



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MICHAEL G. LEWANDOWSKI,

Complainant,

v.

**TOWN OF TONAWANDA POLICE
DEPARTMENT,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10210593

Federal Charge No. 16GC100830

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by the Honorable Denise M. Miranda, Acting Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before Rebecca A. Clancy, an Administrative Law Judge 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, NY 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: January 30, 2025
Bronx, NY



DENISE M. MIRANDA
ACTING COMMISSIONER



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**TOWN OF TONAWANDA POLICE
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ORDER AFTER HEARING

Case No. **10210593**

Federal Charge No. 16GC100830

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against him and harassed him because of his race, national origin, sex, and military status. Complainant failed to meet his burden of proof and the complaint is dismissed.

PROCEEDINGS IN THE CASE

On December 18, 2020, Complainant filed a complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to employment 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 Rebecca A. Clancy, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held virtually on October 23 and 24, 2023.

Complainant and Respondent appeared at the hearing. Complainant was represented by the Law Office of Lindy Korn, PLLC, by Richard Perry, Esq. Respondent was represented by Goldberg Segalla, LLP, by Christopher Maugans, Esq.

Permission to file post-hearing briefs was granted. The parties timely filed post-hearing briefs and applications for attorney’s fees.

On March 8, 2024, ALJ Clancy issued a Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”). Complainant’s counsel filed timely objections to the Recommended Order.

FINDINGS OF FACT

1. Complainant is male and of Polish and Puerto Rican descent. (Tr. 34)
2. Complainant was an active-duty reservist in the United States Marine Corps from 2005 to 2011. (Tr. 11, 197)
3. In August of 2011, Respondent hired Complainant as a police officer. (Tr. 14, 121)
4. Complainant testified that in 2011 and 2012, he was ridiculed for his Polish heritage being mocked for his nickname, “Polish Prince.” (Tr. 35-36, 96, 194; Complainant’s Exhibit 19)

5. Complainant testified that sometime between 2011 and 2015, he was referred to as “Poloricán” which he understood to be a reference to him as a “half-breed” for having mixed Polish and Puerto Rican heritage. (Tr. 39-41)

6. Complainant also testified that he was teased specifically for his Puerto Rican heritage when asked if he carried switchblades or razors. He testified that this occurred throughout his tenure, though it decreased towards the end of his career. He failed to identify with any specificity the dates when these alleged comments were made or the identities of the individuals alleged to have made them. (Tr. 39-41)

7. Complainant testified that in approximately 2013, his uncle, James Stauffiger, Respondent’s assistant chief of police, and Captain Jesse Haug referred to Complainant as a “weekend warrior” and “tampon of the Marine Corps” denigrating his service as a reservist who served on a part-time rather than full-time basis. (Tr. 75-76, 112-14, 116-17, 120, 197)

8. From 2013 to 2015, Respondent issued five letters of counsel to Complainant for speaking in an inappropriate manner with a member of the public, interacting with another police officer in an unprofessional manner, failing to give timely notice for military leave, failing to follow proper protocol during traffic stops and engaging in a prank that required repair to Respondent’s property. (Tr. 160-67, 280-81; Respondent’s Exhibits 18, 19, 20, 21, 22)

9. On or about April 17, 2016, Complainant received a written complaint in his work mailbox from then-captain Joseph Carosi criticizing how Complainant had filled out a prisoner meal order. (Tr. 60; Complainant’s Exhibit 9)

10. In the complaint, Carosi wrote that Complainant would “feel the complete and total wrath of the planning bureau” if Complainant filled out a prisoner meal order that same way again. Carosi also wrote that “[w]ithout notice I will fucking slaughter all your pets, set your car

on fire and distribute buckets of bed bugs in your house.” Carosi ended the complaint with, “I order you to follow directions and put your fucking initials on the receipt. Fuck. Have a nice day.” (Tr. 60; Complainant’s Exhibit 9)

11. On January 17, 2017, Respondent issued Complainant two reports of violation for violating Respondent’s code of conduct after he had a verbal dispute with two individuals during a court proceeding, and physically removed an individual from the courtroom without cause while using expletives in the courtroom. (Tr. 171-73, 270; Respondent’s Exhibits 23, 24)

12. The reports of violation stated that Complainant had several prior incidents where he interacted in an unprofessional manner with members of the public and that he was on notice that any further violations of this nature could result in severe discipline, including the termination of his employment. (Respondent’s Exhibit 23)

13. As a result of these reports of violation, Respondent suspended Complainant without pay for five days. (Respondent’s Exhibits 23, 24)

14. On January 4, 2019, Stauffiger, then Respondent’s assistant chief of police, recommended that Complainant be considered for the American Legion’s Law Enforcement “Officer of the Year” award. (Tr. 191; Complainant’s Exhibit 3)

15. On May 25, 2019, Complainant received a letter of counsel after he and another police officer conducted a vehicle stop in an unsafe manner. (Tr. 175; Respondent’s Exhibit 26)

