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**NYC COMMISSION ON HUMAN RIGHTS AND LEGAL AID
SOCIETY ANNOUNCE LARGEST-EVER CIVIL PENALTY LEVIED IN
COMMISSION HISTORY IN AFFIRMATION FROM NY SUPREME COURT**

The New York State Supreme Court upheld Commissioner Carmelyn P. Malalis' 2015 decision ordering the payment of a \$250,000 civil penalty and over \$422,000 in damages to victim of sexual harassment

The settlement, which includes significant emotional distress damages and front and back pay for the victim, is also the one of the highest damages awards in the history of the Commission.

NEW YORK – The NYC Commission on Human Rights and the Legal Aid Society announce that the Supreme Court of the State of New York, New York County, affirmed Commissioner Carmelyn P. Malalis' decision in *Commission of Human Rights ex rel. Cardenas v. Automatic Meter Reading Corp. and the Estate of Jerry Fund* ordering \$422,670.26 in damages to the victim for sustained and egregious sexual harassment, and, for the first time, ordering the maximum civil penalty of \$250,000 allowable under the NYC Human Rights Law.

“I was very happy to hear that the Court affirmed the Commission’s decision and acknowledged that the discrimination and harassment I endured was illegal,” said Monica Cardenas, complainant in the case. “This has been a long fight and I hope we are near the end.”

The investigation began in 2011 when Monica Cardenas and her Legal Aid Society lawyers filed a complaint at the Commission alleging sexual harassment by her boss at Automatic Meter Reading Corp., Jerry Fund. Cardenas reported that Fund had repeatedly humiliated her in front of colleagues and clients by putting lewd cartoons with her name written on them in common spaces, repeatedly hitting her backside with an umbrella after she demanded he stop, and offering sex as a cure for her migraines, among other harassment. Fund admitted to his behavior, stating that he “deserved to have a little fun” with Ms. Cardenas for having employed her for 15 years. After a week-long trial, an administrative law judge ruled in Ms. Cardenas’ favor in 2014; however, an injunction was filed in federal court that delayed the proceedings. After Commissioner Malalis assumed leadership of the Commission in 2015, she issued a Decision and Order finding for Ms. Cardenas and ordering over \$400,000 in damages accounting for front pay, back pay, and emotional distress.

Commissioner Malalis also ordered the highest civil penalty available under the NYC Human Rights Law – reserved for willful, wanton, or malicious conduct – given Respondents’ failure to cooperate during certain points in the process, Fund’s multiple admissions of his behavior and lack of contrition, and the extreme nature of the harassment. In 2015, Respondents appealed Commissioner Malalis’ decision in state court to annul the Commissioner’s determination, alleging denial of due process, a lapse in the statute of limitations, and error of law, all of which Justice Shlomo Hagler firmly dismissed in his ruling, stating;

“Here, there is substantial evidence that a higher civil penalty of \$250,000 is warranted in light of the demonstration of Fund’s continuous wanton, willful, and malicious conduct and his acknowledgement of many of his behaviors.”

“Monica Cardenas suffered through years of sexual harassment by her employer, and while no compensation will ever fully vindicate the discriminatory conduct she experienced, we hope that this outcome delivers some closure,” said **Amy Hong, Staff Attorney with the Employment Law Unit at The Legal Aid Society**. “Ms. Cardenas is a very strong woman to have pursued her fight for justice in light of the amount of time it took. It was a tough and long fight, but we are thrilled to see that Judge Hagler ultimately affirmed the underlying decision on each and every issue challenged by her employer. The Legal Aid Society is proud to have worked with the NYC Commission on Human Rights to litigate this important case.”

“This is an historic day for the Commission on Human Rights, for victims of sexual harassment and discrimination who bravely come forward to hold their harassers accountable, and for advocates who fight to get justice for those victims,” said **Carmelyn P. Malalis, Commissioner and Chair of the NYC Commission on Human Rights**. “What Ms. Cardenas suffered through is inexcusable, and we are grateful for her bravery. We are proud to see justice served and the Commission’s original decision upheld in full. Let this be a warning to anyone who thinks they can violate the NYC Human Rights Law with impunity: we are here, we are watching, and we are steadfast and unrelenting in our pursuit to hold violators of the City Human Rights Law accountable.”

The ruling from Justice Hagler solidifies several important legal principles under the NYC Human Rights Law: including the principle that a worker who is being sexually harassed does not have to endure the harassment – the decision to leave an abusive employer is reasonable and justified under the law. Further, the decision supports the continuing violation theory, which states that if a worker files a claim when only some acts of harassment are within the statute of limitations, prior acts of harassment may be considered because the harassment is one continual violation. Also notable is the emotional distress award amount - \$200,000 – an amount found to be reasonable for a sexual harassment claim by the court given the evidence of the emotional harm the sexual harassment caused.

This case exemplifies the type of power dynamic that can be exploited in an employer/employee relationship,” said Katherine Carroll, supervising attorney at the Commission on Human Rights, one of the attorneys who litigated the case at trial. “It provides strong support for the doctrine of Constructive Termination – whereby an employer creates a work environment so hostile that is untenable for an employee and they have no recourse but to quit. In the eyes of a law that is no

different than any other type of unlawful termination and this ruling is a crystal clear example of effective application of the constructive termination theory.”

Only one case in the Commission’s history has awarded higher emotional distress damages. Under the leadership of Commissioner Malalis, the Commission on Human Rights has substantially increased its work in the area of sexual harassment, awarding \$1.4 million in penalties and damages in sexual harassment cases alone, and tripling the amount of damages and penalties awarded in general. In January 2019, the Commission launched a Gender-Based Harassment unit dedicated solely to pursuing cases of gender-based and sexual harassment in the workplace and is currently preparing to launch an online sexual harassment training that will be mandatory for most NYC employees.

The New York City Commission on Human Rights takes reports of discrimination seriously. If you have experienced or witnessed discrimination you can call 718-722-3131 to report or dial 311 and ask for Human Rights. To contact Legal Aid Society, call 212-577-3300.

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