



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

LEON H. MARTIN, III,

Complainant,

v.

PAUL J. NOE,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10143241

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 December 20, 2011, by Martin Erazo, Jr., 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:

3/7/12
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

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PAUL J. NOE,

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

Case No. **10143241**

SUMMARY

Respondent denied Complainant a commercial space because Complainant is African-American. Respondent is liable to Complainant for \$10,000 in pain and suffering damages. Complainant did not establish any economic loss for the denial of commercial space.

Respondent is also liable to the State of New York in the amount of \$20,000 in civil fines and penalties.

PROCEEDINGS IN THE CASE

On August 13, 2010, 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”).

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 Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on August 3, 2011.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq., Senior Attorney. Respondent appeared pro se. ALJ Erazo gave Respondent several opportunities before and during the hearing to obtain counsel. Respondent repeatedly declined the opportunity. (Tr. 14-15, 52-53, 80, 108-09, 113)

The parties submitted timely post-hearing briefs.

FINDINGS OF FACT

1. Respondent owns a commercial space on the first floor of 1582 Kenmore Avenue, Buffalo, New York 14216 (“1582 Kenmore Avenue”). (ALJ Exhibits 1, 2, 4; Respondent’s Exhibits 4, 5)
2. Respondent has owned the building at 1582 Kenmore Avenue for approximately 16 years. (Tr. 257, 260)
3. In early 2008 Respondent advertised the 1582 Kenmore Avenue commercial property for rent on the internet website, Craigslist, after his own business outgrew the location. (Tr. 243)
4. In December in 2008, after having no success in obtaining a commercial tenant for 1582 Kenmore Avenue, Respondent attempted to sell the building by placing it with a realtor. (Tr. 243)

5. In July 2009, after having no success in selling the 1582 Kenmore Avenue building, Respondent again placed the commercial space for rent on Craigslist. (Tr. 244-45)
6. Complainant is African-American. (Tr. 126)
7. Complainant and his wife, Jean Liu (“Liu”), have owned a debt collection agency called Henderson, Weinstein, Wyatt, & Associates (“HWWA”) since June of 2009. (Tr. 98-99, 127-28, 161, 166)
8. Complainant had been running his debt collection business out of his basement. (Tr. 150)
9. In August of 2009 Complainant searched on Craigslist seeking a commercial office space for his debt collection business. (Tr. 36)
10. On August 23, 2009, Complainant found and responded to Respondent’s Craigslist advertisement for the 1582 Kenmore Avenue commercial space. (Tr. 36-38, 128, 130)
11. Complainant telephoned Respondent at Respondent’s business, Capo US, Inc. (“Capo”). (Tr. 236-37)
12. Capo is an underwriting commercial inspection business used by commercial insurance companies. (Tr. 236-37)
13. Capo US Inc. does not own Respondent’s 1582 Kenmore Avenue building. (257-58)
14. On August 23, 2009 Complainant and Respondent agreed to meet the following day at Respondent’s commercial space location, 1582 Kenmore Avenue. (Tr. 36-38, 128, 130)
15. During the August 23, 2009 phone conversation Complainant informed Respondent that Complainant’s business was debt collection. (Tr. 40, 133-35)

16. During the August 23, 2009 phone conversation Respondent confirmed that he was the owner of the commercial space, 1582 Kenmore Avenue, and that it was still available. (Tr. 40, 133-35)

17. Aaron Martin (“A. Martin”) is African –American. (Tr. 35)

18. A. Martin is Complainant’s brother. (Tr. 35-36)

19. On August 24, 2009, Complainant and his brother, A. Martin, met with Respondent at approximately 12:10 p.m. (Tr. 132, 244-45)

20. Respondent explained to Complainant that the commercial space was only the first floor of the two story building located at 1582 Kenmore Avenue. (Tr. 47-50, 246)

21. Respondent informed Complainant that the commercial space had been unoccupied for the better part of a year. (Tr. 149)

22. Respondent asked Complainant how many people would occupy the commercial space but did not raise any concern regarding the number of employees. Complainant informed Respondent that he had a total of six employees at the time. (Tr. 101,140-42, 212)

23. Complainant informed Respondent that he may eventually have as many as 12 employees. (Tr. 190, 204)

24. Complainant again informed Respondent that the nature of Complainant’s business is debt collection. (Tr. 246-47)

25. Complainant informed Respondent that his business was open from 9 a.m. to 9 p.m., Monday through Thursday, and 9 a.m. to 6:15 p.m. on Friday. (Tr. 142-43)