16. On July 18, 2019, the American Legion presented Complainant the “Officer of the Year” award at a ceremony also attended by Stauffiger. (Tr. 191; Complainant’s Exhibit 3)

17. After the ceremony, Complainant was informed by two police officers that they overheard Stauffiger and Captain David Price discussing who would prevail in a physical “fight to the death” between Complainant and Price. (Tr. 63-64, 66) Complainant construed the

conversation as a threat, however, he conceded he was not present for the conversation and was unaware of the tone, context or specific language used during the conversation, and acknowledged he was speculating about what Stauffiger's and Price's intentions were when they had that conversation. (Tr. 192-93)

18. On September 6, 2019, Complainant received a report of violation after he sent a state trooper a text message regarding a ticket that the trooper had issued to a family member of Complainant. Complainant texted the trooper a photograph of the trooper receiving a certificate of excellence and stated "[e]xcellence must be for writing cops [sic] family members. Keep up the good work. I'll make sure to let everyone in Erie County know how good a job you do with that aspect." (Tr. 176; Respondent's Exhibit 27)

19. As a result, Complainant was suspended without pay for eight days. (Respondent's Exhibit 27)

20. At some point in or around November of 2019, after Complainant returned to work from his suspension, Complainant alleged that Price called Complainant's moustache a "landing strip" apparently as a veiled allusion to female genitalia. (Tr. 71-74)

21. On October 18, 2019, Complainant received a letter of counsel after he cut off and collided with another patrol vehicle while taking a short cut into a parking lot. Both patrol vehicles suffered damage. (Tr. 177, 304; Respondent's Exhibit 28)

22. On March 5, 2020, Complainant received a letter of counsel after he criticized a supervising lieutenant using a work group chat system. (Tr. 309-10; Respondent's Exhibit 33)

23. On August 18, 2020, Complainant received a report of violation charging him with unsafe driving while pursuing a vehicle. Specifically, Complainant ran through several stop signs at excessive speed, passed a fire truck that had on its emergency lights at approximately 65

miles per hour and drove 82 miles per hour down a busy residential street. (Tr. 304-306; Respondent's Exhibit 32)

24. As a result, Complainant was suspended without pay or benefits for twelve days. (Tr. 306; Respondent's Exhibit 32)

25. On November 28, 2020, Complainant responded to a call about a dispute between neighbors. (Tr. 179; Respondent's Exhibit 30)

26. In his report about the neighbor dispute, Complainant included inaccurate information to justify his conduct during the interaction. (Tr. 308)

27. Thereafter, on December 10, 2020, Respondent issued Complainant a report of violation because Complainant unnecessarily escalated the conflict by yelling at and pointing in the face of one of the involved individuals. (Tr. 180, 307; Respondent's Exhibit 31)

28. On March 10, 2021, Respondent served Complainant with numerous written misconduct charges, acts of alleged incompetence and rules violations, including a charge relating to Complainant's conduct during the November 28, 2020, neighbor dispute. (Tr. 131; Respondent's Exhibit 1)

29. On October 28, 2021, following a disciplinary hearing on the written charges, a hearing officer recommended that Complainant's employment be terminated. (Tr. 133, 137; Respondent's Exhibit 3)

30. On November 8, 2021, Complainant's employment was terminated. (Tr. 63, 137)

31. Complainant testified that he complained to the union about being harassed by his supervisors and in response, after each complaint, he suffered reprisals, including being removed from specialty duties, SWAT, field training, the street intelligence unit, being demoted from

senior to junior officer, being counseled, issued reports of violations, being suspended and, ultimately, having his employment terminated. (Tr. 56-57)

32. By order dated June 24, the New York State Supreme Court, Erie County, denied Complainant's petition to set aside the termination of his employment. (Tr. 138; Respondent's Exhibit 4)

OPINION AND DECISION

Human Rights Law § 297.5 requires that, “[a]ny complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice.”¹ Complainant filed the instant complaint on December 20, 2020. During the COVID-19 pandemic, then-Governor Cuomo issued several executive orders which served to toll statutes of limitations from March 20 to November 3, 2020. *See* 9 N.Y.C.R.R. §§ 8.202.8, 8.202.72; *Brash v. Richards*, 195 A.D.3d 582, 583-84 (2d Dept. 2021). Pursuant to the executive orders, claims accruing on or after May 7, 2019, are timely. Any claims arising prior to May 7, 2019, are time-barred unless Complainant can show a continuing violation.

A continuing violation requires a showing of an ongoing practice or policy of discrimination permitted to continue by Respondent without remedy. *See Clark v. State of New York*, 302 A.D.2d 942, 944 (4th Dept. 2003). Complainant claimed a number of allegations which arose within and beyond the statute of limitations period, however, he failed to provide sufficient proof and/or failed to show a sufficient connection between the allegations to demonstrate an ongoing discriminatory practice. Therefore, he failed to demonstrate a continuing violation in the instant matter.

¹ Effective February 15, 2024, Human Rights Law § 297.5 was amended to extend the statute of limitations for all discrimination claims to three years. This statutory amendment does not apply to the instant complaint as none of the claims accrued on or after February 15, 2024.

