



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

JOSE RODRIGUEZ,

Complainant,

v.

LORENZO INTERNATIONAL, INC., GREGORY
V. LORENZO, INDIVIDUALLY,

Respondents.

NOTICE AND
FINAL ORDER

Case No. 10131767

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 January 31, 2012, 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”), WITH THE FOLLOWING AMENDMENTS:

- Due to an arithmetic error in Finding of Fact number 74 of the Recommended

Order, the lost wage award was miscalculated. The correct lost wage is \$26,092.

Interest shall be paid on this amount at a rate of nine percent per annum from May 23, 2010, a reasonable intermediate date (not January 12, 2010, as stated in the Recommended Order), until the date payment is made.

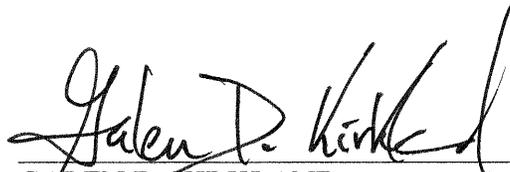
- The Recommended Order is otherwise adopted in full as the Final Order of the Division.

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: 4/30/12
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

JOSE RODRIGUEZ,

Complainant,

v.

**LORENZO INTERNATIONAL, INC.,
GREGORY V. LORENZO, individually,**

Respondents.

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

Case No. **10131767**

SUMMARY

Respondents subjected Complainant to a hostile work environment based on race and national origin. Complainant is Hispanic of Puerto Rican origin. Respondents also constructively discharged Complainant. Respondents are liable to Complainant for \$26,042 in lost wages and \$60,000 for pain and suffering.

PROCEEDINGS IN THE CASE

On March 11, 2009, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

On November 9, 2010, after investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents 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. Public hearing sessions were held on August 10, 2011 and August 23, 2011.

Complainant appeared at the hearing. Complainant was represented by the law offices of Lipsitz, Green, Scime, Cambria, L.L.P., John M. Lichtenthal, Esq., of counsel.

Respondents failed to appear before the Division to defend against the complaint. Respondents defaulted pursuant to 9 N.Y.C.R.R. §465.11(e). The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. §465.12(b) 3.

Complainant’s counsel made closing arguments on the record in lieu of submitting a post-hearing brief.

FINDINGS OF FACT

Notice

1. Complainant’s March 11, 2009, verified complaint with the Division placed Mr. Lorenzo on notice that his personal actions were at issue. The verified complaint specifically charges that all of the unlawful discriminatory activity alleged by Complainant was personally performed by Mr. Lorenzo. (ALJ Exhibit 10)

2. In response to the verified complaint, Mr. Lorenzo actively participated in the Division’s investigatory process. Mr. Lorenzo was represented by counsel. (ALJ Exhibit 9)

3. Notice is taken that on November 9, 2009, Mr. Lorenzo participated in the Division's investigatory conference.

4. On November 9, 2010, after investigation, the Division issued a probable cause determination and ordered this matter to a public hearing. The probable cause determination was not returned to the Division and was, therefore, presumed received by all the parties. (ALJ Exhibit 9)

5. In November 2010, Randolph Oppenheimer ("Oppenheimer"), Esq., informed the Division that he no longer represented Respondent Lorenzo International, Inc., ("International"). Oppenheimer was International's attorney at the Division's investigatory stage. Oppenheimer indicated that future correspondence should be sent to International's new attorney, Thomas Palmer ("Palmer"), Esq. (ALJ Exhibit 4)

6. Palmer informed the Division that he has never been International's attorney. (ALJ Exhibit 5)

7. Respondent Gregory V. Lorenzo ("Mr. Lorenzo") is the owner and operator of International. Mr. Lorenzo's approval was needed as to all hiring, firing, and business decisions made by the company. (ALJ Exhibit 9; Tr. 42-45, 47-48)

8. The New York State Department of State ("NYS DOS"), Division of Corporations, also lists Mr. Lorenzo as the "Chairman or Chief Executive Officer" of "Lorenzo International, Inc." (ALJ Exhibit 6)

