

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32821
Y/kmb

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Submitted - October 13, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2011-02580

DECISION & JUDGMENT

In the Matter of New York State Division of Human Rights, et al., petitioners, v Ben Rottenstein Associates, Inc., et al., respondents.

(Index No. 26531/10)

The Watanabe Law Firm, LLC, New York, N.Y. (William Keith Watanabe of counsel), for petitioner Norman Parnass.

Proceeding pursuant to Executive Law § 298 to enforce a determination of the Commissioner of the New York State Division of Human Rights dated June 7, 2010, which adopted the recommendation and findings of an administrative law judge dated March 31, 2010, made after a hearing, finding that the respondents discriminated against the complainant on the basis of age and retaliated against him for opposing the discriminatory practices, and awarded the complainant the principal sums of \$188,750 for back pay, \$26,192.40 in compensatory damages for unused sick and vacation days, \$7,067.50 in compensatory damages for the complainant's share of the 2006 profits of the respondent Ben Rottenstein Associates, Inc., and \$15,000 in compensatory damages for mental anguish.

ADJUDGED that the petition is granted, the determination is confirmed, with costs, and the respondents are directed to pay the complainant the principal sum of \$188,750.00, plus interest at the rate of 9% per year from February 15, 2008, the principal sum of \$26,192.40, plus interest at the rate of 9% per year from October 11, 2006, the principal sum of \$7,067.50, plus interest at the rate of 9% per year from December 31, 2006, and the principal sum of \$15,000.00, plus interest at the rate of 9% per year from June 7, 2010.

November 9, 2011

Page 1.

MATTER OF NEW YORK STATE DIVISION OF HUMAN RIGHTS
v BEN ROTTENSTEIN ASSOCIATES, INC.

The determination of the Commissioner of the New York State Division of Human Rights (hereinafter the Commissioner), finding unlawful discrimination in employment, is supported by substantial evidence (*see Matter of MTA Trading, Inc. v Kirkland*, 84 AD3d 811, 814; *Matter of New York State Div. of Human Rights v Independent Auto Appraisers, Inc.*, 78 AD3d 1541, 1542; *Matter of Iona Coll. v Gibson*, 62 AD3d 878; *Matter of Miller Brewing Co. v State Div. of Human Rights*, 166 AD2d 705, 706), as is the Commissioner's determination that the respondents retaliated against the complainant for opposing the unlawful discrimination (*see Matter of New York State Dept. of Correctional Servs. v New York State Div. of Human Rights*, 53 AD3d 823, 825-826).

The Commissioner's determination that the complainant sustained mental anguish as a result of the respondents' unlawful actions is supported by substantial evidence. Moreover, the award of \$15,000 for mental anguish "is reasonably related to the wrongdoing, is supported by substantial evidence, and is similar to comparable awards for similar injuries" (*Matter of MTA Trading, Inc. v Kirkland*, 84 AD3d at 814 [internal quotation marks omitted]; *see Matter of Town of Lumberland v New York State Div. of Human Rights*, 229 AD2d 631, 637).

The Commissioner's determinations that the complainant is entitled to compensation for unused vacation and sick days and a share of the 2006 annual net profits of the respondent corporation are based on, among other factors, the terms of the complainant's employment agreement and the respondent corporation's tax returns. Accordingly, those determinations are supported by substantial evidence.

Lastly, the back pay award is also supported by substantial evidence, which includes testimony regarding the complainant's numerous efforts to mitigate his damages following his termination (*see Matter of Goldberg v New York State Div. of Human Rights*, 85 AD3d 1166, 1168).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court