

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

D23437
G/prt

_____AD3d_____

Argued - April 2, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2008-02235

DECISION & JUDGMENT

In the Matter of Carl Palmblad, d/b/a
Smilemakers, petitioner, v Kumiki Gibson,
etc., et al., respondents.

(Index No. 25951/07)

Jacobson, Goldberg & Kulb, LLP, Garden City, N.Y. (Jeffrey A. Granat of counsel),
for petitioner.

Caroline J. Downey, Bronx, N.Y. (Marilyn Balcacer of counsel), for respondent
Kumiki Gibson (no brief filed).

Raymond Nardo, Mineola, N.Y., for respondent Veronica Rinaldi.

Proceeding pursuant to Executive Law § 298 to review a determination of the
Commissioner of the New York State Division of Human Rights dated June 29, 2007, which adopted
the recommendation of an Administrative Law Judge dated May 31, 2007, made after a hearing, inter
alia, finding that the petitioner unlawfully discriminated against Veronica Rinaldi on the basis of her
pregnancy in violation of Executive Law § 296, and awarding her damages in the principal sums of
\$65,032 for back pay and \$30,000 for mental anguish. The New York State Division of Human
Rights cross-petitions pursuant to Executive Law § 298 to enforce the determination.

ADJUDGED that that branch of the petition which is to annul the damages awards
is granted, on the law, without costs or disbursements, those portions of the determination awarding
Veronica Rinaldi damages in the principal sums of \$65,032 for back pay and \$30,000 for mental
anguish are annulled, the determination is otherwise confirmed, the proceeding is otherwise
dismissed on the merits, and the matter is remitted to the New York State Division of Human Rights

June 9, 2009

Page 1.

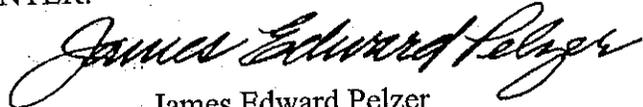
MATTER OF PALMBLAD, d/b/a SMILEMAKERS v GIBSON

for the imposition of a new damages award for back pay consistent herewith and a new damages award for mental anguish in an amount not to exceed the sum of \$5,000.

The determination of the Commissioner of the New York State Division of Human Rights that Veronica Rinaldi was discriminated against on the basis of her pregnancy is supported by substantial evidence (see *Rainer N. Mittl v New York State Div. of Human Rights*, 100 NY2d 326, 331-332; *Matter of A.S.A.P. Personnel Servs. v Rosa*, 219 AD2d 648). However, the amount awarded for back pay was improper. 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" (*Rio Mar Rest. v New York State Div. of Human Rights*, 270 AD2d 47, 48). Here, the record demonstrates that Rinaldi failed to diligently seek new employment from the time of her discharge on May 7, 2003, until January 1, 2004, and that after February 2004, she failed to diligently seek a position offering hours similar to those of her prior position. Further, based on, inter alia, the awards rendered in similar cases, we find that the award of damages for mental anguish was excessive to the extent indicated (see *Matter of State of New York v New York State Div. of Human Rights*, 284 AD2d 882, 884; *Matter of A.S.A.P. Personnel Servs. v Rosa*, 219 AD2d at 649; *Matter of Cosmos Forms v State Div. of Human Rights*, 150 AD2d 442, 443-444).

SKELOS, J.P., FLORIO, LEVENTHAL and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court