9. NYS DOS lists "Lorenzo International, Inc." as an active corporation. (ALJ Exhibit 6)

10. NYS DOS lists International's principal executive office as "3575 Chadwick Bay Drive, Dunkirk, New York, 14048." (ALJ Exhibit 6)

11. On May 23, 2011, the Division's Calendar unit mailed hearing letters to all the parties in advance of the formal hearing notices. International's hearing letter was mailed to 3575 Chadwick Bay Drive, Dunkirk, New York, 14048. (ALJ Exhibit 1)

12. On June 2, 2011, the United States Postal Service ("USPS") returned the May 23, 2011 hearing letters sent to International. USPS identified International's forwarding address as "PO Box 471, Dunkirk, New York 14048." (ALJ Exhibits 1, 2)

13. On June 13, 2011, the Division's Calendar unit mailed hearing letters to all the parties, in advance of the formal hearing notices. International's hearing letter was sent to "PO Box 471, Dunkirk, New York 14048." (ALJ Exhibit 3)

14. On June 27, 2011 the Division's Calendar unit served formal notices of hearing on all parties. International was served at PO Box 471, Dunkirk, New York 14048. The formal notices stated the dates of July 12, 2011, for the preliminary conference, and August 10, 2011, for the public hearing. (ALJ Exhibit 7)

15. The June 13, 2011, hearing letters and the June 27, 2011 formal notices were not returned to the Division and are, therefore, presumed received by all parties.

16. Respondents did not appear at either the July 12, 2011 preliminary conference or the August 10, 2011 public hearing. (Tr. 5-6, 16-17)

17. At the August 10, 2011 public hearing, a second public hearing session was scheduled for August 23, 2011. (Tr. 120-21)

18. On August 16, 2011, the Division's Calendar unit served formal notices of hearing on all parties informing them of the second hearing date. International was served at PO Box 471, Dunkirk, New York 14048. International was also served at a second address identified at the

public hearing: 314 Central Avenue, PO Box 778, Dunkirk, New York 14048. (ALJ Exhibits 6, 10; Complainant Exhibits 1, 2; Tr. 130)

19. The August 16, 2011 formal notices were not returned to the Division and are, therefore, presumed received by all the parties.

20. Respondents did not appear at the August 23, 2011 public hearing session. (Tr. 128)

21. Respondents did not submit verified answers in this matter. (Tr. 16)

Parties

22. International is a commercial trucking business providing transportation of goods for various companies. (Tr. 34-35)

23. Complainant is Hispanic of Puerto Rican origin. (ALJ Exhibit 7)

24. On May 27, 2008 Mr. Lorenzo hired Complainant as a dispatcher. (Tr. 34)

25. Complainant's duties were to receive customer requests for trucking services, answer any questions regarding rates, assign Respondents' drivers for deliveries, and secure the services of independent truck drivers. (Tr. 37-39)

26. In particular, Complainant was also hired as a dispatcher for his bilingual ability to speak both English and Spanish with Respondents' customers. (Tr. 53-55)

27. Complainant worked as one of 12 dispatchers. The other 11 dispatchers were white. (Tr. 37)

28. Gilberto Ortiz, who is of Hispanic origin, was the dispatch manager. (Tr. 45)

29. Dispatchers interacted with Mr. Lorenzo when a potential customer requested any deviation from posted rates or when contract approvals were needed for trucking services. All contracts were personally reviewed by Mr. Lorenzo. (Tr. 39-41)

30. After contract approvals were secured, Complainant memorialized any “booking load” assignment in Respondents’ computer database. (Tr. 39)

31. Respondents' accounting department handled all billing issues through a separate computer system. Dispatchers did not have access to the accounting department’s database. (Tr. 40-41, 80-81)

Hostile Work Environment

32. On Complainant’s first day of employment Mr. Lorenzo prohibited Complainant from using “Jose,” his real name, while at work. Mr. Lorenzo ordered Complainant to simply identify himself as “J.” Mr. Lorenzo stated, “your name here is J.” The other dispatchers were allowed to use their real names. (Tr. 57-59)

33. In June of 2008, after two weeks of employment, Mr. Lorenzo began to use offensive racial language in Complainant’s presence. (Tr. 56)

