

Testimony of Sapna Raj
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New York City Commission on Human Rights
Before the Committee on Civil and Human Rights on the Law Enforcement Bureau
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Good morning Chair Williams and members of the Committee on Civil and Human Rights. I am Sapna Raj, Deputy Commissioner of the Law Enforcement Bureau at the New York City Commission on Human Rights. It is my pleasure to speak about the work of the Law Enforcement Bureau.

The attorneys in the Law Enforcement Bureau (“LEB”) evaluate and investigate allegations of discrimination brought to the Commission by members of the public and utilize the agency’s investigatory and prosecutorial powers to root out pattern-or-practice or other forms of discrimination through Commission-initiated investigations. LEB and its specialized units, the Early Intervention Unit, Source of Income Unit, and Gender-Based Harassment Unit, offer the option of resolving claims in lieu of filing a complaint, leading to a quicker resolution.

Resolutions through pre-complaint intervention have significantly increased over the past several years, as LEB has worked to provide timely resolutions despite an increased caseload. In FY 21, the Commission fielded 9,055 inquiries from members of the public, in the form of phone calls, emails, letters, visits to Commission offices, and queries to mobile intake units dispatched to community sites or at Commission events.

The Law Enforcement Bureau uses a variety of tools to investigate and determine whether violations of the Human Rights Law have occurred, and to provide redress. We are an enforcement agency, but we do not simply issue determinations that violations have occurred and that damages should be paid to the complainant or that civil penalties should be paid to the City if New York. Our aim is always to repair harms experienced by individuals and communities impacted by discrimination, and to prevent future Human Rights Law violations. The Commission takes a cooperative approach to fostering Human Rights Law compliance. In many instances involving first-time violators of the City Human Rights Law, where no complainant was harmed by a violation, the Commission has sought to educate businesses and housing providers about their legal obligations and work with them in creating non-discriminatory policies and practices, rather than levying fines.

Identifying Possible Human Rights Law Violations: Inquiries and Testing

The Commission has several pathways to identifying violations of the Human Rights Law.

Any individual can contact the Law Enforcement Bureau via our Infoline to report allegations of discrimination, and to file an individual complaint. Any New Yorker has the right to file a complaint with the Commission in the jurisdictional areas covered by our law. The Bureau may also become aware of alleged unlawful discriminatory practices, through an anonymous tip,

information shared by a community-based organization, an elected official, through social media, or media reports. In these instances, the Commission can launch a Commission-initiated action.

The Law Enforcement Bureau also uses testing as an investigative tool to determine whether there is discrimination in housing, employment, or public accommodations. The agency has the authority to use testers to determine if they are treated differently or are given different information by potential employers, landlords/real estate brokers, restaurants, hospitals, stores, or other public accommodations because they belong to a protected class. This is a historically effective tool used in civil rights litigation.

When the Commission learns of potential discriminatory conduct, through a tip, testing, or a complaint filed by a member of the public, the Law Enforcement Bureau has many options as to how to proceed.

Tools to Respond to Allegations of Discrimination: Interventions and Investigations

The Commission has the authority to take a range of actions before a complaint is ever filed. One is to issue a cease-and-desist letter to notify the alleged wrong-doer that actions taken may be a violation of the New York City Human Rights Law, demand the discriminatory actions cease and that specific actions be taken, including, for example, restoring a victim of discrimination to the status they were in before the discriminatory action or change policies and procedures.

While cease-and-desist letters can be very effective, the Commission uses a suite of investigative methods, such as requests for information on policies and practices, demands for documents and data, and interviews of key witnesses to build a comprehensive record of what occurred. Each of these tools can help build a factual record.

The amount of time that it takes to respond and investigate depends on the unique factors of each case: the underlying claim, the factual and legal complexity, the availability and responsiveness of those harmed by discrimination, as well as any witnesses and respondents.