Except for his allegations that he was disparaged for his heritage in 2011 and 2012, Complainant was unable to connect his pre-May 7, 2019, claims to his timely allegations. He claimed that in 2013, he was denigrated for his status as a reservist and that in 2016, Carosi discriminated against him via a harassing written complaint. These claims are respectively discrete, sporadic and/or vague and are insufficiently similar to the timely landing strip comment, fight conversation or retaliation allegations. Accordingly, these claims are untimely and must be dismissed. *See Khalil v. State of New York*, 17 Misc. 3d 777, 782-83 (Sup. Ct. N.Y. Co. 2007) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002)).

To the extent Complainant claimed he was ridiculed in 2011 and 2012 for his Polish heritage as well as for his Puerto Rican heritage throughout his tenure, this might be considered a continuum of conduct, however, Complainant failed to provide any evidence as to when this ridicule occurred or who was involved. Accordingly, these claims must also be dismissed.

The three remaining timely claims are that sometime after Complainant's September 6, 2019, suspension, his moustache was referred to as a landing strip; that on July 18, 2019, Price and Stauffiger discussed a hypothetical fight; and that Complainant was disciplined and had his employment terminated in retaliation for engaging in protected activity.

Effective for claims which accrued after October 11, 2019, the Human Rights Law was amended, in relevant part, to make it unlawful for an employer to harass an individual because of their protected class membership. *See* Human Rights Law § 296.1(h). Under the amendment, harassment occurs when an individual is subjected "to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories." *Id.* This is so "regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims . . . It shall be an affirmative defense

to liability under this subdivision that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic or characteristics would consider petty slights or trivial inconveniences.” *Id.*

To the extent Complainant alleged that the landing strip comment occurred after October 11, 2019, it is appropriate to apply the current standard. Even under this less burdensome standard, Complainant failed to show he was subjected “to inferior terms, conditions or privileges of employment” based on his sex because of this comment about his moustache. Further, Respondent has met its burden of proving this comment was no more than a petty slight or trivial inconvenience and would not constitute harassment under the Human Rights Law.

Additionally, Complainant failed to show how the Price and Stauffiger fight discussion related in any way to his class memberships. *See Arcuri v. Kirkland*, 113 A.D.3d 912, 914 (3d Dept. 2014). Indeed, Stauffiger had nominated Complainant to receive an “Officer of the Year” award and had attended the awards ceremony with Complainant hours before the conversation. Complainant conceded he was unaware of the tone, context or exact words that were used during the conversation, and he failed to demonstrate that his working conditions were affected.

Finally, the record does not support Complainant’s allegations that Respondent retaliated against him in violation of the Human Rights Law. Complainant testified that he complained to the union about being harassed by his supervisors. However, he provided insufficient evidence of the specific nature of his complaints or that Respondent was aware of this activity. Accordingly, Complainant failed to make out a prima facie case of retaliation and this claim must be dismissed. *See Adeniran v. State of New York*, 106 A.D.3d 844 (2d Dept. 2013).

In any event, Respondent has provided legitimate, independent, and non-discriminatory reasons for its disciplinary decisions. Complainant had a lengthy record of failing to operate a

police vehicle in a safe manner and for engaging with members of the public in an unprofessional manner. Despite repeated counseling, Complainant continued to engage in highly dangerous behavior during a police pursuit in August 2020, and he was subjected to a lengthy unpaid suspension as a result. In November 2020, Complainant berated an individual engaged in a dispute with a neighbor, which unnecessarily escalated the matter, and subsequently misrepresented the incident in his written report to protect himself. Given Complainant's extensive history of professional misconduct, Respondent was justified in terminating his employment. Ultimately, the Erie County Supreme Court sustained the termination of Complainant's employment and concluded that Respondent's actions were appropriate. Complainant failed to demonstrate that Respondent's reasons for its actions were pretextual.

The Human Rights Law permits the Commissioner in her discretion "to award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must . . . show that the action of proceeding brought was frivolous." *See* Human Rights Law § 297.10. A proceeding is frivolous if:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

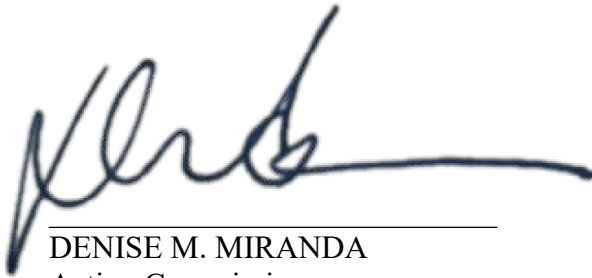
Id.

Respondents have failed to show that the proceeding was commenced, used or continued in bad faith. Accordingly, Respondent's motion for attorney's fees is denied.

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 the complaint is dismissed.

DATED: January 30, 2025
Bronx, NY

A handwritten signature in black ink, appearing to read 'DMR', with a long horizontal line extending to the right.

DENISE M. MIRANDA
Acting Commissioner