34. On a daily basis, Mr. Lorenzo made offensive racial comments such as calling manager Ortiz his “Puerto Rican gangster” and his “number one Puerto Rican.” (Tr. 56, 60)

35. Instead of saying good morning, Mr. Lorenzo greeted Complainant by stating: “what’s up my nigger,” “my number two Puerto Rican,” or variations on the same words. (Tr. 56-57)

36. Mr. Lorenzo also called Complainant his “Mexican,” and “you’re a Mexican.” (Tr. 56)

37. At one point Mr. Lorenzo made a general announcement to the employees that he was seeking to hire more employees. Mr. Lorenzo asked his employees to suggest “anybody good looking for a job...let him know...” (Tr. 64)

38. When Complainant suggested a few people, Mr. Lorenzo stated “we don’t want [any] more Puerto Ricans in here. No Puerto Ricans. No jigs.” The word “jigs” was the word Mr. Lorenzo used to refer to African-Americans. (Tr. 64-65)

39. On five occasions Mr. Lorenzo reminded Complainant that “there would never be an African-American or anybody employed by Lorenzo International as dark as [Complainant]. [Complainant was] the darkest it comes.” (Tr. 67-68)

40. When then candidate Barack Obama was running for the office of President of the United States, Mr. Lorenzo publicly made frequent comments such as: “the White House is going to be Black,” “It’s going to be called the Black house,” “they should call it an inniggeration instead of inauguration.” Mr. Lorenzo’s offensive racial commentary became worse as the 2008 presidential campaign went along. (Tr. 66-67)

41. After approximately one month of Mr. Lorenzo’s behavior, Complainant complained to his immediate manager Ortiz about Mr. Lorenzo’s offensive commentaries. Ortiz refused to take any action. Ortiz replied that “if you want, you go tell him but he always wins, so you’re free to tell him.” (Tr. 61-62)

42. Jeannie Armstrong (“Armstrong”) was Respondents’ Human Resource manager. (Tr. 43)

43. Complainant approached Armstrong to see if she could address Mr. Lorenzo’s behavior. Armstrong responded that she could not help because Mr. Lorenzo “didn’t listen to anyone.” (Tr. 69-71)

44. Complainant personally asked Mr. Lorenzo to modify his behavior toward Complainant and address Complainant by his actual name. Mr. Lorenzo replied: “I own the company, I do what I want...get out of my office...” (Tr. 62-63)

Constructive Discharge

45. “Detention time” is a term of art used in the trucking business. It is an hourly rate, paid by a customer or contractor, if a driver assigned to a particular delivery waits beyond an initial courtesy hour to be loaded or unloaded. (Tr. 72-74)

46. A dispute arose over detention time fees Respondents allegedly owed a trucking subcontractor, US Express. The fees had accumulated over several months and totaled almost \$100,000. (Tr. 82-84)

47. Customer disputes over detention time fees were handled by Respondents’ accounting department and, ultimately, Mr. Lorenzo. At times, the dispatcher involved in assigning a driver was brought into the discussion to clarify information the dispatcher may have logged into the computer system. (Tr. 76-80)

48. Although Complainant had been the “main dispatcher” for US Express, he had not been the only dispatcher that handled their work. (Tr. 82-83)

49. On the morning February 18, 2009, Mr. Lorenzo ordered Complainant to perform accounting duties. Mr. Lorenzo gave Complainant a vague assignment of creating a spreadsheet to “narrow down the monies owed for the detention” fees associated with US Express. (Tr. 85-87) Mr. Lorenzo wanted a finished product by lunch time of that day. (Complainant’s Exhibit 1; Tr. 92, 95-96)

50. Complainant made an attempt to perform the assignment by gathering information from Respondents’ accounting department, from US Express, and from his own computer log entries. (Tr. 96-101)

51. From February 18, 2009 to February 20, 2009, Complainant had daily conversations with Mr. Lorenzo concerning the difficulty of the assignment. Complainant was not an accountant and did not have access to all the necessary information. Those conversations resulted in daily extensions of Mr. Lorenzo's initial deadline. (Complainant's Exhibit 1; Tr. 92, 95-96)

