



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

SALVADOR A. GRANADOS,

Complainant,

v.

**MADEIRA'S SPORT CAFE, INC., D/B/A
MADEIRA'S CAFE, PASCAL ANTONIO DE
SOUSA,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10199651

Federal Charge No. 16GB901928

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 March 27, 2025, by Alexander Linzer, 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 DENISE M. MIRANDA, ESQ., ACTING 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, NY 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: May 21, 2025
Bronx, NY



DENISE M. MIRANDA
ACTING COMMISSIONER



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**MADEIRA'S SPORT CAFE, INC., D/B/A
MADEIRA'S CAFE, PASCAL ANTONIO DE
SOUSA,**

Respondents.

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

Case No. **10199651**

Federal Charge No. 16GB901928

SUMMARY

Complainant alleged that Respondents subjected him to unlawful discrimination based on national origin, race, and color. Respondents defaulted. Complainant has proven his claim and is awarded damages. A civil fine and penalty is also assessed against Respondents.

PROCEEDINGS IN THE CASE

On January 10, 2019, Complainant filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondent Madeira's Café 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.

On April 18, 2024, the Division duly served a Notice of Hearing on all parties via the United States Postal Service (“USPS”). (ALJ’s Exhibit 1). The Notice of Hearing was not returned as undeliverable and is presumed to have been delivered. (Tr. 6).

After due notice, the case came on for hearing before Alexander Linzer, an Administrative Law Judge (“ALJ”) of the Division. A virtual public hearing session was held on May 6, 2024.

Complainant appeared at the hearing. The Division was represented by Michael Adeyemi, Esq., Senior Attorney. Respondent Madeira’s Café did not appear or file an answer and defaulted. The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. § 465.12(b)(3). (Tr. 5-6).

On September 13, 2024, the presiding ALJ amended the complaint to correctly name Respondent Madeira’s Sport Café, Inc., d/b/a Madeira’s Café, and to name Pascal Antonio De Sousa as a respondent. (Tr. 32-33, 44-45; ALJ’s Exhibits 3, 4). An additional hearing date was scheduled for January 17, 2025, to give Respondents an opportunity to appear and defend against the allegations in the complaint. On December 17, 2024, the Division duly served a Notice of Hearing on all parties via the USPS. (ALJ’s Exhibit 3). The Notice of Hearing was not returned as undeliverable and is presumed to have been delivered. (Tr. 32).

A virtual public hearing session was held on January 17, 2025. Complainant appeared at the hearing. The Division was represented by Senior Attorney Adeyemi. Respondents did not

appear or file an answer and defaulted. The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. § 465.12(b)(3). (Tr. 32-33).

FINDINGS OF FACT

1. Complainant is Latino and is from El Salvador. (Tr. 18; ALJ's Exhibit 1)
2. Respondent Madeira's Sport Café, Inc., d/b/a Madeira's Café (Respondent "Madeira") operates a café (the "café") located at 247 Mineola Boulevard, Mineola, New York. (Tr. 9-10, 19-20; ALJ's Exhibit 1)
3. Respondent Madeira is owned by Respondent Pascal Antonio De Sousa. (Tr. 10, 42)
4. Respondent De Sousa is from Portugal. (Tr. 43)
5. In or around the beginning of 2018, Respondents hired Complainant to work in the café as a cook. (Tr. 9)
6. Complainant worked for Respondents 12 hours per day, six days per week. (Tr. 12)
7. Respondents paid Complainant \$700 per week. (Tr. 12)
8. During the relevant period, six employees worked in the café in addition to De Sousa. Five employees who worked in the café kitchen, including Complainant, were from El Salvador, and one waiter was from Brazil. (Tr. 39-43)
9. On many occasions, Complainant heard Respondent De Sousa say that people from El Salvador "came to this country like pigs to eat from the government and take advantage of the government." (Tr. 10-11)
10. On two occasions, Respondent De Sousa was drinking alcohol and told Complainant that El Salvador is a corrupt country. (Tr. 20-21)

11. Complainant never heard Respondent De Sousa make any inappropriate comments to Respondents' Brazilian employee. (Tr. 41)

12. Respondent De Sousa's derogatory comments concerning El Salvador made Complainant feel "terribly" and "horribly." (Tr. 38)