26. Respondent explained that the monthly rent would be would be a total of \$750 representing \$550 for rent plus \$200 for utilities. (Tr. 41, 146)

27. Respondent also required a security deposit of \$750. (Tr. 42, 148, 216-17)

28. Respondent also stated the following rental conditions: that no one could sit on the sink; that activating the security system would cost an additional \$200 a year; the requirement of a one year lease; and proof of Complainant's business insurance. (Tr. 146-48)

29. Respondent and Complainant agreed that they would meet on the following day, August 25, 2009, when Respondent would present Complainant with a lease and the keys. Complainant agreed to bring \$1,500 in cash or certified check. (Tr. 42-43, 148-49)

30. Respondent and Complainant agreed that the lease would begin on September 1, 2009. (Tr. 149)

31. Respondent testified that he decided not to rent to debt collection businesses the evening of August 24, 2009, after he met Complainant and his brother. (Tr. 250-51)

32. On the morning of August 25, 2009, A. Martin called Respondent to confirm the time that they were to meet. Respondent replied that he was concerned about his "two white female tenants upstairs." When A. Martin asked Respondent for clarification regarding the concern, Respondent stated "I'm really concerned about my two white female tenants upstairs and you guys downstairs." (Tr. 50-52, 55, 74-76, 106, 151-52, 202, 224)

33. Complainant immediately called Respondent. However, Complainant was informed that Respondent could not come to the phone because Respondent was in a meeting. (Tr. 153)

34. Respondent admitted at public hearing that he was avoiding Complainant's calls on the morning of August 25, 2009. Respondent testified that "he did not know what to say to [Complainant]" since Respondent had decided not to rent to him. Respondent instructed his secretary "to take a message" when Complainant called. (Tr. 251-52)

35. Since Complainant could not communicate with Respondent, Complainant wanted to see if Respondent would respond to someone else's phone call about Respondent's commercial

property. Complainant had one of his collectors, Julie Allen (“Allen”), a white female employee, follow up and speak with Respondent, posing as an interested renter with a debt collection business. (Tr. 59-62, 153, 220)

36. Although Respondent’s secretary informed Allen that Respondent did not rent to debt collection businesses, the proof established that Respondent was actively screening phone calls on the morning of August 25, 2009. During a portion of the conversation with Allen, Respondent’s secretary activated the speakerphone function. Complainant and his brother heard Respondent and staff directing Respondent’s secretary how to respond to Allen’s questions. (Tr. 81-82, 153-54, 202-03)

37. Complainant then called Respondent and insisted on speaking with Respondent. When Respondent came to the phone, Complainant told Respondent, “I thought we had an agreement.” Complainant also told Respondent that Complainant had the rental money. Respondent again stated, “I’m really concerned about my two white female tenants upstairs and you guys downstairs.” (Tr. 63-65, 92, 155-56, 202)

38. After Complainant questioned Respondent’s change of mind, Respondent stated that he did not want a collection business or telemarketing business. (Tr. 69, 156-57, 233)

39. Respondent told Complainant that Complainant’s collection business would make too much evening noise, disturb his upstairs residential tenants, and that Respondent was concerned with overcrowding. (Tr. 254-55, 268, 270-72, 287)

40. I do not credit Respondent’s testimony at public hearing that he was an inexperienced landlord. Respondent blames his inexperience for failing to appropriately handle his interaction with Complainant. Respondent claims that he should have informed Complainant earlier that Respondent did not want a debt collection firm as a commercial tenant. (Tr. 255-56, 260)

41. During the 16 years Respondent has had six residential tenants in the upstairs apartment and three commercial tenants in the commercial space on the downstairs floor at 1582 Kenmore Avenue. (Tr. 260, 275)

42. Respondent crafted individualized leases for each of his residential and commercial tenants “every single time.” (Tr. 273, 275, 277)

43. I do not credit Respondent’s testimony that he never told Complainant, or Complainant’s brother, the race or gender of the upstairs tenants. (Tr. 263)

44. Respondent testified that the upstairs tenants worked, were not in the apartment during the day, and usually arrived around 5:15 p.m. Complainant or Complainant’s brother did not see the upstairs tenants. (Tr. 271)