52. After discussions with Mr. Lorenzo and Respondents' accounting department, Complainant concluded that Mr. Lorenzo wanted him to fabricate information so as to deny payment to US Express. (Tr. 96-101) Accounting managers Greg Lorenzo and Jeff Storey told Complainant not to worry about the discrepancies in the numbers. They told him, "don't worry about that, you make it work with what we gave you." (Tr. 100)

53. On February 20, 2009 Mr. Lorenzo told Complainant "you better fucking have it done or else. By the end of the day or else. I don't want to hear shit." (Tr. 97) "I don't give a fuck. Get the shit done." (Tr. 193)

54. On February 20, 2009, Complainant resigned his position. (Tr. 34, 107-08)

55. Complainant left because he could no longer tolerate being picked on because of his race. None of the other 11 dispatchers, all whom are white, had ever been given this kind of odd assignment. (Tr. 89, 104-05, 190-91)

56. On February 20, 2009, Complainant sent Mr. Lorenzo a resignation letter by electronic mail that stated, in pertinent part, "for months now, I have found it very stressful and unhealthy for me and my family...being employed at Lorenzo International...I wish to no longer be a part of something that always looks to instill fear, with verbal, disparaging and degrading comments...I have never been a quitter. My health and sanity are not worth it...Your latest threat of my having to produce a spread sheet...doesn't scare me. You are asking me not to

mention stuff, lie, and commit fraud, will not happen. Find someone else..." (Complainant Exhibit 3; Tr. 104)

57. Complainant signed off on the February 20, 2009 electronic message using his full name "Jose A. Rodriguez" so Mr. Lorenzo would remember his name since Complainant had been only addressed as "J." during his employment. (Tr. 108)

Emotional Damages

58. Complainant felt "disrespected" when Mr. Lorenzo refused to call him by his name and when his skin color played a role in the manner he was treated at work. (Tr. 178-79)

59. Complainant felt "bad," "disparaged," and "belittled." Complainant testified that his emotions fluctuated: "sometimes I was stressed," "sometimes I was sad," "sometimes I was angry," "sometimes I wanted to explode." (Tr. 180-81)

60. Complainant felt he was "humiliated" because he was not treated as a "normal person," an "individual," as a "human being." (Tr. 183)

61. Complainant stated that it "was uncalled for" when Mr. Lorenzo used words such as "inniggeration" instead of inauguration. (Tr. 185)

62. Complainant felt hopeless about moving ahead at work when Mr. Lorenzo told him that no one darker than Complainant would work there; no more Puerto Ricans and no African-Americans. (Tr. 186-189)

63. Complainant testified that he "felt like [he] was a cotton picker...like going back in history...people were treated different because of their name, their ethnic [background], their complexion." (Tr. 180, 184)

64. Complainant's failed attempts to stop Mr. Lorenzo's offensive comments and behavior made him feel "lost," and "down," particularly since Complainant raised legitimate issues "in a

nice way, asking for a little respect instead of demanding it.” Complainant felt “like I couldn’t win” and as if he was at “square one” all the time. (Tr. 182-84)

65. Complainant was “shocked and confused” by Mr. Lorenzo’s February 2009 assignment to perform an accounting related task which no other dispatcher was asked to perform. (Tr. 191-93)

66. Complainant felt “trapped” because he needed the job but at the same time Mr. Lorenzo was asking him to falsify account information. (Tr. 197-98)

67. The loss of the job caused havoc in his personal life. Complainant caused “back and forth” arguments with his child’s mother and an appearance in Family Court because Complainant lost his income. (Tr. 201-03)

68. At the public hearing, two and half years after Complainant left Respondent’s employment, he was “still mad” at the treatment he received from Mr. Lorenzo. (Tr. 205-06)

Economic Damages

69. Complainant’s base earnings were \$9.30 an hour during a 40 hour work week or \$74.40 daily. (Tr. 135-37)

70. Complainant mitigated his economic losses by actively seeking employment and applying for NYS unemployment insurance benefits (“UIB”). (Tr. 159-61, 170-74)