Ultimately at the conclusion of an investigation, LEB reaches a determination as to whether the evidence it has gathered supports the allegations in the complaint or not. If LEB finds probable cause, the cases proceed to a hearing at NYC OATH – presided over by an Administrative Law Judge. Before initiating the prosecution, LEB attempts to settle, or conciliate, the case. If the case does not settle, then OATH will hold a hearing, and the Commissioner of CCHR will issue a final decision dismissing the case or ordering relief for the complainant.

Settlements

At all points during the investigation, once probable cause has been found and until a Decision and Order is issued by the Commissioner, the parties can and do enter into settlement of the claims. Not all complaints are resolved by an LEB determination on the merits. Many cases settle for monetary restitution, and/or affirmative relief such as policy creation, training,

monitoring of the covered entity's business practices, or community service. In FY 21, 30% of cases were resolved through settlements. It is important to note that not all inquiries become filed complaints. The Commission has instituted a range of approaches to quickly resolve matters.

Pre-Complaint Interventions (PCI)

In an ongoing effort to foster accountability and justice for New Yorkers facing ongoing discrimination and harassment, the Law Enforcement Bureau has increasingly pursued Pre-Complaint Interventions. This is where the Commission attempts to resolve claims prior to the filing of a complaint. In FY 21, LEB obtained a positive outcome for a Complainant in 214 matters, such as a reasonable accommodation for a disability or a transfer away from a harasser, without filing a complaint. In FY 20, LEB resolved 403 matters in this way.

In FY 21, the most common Pre-Complaint Interventions involved disability accommodations in housing (91 interventions), and lawful source of income discrimination, in which a tenant or prospective tenant was denied an apartment, or the renewal of a lease based on the use of rental assistance (13 interventions). Because of LEB's Interventions, New Yorkers were able to get a ramp installed at their apartment buildings or have the employer grant a reasonable accommodation that was requested due to a disability, pregnancy or religious beliefs, without filing a complaint and ensuing litigation process which can be lengthy.

Outcomes: Damages and Civil Penalties and Other Forms of Relief

The Law Enforcement Bureau remains a venue for justice where recoveries and affirmative relief are calibrated to address the harms caused to New Yorkers.

Through conciliation and decisions and orders, the Commission can award monetary damages for the complainant, including lost wages, emotional distress damages, and attorneys' fees. The Law Enforcement Bureau can also impose civil penalties of up to \$250,000 that are paid to the general fund of the City of NY.

Since 2015, the Commission has broken records year after year with respect to damages and penalties assessed. Last year was no different. In FY 21, the Commission recovered \$9,741,100 in compensatory damages and civil penalties, the highest in Commission history for the third year in a row, and \$2.2 million more than in FY 20 (\$7,519,147). Of that, \$8,069,100 were awarded in compensatory damages to Complainants and \$1,678,000 in civil penalties to the general fund of the City of New York.

In addition to securing monetary relief, the Law Enforcement Bureau continues to innovate creative resolutions that deter future harm and put restorative justice principles into practice to change the dynamics that led to harms in the first place. Through case resolutions, the Commission can order Respondents to perform wide ranging affirmative relief, including posting Notice of Rights the Commission has issued, creating or revising policies, conducting trainings, performing community service, and more. Settlements and agreements usually

involve some combination of policy changes, training for staff and management, civil penalties, posting requirements, or other forms of affirmative relief. In instances of employment discrimination, the Commission has negotiated resolutions that require Respondents to invest in employment pipeline opportunities for underrepresented groups, and to engage with community-based organizations to facilitate broader recruitment. In housing cases, settlements have included set-asides of apartments for voucher holders and broker incentives for working with voucher holders.

The Law Enforcement Bureau continues to identify strategic interventions to address discrimination in housing, employment, and public accommodations, and to respond to retaliation. We look forward to working with the Administration and members of City Council to identify and root out all manifestations of discrimination and harassment.

Thank you for convening today's hearing today. We look forward to your questions.