45. Respondent confirmed that his upstairs residential tenants were actually two white females. (Tr. 263)

46. Of Respondent’s nine residential and commercial tenants, none were African-American. (Tr. 260-61)

47. Respondent admitted that he would include a noise level provision in any lease if he found it necessary. (Tr. 273)

48. Respondent subsequently rented the commercial space Complainant sought to Lisa Jeris for her business called “Get Waxed.” (ALJ Exhibit 4; Tr. 274, 280)

Damages

49. Complainant described himself as a 56 year old, six foot one, African-American male. Complainant testified that during his life many individuals have described his appearance as intimidating. Complainant indicated that after his negative encounter with Respondent,

Complainant wanted to eliminate his own size and appearance as an issue in seeking a rental for his growing business. (Tr. 159-62, 177-78, 304-05, 304)

50. Accordingly, Liu, Complainant's wife, who is of Asian origin, began her own company, Freidman, Liu, Kahn ("FLK"). FLK served as a "front" for Complainant's business, HWWA, in order to obtain commercial space. (Tr. 159-62, 177-78, 304-05, 304)

51. On October 1, 2009, Complainant obtained a commercial space comparable to Respondent's 1582 Kenmore Avenue location through FLK. (Tr. 174)

52. On October 1, 2009, FLK obtained a commercial space at \$750 a month that includes water and gas. FLK pays the monthly rental and electric. Electricity is not included in the monthly rental. HWWA reimburses FLK for the rental and electric by paying FLK \$3,500 a month for all costs. (Tr. 161-67, 171-72, 296-97, 300-02)

53. At public hearing no evidence was submitted regarding the actual cost of electricity.

54. Complainant found Respondent's treatment of him "very, very hurtful," "very disappointing," and a "complete smack in the face." (Tr. 159, 167-69)

55. Complainant found Respondent's actions "very hurtful" because he was starting a business, trying to get people employment in the middle of a recession, trying to send his daughters to college and Respondent denied him an opportunity "just simply because of the color of my skin." (Tr. 169)

56. Complainant testified that Respondent's treatment of him reminded him of when he was a child and visited his grandfather in Alabama. Complainant and his grandfather went to the movies but had to enter "in the side door." Complainant recalls how he asked his grandfather why he could not go through the front door of the movie house. (Tr. 168)

57. ALJ Erazo observed Complainant's demeanor as he testified about his reactions to Respondent's discriminatory activity that took place on August 25, 2009. Complainant's demeanor was consistent with his own testimony. Nearly two years later at public hearing, August 3, 2011, Complainant appeared disgusted, upset, and annoyed, at Respondent's discriminatory actions.

OPINION AND DECISION

Disparate Treatment

“It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space... To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race... of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available...” Human Rights Law §296.5(b) (1)

“The term ‘commercial space’ means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied ...as a separate business or professional unit or office in any building, structure or portion thereof.” Human Rights Law §292.13

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. *Dunleavy 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 (N.Y. Sup. Ct. 2005).

Complainant established a prima facie case of unlawful discrimination.

First, Complainant was a member of a protected class. Complainant is African-American. Second, Complainant demonstrated that he was qualified to rent Respondent's facility. Complainant had a business and was financially able to rent Respondent's commercial space. Third, Complainant suffered an adverse housing action. Respondent refused to rent to Complainant a commercial space. Fourth, the adverse housing action occurred under circumstances giving rise to an inference of unlawful discrimination. When Complainant first spoke with Respondent by telephone, Respondent was eager to rent the commercial space to him. The next day, after Respondent met Complainant and his brother in person, Respondent changed his mind about renting the commercial space to Complainant.

Respondent articulated business reasons for his actions. Respondent argued that he is an unsophisticated landlord and should have expressed his concerns about the debt collection business much sooner to Complainant. Respondent believed that Complainant's debt collection

business would make too much evening noise, disturb the upstairs residential tenants, and Complainant's debt collection business would cause overcrowding with too many employees.

Complainant demonstrated that Respondent's articulated business reasons are not worthy of credence. Respondent denied Complainant the commercial space solely because Complainant is African-American.

First, Respondent testified about his frustration in finding any commercial tenant since early 2008. At public hearing, Respondent detailed his failed efforts during an approximate period of a year and a half, in obtaining an interested commercial tenant or potential buyer. Respondent was not concerned about the debt collection business during the year and a half he sought a commercial tenant. On August 23, 2009, Complainant spoke with Respondent by telephone and informed Respondent of Complainant's debt collection business. At that point in time Respondent did not change his attitude towards the debt collection business. Respondent proceeded to meet with Complainant the very next day, August 24, 2009. Respondent had no problem with the debt collection business until he met Complainant. Respondent changed his mind about renting to Complainant when Respondent saw Complainant is African-American.