71. In the year 2009 Complainant received \$9,546 in UIB. (Complainant’s Exhibit 6, p.2; Tr. 150-52)

72. In the year 2010 Complainant received \$11,272 in UIB. (Complainant’s Exhibit 8, pages 1, 22; Tr. 154-56)

73. In the year 2011 Complainant received four UIB payments totaling \$778. Complainant received no further UIB payments in 2011. (Complainant Exhibit 7; Tr. 157-58)

74. In the year 2011 Complainant performed some odd jobs. Complainant earned \$450 for house painting and \$370 for mowing lawns. Complainant (Tr. 162-96)

75. Complainant was unable to secure permanent employment from February 20, 2009, the date of Complainant's resignation, to the date of the August 23, 2011 public hearing. (Tr. 159)

76. There are 652 weekdays between February 20, 2009 and August 23, 2011. $652 \times \$74.40$ (Complainant's daily wage) = \$48,508. $\$48,508 - \$21,596$ (Complainant total UIB) = \$26,912. $\$26,912 - \870 (Complainant odd job earnings) = \$26,042.

OPINION AND DECISION

Amendment

The complaint is amended to properly name Gregory V. Lorenzo, individually, as an owner. The amendment conforms the pleadings to the proof. 9 NYCRR §465.12(f)14. Mr. Lorenzo is properly added as a Respondent per the relation back doctrine. There is no unfair surprise to Mr. Lorenzo as to claims of his individual liability. Mr. Lorenzo is the owner and is united in interest with the originally named Respondent. Mr. Lorenzo was the Complainant's harasser. During Complainant's employment, Complainant asked Mr. Lorenzo to stop his harassing conduct. Complainant's verified complaint with the Division charged Mr. Lorenzo with all of the harassing behavior identified in the complaint. Mr. Lorenzo was clearly on notice that his personal conduct toward Complainant was the issue in this case. After the verified complaint was filed, Mr. Lorenzo appeared, with counsel, to defend against the complaint at the Division's investigatory stage of the process. The Division's probable cause determination and hearing notices were properly served. Mr. Lorenzo made no further appearances before the Division. There is no proof that Mr. Lorenzo suffered any prejudice in not having been

originally named. *Rio Mar Restaurant, et.al. v. State Div. of Human Rights*, 270 A.D.2d 47, 704 N.Y.S. 230 (1st Dept. 2000)

Hostile Work Environment

Human Rights Law §296.1(a), makes it an unlawful discriminatory practice for an employer “because of an individual’s ...race...national origin...to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

In order to sustain a claim of harassment based on race and national origin, Complainant must demonstrate that he was subjected to a work environment permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 295, 786 N.Y.S.2d 382, 819 N.E.2d 998 (2004), *also see, Father Belle Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 65

Complainant established that Mr. Lorenzo’s actions were sufficiently severe or pervasive that a reasonable person would find that they created a hostile work environment based on race and national origin. Immediately upon hire, Mr. Lorenzo prohibited Complainant from using his real name “Jose” and ordered him to identify himself only as “J.” On a daily basis Mr. Lorenzo subjected Complainant to offensive racial language that included the words: “what’s up my nigger,” “my number two Puerto Rican,” or variations on the same words. Mr. Lorenzo also called Complainant his “Mexican,” and “you’re a Mexican.” In the presence of Complainant

Mr. Lorenzo referred to a Hispanic supervisor, Ortiz, as “Puerto Rican gangster” and his “number one Puerto Rican.” When Complainant responded to Mr. Lorenzo’s workplace request for job candidate recommendations, Mr. Lorenzo replied “we don’t want [any] more Puerto Ricans in here. No Puerto Ricans. No jigs.” The word “jigs” was the word Mr. Lorenzo’s used to refer to African-Americans. On five specific occasions Mr. Lorenzo reminded Complainant that Complainant was “the darkest it comes” and that there would never be an African American or anybody employed by Lorenzo International with a dark complexion as Complainant. During candidate Obama’s run for the office of President of the United States, Mr. Lorenzo publicly made frequent comments such as: “the White House is going to be Black,” “It’s going to be called the Black house,” “they should call it an inniggeration instead of inauguration.”

