Judge. Regardless, in their answer respondents indicate that they are "willing to reopen the administrative proceedings to allow petitioner to present its defenses."

Based upon the foregoing, the order dated June 11, 2007 which adopted the findings of Administrative Law Judge Thomas S. Protano dated May 18, 2007 in the matter New York State Division of Human Rights on the complaint of Germalia Joseph v. HDMJ Restaurant, Inc., (Case No. 10110548) is hereby vacated. Said matter is remanded to Respondent New York State Department of Human Rights for further proceedings and ultimate resolution.

So Ordered.


A.J.S.C.

Dated: October 26, 2007