Second, Respondent is not an unsophisticated landlord as Respondent currently claims. To the contrary, Respondent is an experienced businessman and landlord. Respondent is in the business of reviewing commercial properties and assessing risk for insurance companies. Respondent personally tailors each and every new residential and commercial lease to meet Respondent's business concerns. No two leases are the same. Respondent admitted that if he saw the need he would include a noise level provision in a lease. Respondent did not use his vast experience as a landlord to tailor a lease to address Complainant's potential use of Respondent's commercial space. Given Respondent's vast experience with tailoring lease provisions for each

new tenant, Respondent could have easily negotiated lease provisions with Complainant that established a ceiling for the number of future employees, the hours of operation, or noise levels.

Third, Respondent told both Complainant and Complainant's brother on August 25, 2009, that Respondent did not want to rent the commercial space because he was "...really concerned about my two white female tenants upstairs and you guys downstairs." I do not credit Respondent's testimony when he claims that he never told Complainant or Complainant's brother about the race or gender of his upstairs residential tenants. The upstairs tenants were not there during the day. Complainant or Complainant's brother did not see them. Complainant credibly testified that he obtained a detailed description of the upstairs tenants only when Respondent gave him that information.

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondent's violation of the Human Rights Law. Human Rights Law § 297.4(c)(iii) The award of compensatory damages may be based solely on a complainant's testimony. Indeed, "[m]ental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct." *New York City Transit Auth. v. N.Y. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991); *Cullen v. Nassau County Civil Service Commission*, 53 N.Y.2d 452, 442 N.Y.S.2d 470 (1981). The severity, frequency, and duration of the conduct, may be considered in fashioning an appropriate award. *New York State Dep't of Corr. Servs. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996). In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record, and comparable to awards for similar injuries.

N.Y. State Div. of Human Rights v. Muia, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Complainant credibly testified about the negative effect caused by Respondent's discriminatory conduct. Complainant testified that Respondent's treatment of him in August 2009 was "very disappointing" and a "complete smack in the face." Complainant found Respondent's actions "very hurtful" because Respondent denied him an opportunity "just simply because of the color of [his] skin." Respondent's treatment of Complainant recalled vivid memories of his childhood when he visited his grandfather in racially segregated Alabama. Complainant relived going to the movies with his grandfather and entering the movie house through a side door. Complainant relived the conversations of having to ask his grandfather why they could not enter through the front door of the movie house. Complainant testified that his interaction with Respondent also caused him to consider the impression he has on others as a tall African-American male trying to engage in business. Complainant saw the need to hide his appearance as an African-American male behind a "front" corporation run by his wife, who is of Asian origin, in order to obtain the commercial space that he sought. Complainant's demeanor at public hearing, on August 3, 2011, was consistent with his own testimony. Nearly two years later after Respondent's discriminatory actions on August 25, 2009, Complainant appeared disgusted, upset, and annoyed, at Respondent's discriminatory actions.

Given Respondent's conduct, the degree and duration of Complainant's suffering, an award of \$10,000 for emotional distress is appropriate and would effectuate the purposes of the Human Rights Law of making Complainant whole. *Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540, (November 15, 2007), (Commissioner awarded complainant \$8,000 for mental anguish when she was denied a rental because of familial status. Complainant

was upset at the discriminatory treatment.) *aff'd*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009); *Palmisano v. New Venture Gear*, SDHR Case No. 5752007, (June 28, 2006), (Commissioner awarded complainant \$10,000. After being terminated Complainant was lethargic, confused, in a state of shock, humiliated, and had trouble sleeping.) *aff'd*, *New Venture Gear, Inc. v. N.Y. State Div. of Human Rights (Palmisano)*, 41 A.D.3d 1265, 839 N.Y.S.2d 375 (4th Dept. 2007)

Economic Damages

Complainant did not establish that he had any economic losses. Complainant sought to move his business from the basement of his home to Respondent's commercial space. When Respondent denied Complainant the commercial space, Complainant's status quo remained. There was no proof that it was more costly for Complainant to keep his business at his home location. In addition, several weeks later, Complainant found a comparable commercial space at the same rental rate offered by Respondent. Respondent's rental rate included utilities. Complainant claims that at the new location Complainant paid separately for electricity. However, there was no proof in the record to support this claim.

