STATE OF NEW YORK
COURT OF APPEALS

NAFEESA SYEED,

Plaintiff-Appellant,

v.

BLOOMBERG L.P.,

Defendant-Respondent.

No. CTQ-2023-00001

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND TO PRESENT ORAL ARGUMENT

PLEASE TAKE NOTICE, that upon the annexed affirmation of Cleland B. Welton II, dated December 28, 2023, the undersigned will move this Court at the Courthouse, 20 Eagle Street, Albany, New York, 12207, on January 8, 2023, pursuant to Rules 500.12(e) and 500.23 of the Rules of Practice of the Court of Appeals, for an order granting the State of New York and City of New York leave to file to file the accompanying brief as amici curiae and to present 10 minutes of oral argument, and for such other relief as the Court may deem just and proper.

Dated: New York, New York
December 28, 2023

LETITIA JAMES
Attorney General
State of New York

By: */s/ Cleland B. Welton II*
Cleland B. Welton II
Assistant Solicitor General

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STATE OF NEW YORK
COURT OF APPEALS

NAFEESA SYEED,

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No. CTQ-2023-00001

AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND TO PRESENT ORAL ARGUMENT

CLELAND B. WELTON II, an attorney duly admitted to the bar of this State, affirms under penalty of perjury the following:

1. I am an Assistant Solicitor General in the office of Letitia James, Attorney General of the State of New York. I make this affirmation on personal knowledge in support of the motion of the State of New York and the City of New York for leave to submit a brief as amici curiae and to present oral argument in this appeal. The proposed brief is attached as an exhibit hereto.

2. This case presents the following question, certified to this Court by the U.S. Court of Appeals for the Second Circuit: Whether a

nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds. Although this question has arisen in this civil action between private parties, amici have exceptionally strong interests in ensuring that this Court decides the question correctly.

3. The State and City Human Rights Laws (HRLs) guarantee equal opportunity to participate fully in the economic, social, cultural, and intellectual life of the State and the City. When the State Legislature and the City Council enacted their respective HRLs, they recognized that discrimination on the enumerated grounds gravely harms not only individual victims but also the economies, communities, and public welfare of the State and the City themselves. In particular, the State and the City suffer serious injuries when an employer's discriminatory hiring practices result in the denial of a State- or City-based job to a nonresident prospective employee. Such discrimination harms not only the individual victim, who loses an opportunity to work in the State or the City, but also

the State and the City themselves, which suffer the loss of the victim's economic and civil contributions as well as the broader harms that discrimination inflicts upon the public welfare.

4. The State and the City—and all of their inhabitants—suffer these harms even if (perhaps especially if) a particular act of discrimination directly affects an applicant for employment who does not yet live or work in New York. Amici have strong interests in ensuring that the HRLs are interpreted in a manner that will best prevent such harms, and therefore have strong interests in a decision in this case that the HRLs cover discrimination against nonresidents as well as residents in connection with State- or City-based jobs.

5. The State and the City also have strong interests in preserving the ability of their enforcement agencies to vigorously enforce the HRLs. Both the State Division of Human Rights (DHR) and the City Commission on Human Rights (City Commission) have long interpreted the HRLs to apply to employers who deny State- and City-based employment on discriminatory grounds—regardless of where the job applicants happen to live or work when they suffer such discrimination. These agencies are entitled to deference in their interpretation of the

statutes that they enforce. And interpreting the HRLs to protect only current State and City residents and workers from prohibited discrimination would severely limit the enforcement agencies' abilities to investigate and to address discriminatory hiring practices in the State and the City.

6. The proposed amicus brief would assist the Court in its decision of this important case by providing (among other things) analysis of relevant statutory text and purpose that goes beyond what is presented in the parties' briefs. The proposed brief would further assist the Court by providing the perspective of DHR and the City Commission, which are the government agencies responsible for administering and enforcing the HRLs. Leave to file the proposed amicus brief therefore should be granted.

7. Additionally, given the significance of the issues and the unique perspective that amici would offer to the Court, amici respectfully request leave to present 10 minutes of oral argument.

8. Plaintiff-appellant Nafeesa Syeed has consented to the relief requested herein. Defendant-respondent Bloomberg L.P. has stated that it is not taking a position on the motion at this time.

9. Pursuant to Rule 500.23(a)(4)(iii) of the Court of Appeals Rules of Practice, I affirm the following:

a. No party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner.

b. No party or party's counsel contributed money that was intended to fund preparation or submission of the brief.

c. No person or entity, other than amici, contributed money that was intended to fund preparation or submission of the brief.