Constructive Discharge

Complainant claims he was constructively discharged. In order to maintain a claim for constructive discharge, Complainant must demonstrate that respondent “deliberately makes an employee’s working conditions so intolerable that the employee is forced into an involuntary resignation.” *Nelson v. HSBC Bank USA*, 41 A.D.3d 445; 837 N.Y.S.2d 712 (2d Dept. 2007); *Equal Employment Opportunity Commission v. Die Fliedermaus, L.L.C.*, 77 F.Supp.2d 460 (S.D.N.Y. 1999) When a constructive discharge is found, an employee’s resignation is treated as if the employer had actually terminated the employee. *Pena v. Brattleboro Retreat*, 702 F.2d 322, 325 (2d Cir. 1983).

Complainant established that Respondents unlawful discriminatory conduct was intentional and that such conduct created working conditions so intolerable that a reasonable person would have been compelled to resign. *Petrosino v. Bell*, 385 F.3d 210 (2d Cir. 2004).

The intolerable nature of Complainant’s work environment was made painfully evident

by the proof established at the public hearing. During Complainant's employment, Complainant sought relief from Mr. Lorenzo's barrage of daily racial insults. Complainant complained to his immediate manager Ortiz about Mr. Lorenzo's offensive commentary. Ortiz refused to take any action. Complainant complained to Human Resource manager Armstrong. Armstrong refused to take any action. When Complainant personally asked Mr. Lorenzo to change his behavior, Mr. Lorenzo replied: "I own the company, I do what I want...get out of my office..."

In the context of Complainant's racially hostile work setting, in February of 2009, Mr. Lorenzo further escalated his abuse of Complainant by requiring him to engage in a seemingly fraudulent accounting task that was outside of Complainant's skill set or job duties as a dispatcher. None of the other 11 white dispatchers were ever asked to perform such an odd accounting task. Lorenzo verbally humiliated Complainant by telling him "you better fucking have it done or else. ...I don't want to hear shit" and "I don't give a fuck. Get the shit done." Complainant was forced to leave Respondent's employ because he could no longer tolerate the abuse. Complainant eventually left because he found the racially hostile environment to be very stressful and unhealthy.

Liability

Respondent International is strictly liable for the racially hostile environment created by its owner, Mr. Lorenzo. *Faragher v. Boca Raton*, 524 U.S. 775, 118 S.Ct. 2275 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 752, 118 S. Ct. 2257 (1988). In addition, Mr. Lorenzo is individually liable, as an owner, for his own unlawful discriminatory conduct. *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 473 N.E.3d 11, 493 N.Y.S. 659 (1984).

Mental Anguish Damages

Complainant is entitled to recover compensatory damages caused by Respondents' 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).

Respondents' actions had a markedly negative effect on Complainant. Complainant worked for Respondents from May 20, 2008 to February 20, 2009. Complainant testified that, during that nine month period of time, Mr. Lorenzo's daily racially offensive comments made him feel bad, disparaged, belittled, and stressed. Complainant's emotions fluctuated from feeling sad, angry, to wanting "to explode." Complainant felt "humiliated" because he was not treated as an "individual" or a "human being." Complainant felt "disrespected" when Mr. Lorenzo refused to call him by his actual name unlike any of his white counterparts. Complainant felt hopeless about moving ahead at work when Mr. Lorenzo told him that no one with a darker skin

complexion than Complainant's would work there. Complainant also felt lost, down, "like [he] couldn't win" when Mr. Lorenzo refused to change his offensive behavior. Complainant was "shocked and confused" by Mr. Lorenzo's February 2009 assignment to perform a fraudulent accounting related tasks and also "trapped" because he needed the job. The loss of the job caused Complainant family friction because Complainant lost his income. At public hearing, two and a half years after his constructive discharge, Complainant remained angry at the treatment he received from Mr. Lorenzo.