Civil Fines and Penalties

Human Rights Law § 297 (4)(c)(vi) permits the Division to assess civil fines and penalties, "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."

Human Rights Law § 297 (4)(e) requires that "any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any

other damages or payment imposed upon a respondent pursuant to this article.”

A penalty of \$20,000 is appropriate in this matter. *Wilson-Shell v. Stennett* SDHR Case No. 10113269, (November 30, 2007), (\$25,000 civil fine); *Simmons v. Stern Properties* SDHR Case No. 10105887, (June 27, 2007), (\$10,000 civil fine).

There are several factors that determine if civil fines and penalties are appropriate: the goal of deterrence; the nature and circumstances of the violation; the degree of respondent’s culpability; any relevant history of respondent’s actions; respondent’s financial resources; other matters as justice may require. *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)

The goal of deterrence warrants a penalty. Respondent denied Complainant a commercial space solely because Complainant is African-American. Respondent had never rented to an African-American. Respondent told Complainant that he was concerned for his two upstairs white female residential tenants if he were to have Complainant and his brother as downstairs tenants.

The nature and circumstances of Respondent’s violation warrants a penalty. Respondent was more concerned with Complainant’s race than Respondent’s business. Respondent’s claim that he did not want Complainant’s debt collection business on his commercial property is patently incredible. Respondent admitted that he had been seeking to sell or rent his commercial property since early 2008 with no success. It would be irrational to conclude that after all of Respondent’s concerted efforts, during a period of a year and half, that Respondent would suddenly dismiss a viable commercial tenant such as Complainant.

Respondent’s degree of culpability warrants a penalty. Respondent’s actions in denying Complainant commercial space were well thought out and deliberate. At public hearing,

Respondent attempted to paint a picture of an unsophisticated landlord that ineptly handled a potential commercial tenant. To the contrary, Respondent is an astute, savvy landlord, and business owner, with many years of commercial experience. Respondent had a 16 year history of personally tailoring residential and commercial leases based on Respondent's needs. Respondent also owns and operates a commercial enterprise whose very purpose is to make commercial risk assessments for insurance companies.

There was no proof that Respondent was adjudged to have committed any previous similar violation of the Human Rights Law or incapable of paying any penalty.

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 tenant in the terms and conditions of housing; 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 sixty days of the date of the Commissioner's Final Order, Respondent, Paul J. Noe, shall pay to Complainant, Leon H. Martin III, the sum of \$10,000 as compensatory damages for mental anguish and humiliation Complainant 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.

2. The payments shall be made by Respondent, Paul J. Noe, in the form of a certified check, made payable to the order of Leon H. Martin III and delivered by certified mail, return receipt requested, to his address 74 Thistle, Williamsville, New York 14221. A copy of the certified check shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

3. Within sixty days of the date of the Commissioner's Final Order, Respondent, Paul J. Noe, shall pay to the State of New York the sum of \$20,000 as a civil fine and penalty for his violation of the Human Rights Law. 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.

4. The payment of the civil fine and penalty shall be made by Respondent, Paul J. Noe, in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

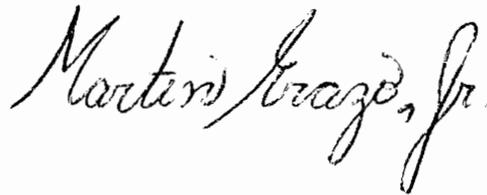
5. Within sixty days of the Final Order, Respondent, Paul J. Noe, shall establish a policy regarding the prevention of unlawful discrimination. This policy shall include the formalization of a reporting mechanism for all rental applicants, and tenants, in the event of discriminatory behavior or treatment. In addition, Respondent, Paul J. Noe, shall attend a training program in the prevention of unlawful discrimination in accordance with the Human Rights Law.

Respondent Paul J. Noe's employees shall also attend a training program in the prevention of unlawful discrimination. A copy of the policy, the reporting mechanism, and proof of attendance at an anti-discrimination program, shall be provided to Caroline Downey, Esq., General Counsel

of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Respondent, Paul J. Noe, shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained in this Order.

DATED: December 20, 2011
Buffalo, New York

A handwritten signature in cursive script that reads "Martin Erazo, Jr.".

Martin Erazo, Jr.
Administrative Law Judge