13. On January 6, 2019, Complainant was at work and asked Respondent De Sousa to pay him his salary. (Tr. 18)

14. Respondent De Sousa was drinking alcohol at the time and became angry. (Tr. 18)

15. Respondent De Sousa told Complainant that he was not going to pay him and became "crazy." Complainant became frightened that Respondent De Sousa was going to hit him and left work. (Tr. 18-19)

16. Complainant does not know why Respondent De Sousa refused to pay him his wages. (Tr. 39-40)

17. Complainant never returned to work for Respondents. (Tr. 40)

18. Respondents paid their other employees from El Salvador on an unspecified date after January 6, 2019. (Tr. 39)

19. On an unspecified date, Respondents paid Complainant wages for his last week of work after Complainant obtained assistance from the New York State Department of Labor. (Tr. 11-12)

OPINION AND DECISION

Discrimination

Complainant alleged that Respondents unlawfully discriminated against him based on his race, color, and national origin in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law")

§ 296.1(a). To make out a prima facie claim of unlawful discrimination in the employment context, Complainant must show that (1) he is a member of a protected class, (2) he was qualified for the position, (3) he suffered an adverse employment action, and (4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004), citing *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997).

If Complainant makes out a prima facie case of unlawful discrimination, the burden shifts to Respondents to articulate a legitimate, independent, and non-discriminatory reason for their actions. *Id.* If Respondents do so, Complainant must show that the reasons presented by Respondents were merely a pretext for the unlawful discrimination by demonstrating both that Respondents' stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391. The "burden of persuasion of the ultimate issue of discrimination always remains" with Complainant. *Stephenson v. Hotel Empls. and Rest. Empls. Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.S.2d 633, 636 (2006).

Complainant failed to establish a claim of unlawful discrimination in connection with Respondents' failure to pay him wages on January 6, 2019. Complainant is a member of protected classes because he is Latino and from El Salvador. Complainant was qualified for his position as cook. Complainant suffered an adverse employment action when Respondents failed to pay him his wages on January 6, 2019. Complainant failed, however, to show that the adverse action occurred under circumstances giving rise to an inference of unlawful discrimination. Respondent De Sousa was drinking alcohol and became angry when Complainant asked him to pay him his wages. Complainant did not know why Respondent De Sousa refused to pay him, and there is no evidence that Respondent De Sousa's refusal to pay Complainant was motivated

by discriminatory animus. Further, Respondent De Sousa subsequently paid Respondents' other employees from El Salvador. This claim is dismissed.

Hostile Work Environment

In order to establish a hostile work environment claim under Human Rights Law § 296.1(a), Complainant must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382, 394 (2004) (quoting *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 21 (1993)).¹ Whether an environment is hostile or abusive can be determined only by looking at all the circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive." *Id.* at 311 (quoting *Harris*, at 23). "Moreover, the conduct must both have altered the conditions of Complainant's employment by being subjectively perceived as abusive by Complainant and have created an objectively hostile or abusive environment--one that a reasonable person would find to be so." *Id.* at 311, 786 N.Y.S.2d at 395 (quoting *Harris*, at 21).

¹ Effective October 11, 2019, the Human Rights Law was amended to make it an unlawful discriminatory practice, "For an employer . . . to subject any individual to harassment because of an individual's [protected category] regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories." Human Rights Law § 296.1(h). Because Complainant's employment with Respondents ended before October 11, 2019, the amendment is not applicable to this case.

Complainant must show that the discriminatory conduct occurred because of his protected class membership. *See Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Respondents subjected Complainant to a hostile work environment when Respondent De Sousa regularly compared El Salvadorians to “pigs” and referred to El Salvador as “corrupt.” Respondent DeSousa’s conduct was sufficiently frequent and severe to create an objectively hostile environment for Complainant. Thus, Complainant has proven his claim and is awarded damages.

Constructive Discharge

Complainant alleged that Respondents subjected him to a constructive discharge. In order to establish a claim of constructive discharge, Complainant must show that Respondents deliberately made his working conditions so intolerable that a reasonable person in his position would have felt compelled to resign. *See Lambert v. Macy's East, Inc.*, 84 A.D.3d 744, 746, 922 N.Y.S.2d 210, 212 (2d Dept. 2011). When a constructive discharge is found, an employee’s resignation is treated as if the employer had terminated the employee.