Given Respondents' outrageous conduct, the degree of Complainant's suffering, and the duration of Complainant's suffering, an award of \$60,000 for emotional distress is appropriate and would effectuate the purposes of the Human Rights Law in making Complainant whole. Fifty thousand dollars of the award reflects Complainant's emotional reaction to a racially hostile work environment including, but not limited to, being addressed as "my nigger," on a daily basis, during a period of nine months; never being addressed by his real name, Jose; and being informed that no more Puerto Ricans would be hired. Ten thousand dollars of the award reflects Complainant's emotional reaction to his constructive discharge that caused havoc in his personal life, arguments with his child's mother, and an appearance in Family Court. *Grove Roofing Services, Inc. v. N.Y. State Div. of Human Rights (Carson)*, 89 A.D.3d 1405, 932 N.Y.S.2d 397 (4th Dept. 2011) (\$50,000 pain and suffering award based on Carson's emotional reaction to Respondent's racially hostile work environment; there was no constructive discharge issue; Court upheld Commissioner's award); *N.Y. State Div. of Human Rights (Gollel) v. Village Plaza Family Restaurant, Inc.*, 59 A.D.3d 1038, 872 N.Y.S.2d 815 (4th Dept. 2009) (\$65,000 pain and suffering award based on Gollel's emotional reaction to owner's sexual harassment; Court upheld Commissioner's award)

Lost Wage Damages

Respondents owe Complainant lost wages in the amount of \$26,042. Complainant left his employment on February 20, 2009. Complainant mitigated his lost wage damages. As of the August 23, 2011 public hearing, Complainant remained unemployed. Respondents are also liable to Complainant for predetermination interest on the back pay award at a rate of nine percent, per annum, from January 12, 2010, a reasonable intermediate date between February 20, 2009 and August 23, 2011, through the date of the Commissioner's Final Order. *Aurecchione v. New York State Division of Human Rights*, 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002). In addition, Respondents are liable to Complainant for interest on the back pay award at a rate of nine percent, per annum, from the date of the Commissioner's Final Order until payment is made.

Civil Fines and Penalties

Human Rights Law § 297 (4)(c)(vi) directs 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." Furthermore, 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." The proof established that Mr. Lorenzo's actions easily met the statutory thresholds of the willful, wanton, and malicious conduct that is required to reach a civil fine and penalty of greater than \$50,000. Nonetheless, a civil fine and penalty cannot be issued in this matter. Respondents' unlawful discriminatory actions occurred

prior to the July 2009 effective date of the civil fines and penalties provisions of the Human Rights Law.

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 Respondents, 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 Respondents, 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, Respondents, Lorenzo International, Inc., and Gregory V. Lorenzo, individually, shall pay to Complainant, Jose Rodriguez, the sum of \$26,042 as damages for back pay. Interest shall accrue on this award at the rate of nine percent per annum, from January 12, 2010, a reasonable intermediate date between February 20, 2009 and August 23, 2011, until the date payment is actually made by Respondents.
2. Within sixty days of the date of the Commissioner's Final Order, Respondents, Lorenzo International, Inc., and Gregory V. Lorenzo, individually, shall pay to Complainant, Jose Rodriguez, the sum of \$60,000 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondents' unlawful discrimination against him. Interest

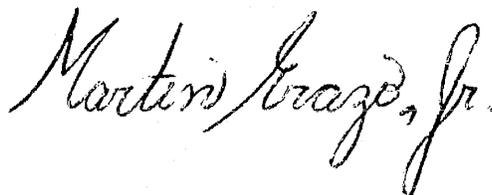
shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondents.

3. The payments shall be made by Respondents in the form of certified checks, made payable to the order of Jose Rodriguez and delivered by certified mail, return receipt requested, to Complainant's attorney, John M. Lichtenthal, Esq., 42 Delaware Avenue, Suite 120, Buffalo, New York 14202. A copy of the certified checks shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Within sixty days of the Final Order, Respondents shall establish a policy regarding the prevention of unlawful discrimination. This policy shall include the formalization of a reporting mechanism for all for all employees who believe they have been discriminated against. In addition, Respondent, Gregory V. Lorenzo, shall attend a training program in the prevention of unlawful discrimination in accordance with the Human Rights Law. Respondents' 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.

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

DATED: January 25, 2012
Buffalo, New York

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

Martin Erazo, Jr.
Administrative Law Judge