Complainant stopped working for Respondents on January 6, 2019, after Respondent De Sousa refused to pay Complainant. However, Complainant failed to establish that the January 6, 2019, incident was related to his race, color, or national origin. Although Respondent De Sousa’s comments subjected Complainant to a hostile work environment, this conduct did not cause Complainant to leave his job. Under the circumstances, Complainant failed to establish that Respondents constructively discharged Complainant. This claim is dismissed.

Damages

Complainant failed to establish that he was constructively discharged and is not entitled

to damages for lost wages. However, Complainant is entitled to recover compensatory damages for mental anguish caused by Respondents' unlawful conduct. 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. *See State v. N.Y. State Div. of Human Rights*, 284 A.D.2d 882, 884, 772 N.Y.S.2d 499, 501 (3d Dept. 2001); *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Because of the strong anti-discrimination policy of the Human Rights Law, a complainant seeking an award for pain and suffering "need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous provision." *Batavia Lodge No. 196, Loyal Order of Moose v. N.Y. State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). 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*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *See State Dept. of Correctional 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).

Complainant was subjected to continuous harassment by Respondent De Sousa throughout his employment. Respondent De Sousa's conduct made Complainant feel "terrible" and "horrible." Taking all the factors into account, an award of \$20,000.00 will compensate Complainant for his mental anguish due to unlawful discrimination. *See Benjamin v. Nissan of New Rochelle*, SDHR Case No. 10205836 (November 16, 2023); *W. Taghkanic Diner II, Inc.*, 105 A.D.3d 1106, 1108–09, 962 N.Y.S.2d 748, 751–52 (3d Dept 2013); *HP Ronkonkoma, Inc. v.*

Kirkland, 122 A.D.3d 737, 996 N.Y.S.2d 343 (2d Dept. 2014).

Pursuant to Human Rights Law § 297.4(c)(vi), the Division may 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.

Pursuant to Human Rights Law § 297.4(e), “[a]ny 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 factors that determine the appropriate amount of a civil fine and penalty are the goal of deterrence; the nature and circumstances of the violation; the degree of Respondents’ culpability; any relevant history of Respondents’ actions; Respondents’ financial resources; and any other matters as justice may require. *See Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009); *119-121 East 97th Street Corp. v. New York City Comm’n on Human Rights*, 220 A.D.2d 79, 88-89, 642 N.Y.S.2d 638, 644 (1st Dept. 1996).

The record does not include any information concerning the relevant history of Respondents’ actions, Respondents’ financial resources or other matters as justice may require. Therefore, Respondents are ordered to pay a civil fine to the State of New York in the amount of \$10,000.00. *See Oz Trucking & Rigging Corp. v. New York State Div. of Human Rights*, 178 A.D.3d 935, 937, 116 N.Y.S.3d 52, 55 (2d Dept. 2019) (affirming a civil penalty of \$10,000 against respondents where the complainant was subjected to “constant sexual badgering and inappropriate behavior.”).

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, their 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

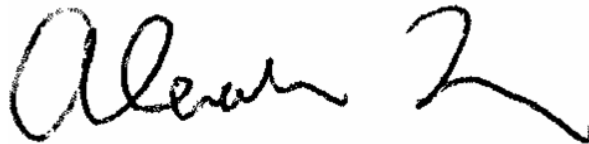
ORDERED, that Respondents, their agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to Complainant the sum of \$20,000.00 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondents' unlawful discrimination. Interest shall accrue on this award at the rate of nine (9) percent per year, from the date of the Commissioner's Order until payment is made by Respondents.
2. The aforesaid payment shall be made in the form of a certified check, made payable to the order of Salvador A. Granados and delivered by certified mail, return receipt requested, to Jacqueline Spratt, Assistant Deputy Commissioner, Prosecutions Unit, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, NY 10458.
3. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay to the State of New York \$10,000.00 as a civil fine and penalty for their violation of the Human Rights Law. Payment shall be made in the form of a certified check payable to the order of the State of New York and delivered by certified mail,

return receipt requested, to General Counsel of the Division, One Fordham Plaza, 4th Floor, Bronx, NY 10458. Interest shall accrue on this award at the rate of nine (9) percent per year, from the date of the Commissioner's Order until payment is made by Respondents.

4. Respondents shall cooperate with representatives of the Division during any investigation into compliance with the directives herein contained.

DATED: March 24, 2025
Bronx, New York

A handwritten signature in black ink, appearing to read 'Alexander Linzer', followed by a large, stylized number '2'.

Alexander Linzer
Administrative Law Judge