10. For the foregoing reasons, the Court should grant amici leave to file the proposed amicus brief and to present 10 minutes of oral argument.

Dated: New York, New York
December 28, 2023

/s/ Cleland B. Welton II
Cleland B. Welton II
Assistant Solicitor General

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Dated: New York, New York
December 28, 2023

/s/ Cleland B. Welton II
Cleland B. Welton II
Assistant Solicitor General

EXHIBIT

CTQ-2023-00001

Argument requested
CLELAND B. WELTON II

State of New York
Court of Appeals

NAFEESA SYEED,

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Defendant-Respondent.

BRIEF FOR STATE OF NEW YORK AND CITY OF NEW YORK AS AMICI CURIAE

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Dated: December 28, 2023

On Certified Question from the U.S. Court of Appeals for the Second Circuit
Docket No. 22-1251

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INTERESTS OF AMICI CURIAE

Plaintiff-appellant Nafeesa Syeed alleges that defendant-respondent Bloomberg L.P. engaged in discrimination based on race and sex by refusing to hire her for a job based in New York City. At the time, Syeed did not live or work in New York. The U.S. Court of Appeals for the Second Circuit certified to this Court the question whether a nonresident plaintiff may pursue claims against a prospective employer under the Human Rights Laws (HRLs) of the State of New York and the City of New York for having refused to hire the plaintiff for a State- or City-based job, on one or more of the discriminatory grounds enumerated by the HRLs.

Amici, the State of New York and the City of New York, have exceptionally strong interests in the correct resolution of this important question, which is critical to the HRLs' guarantees of equal opportunity to participate fully in the economic, social, cultural, and intellectual life of the State and the City. When the State Legislature and the City Council enacted their respective HRLs, they recognized that discrimination on the enumerated grounds gravely harms not only individual victims but also the

economies, communities, and public welfare of the State and the City themselves. In particular, the State and the City suffer serious injuries when an employer's discriminatory hiring practices result in the denial of a State- or City-based job to a nonresident prospective employee. Such discrimination harms not only the individual victim, who loses an opportunity to work in the State or the City, but also the State and the City themselves, which suffer the loss of the victim's economic and civil contributions as well as the broader harms that discrimination inflicts upon the public welfare. The HRLs were enacted to prevent such harms, and that legislative purpose requires interpreting the HRLs to cover discrimination against nonresidents as well as residents in connection with State- or City-based jobs.

The State and the City also have strong interests in preserving the ability of their enforcement agencies to vigorously enforce the HRLs. Both the State Division of Human Rights (DHR) and the City Commission on Human Rights (City Commission) have long interpreted the HRLs to apply to employers who deny State- and City-based employment on discriminatory grounds—regardless of

where the job applicants happen to live or work when they suffer such discrimination. These agencies are entitled to deference in their interpretation of the statutes that they enforce. And interpreting the HRLs to protect only current State and City residents and workers from prohibited discrimination would risk imposing undue limitations the enforcement agencies' ability to investigate and to address discriminatory hiring practices in the State and the City.

Accordingly, the certified question should be answered in the affirmative: the HRLs protect a prospective employee plaintiff from discrimination in connection with a State- or City-based job opportunity, whether or not the plaintiff is currently resident in New York.

QUESTION CERTIFIED TO THIS COURT

Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.

STATEMENT OF THE CASE

A. Legal Background

1. The Human Rights Laws

New York State enacted the forerunner to the State HRL in 1945, making it the first State in the Nation to adopt such legislation. *See* Ch. 118, 1945 N.Y. Laws 457. Among other things, the 1945 enactment declared that the "opportunity to obtain employment without discrimination" is a civil right. *Id.*, § 1, at 458 (former Executive Law § 126). The State HRL has been amended and expanded many times since its enactment and is now codified in Article 15 of the Executive Law. It provides broad civil-rights protections in a wide variety of contexts.

New York City enacted its own HRL in 1965. N.Y.C. Local Law No. 97 (1965). The City HRL was intended to be "the most progressive" civil-rights statute in the Nation.[1] Like the State HRL, the City HRL has been repeatedly amended and expanded; it is now codified in Title 8 of the New York City Administrative Code. It

[1] Comm. on Gen. Welfare, *Council Report of the Governmental Affairs Division* 2 (Aug. 17, 2005).

establishes civil-rights safeguards that are similar to, though somewhat more protective than, those provided by the State HRL.

The State and City HRLs are founded on shared principles and public goals, which include protecting not only individual New Yorkers but also the public welfare from the harms of discrimination. As the Legislature recognized in enacting the State HRL, the failure to provide an "equal opportunity to enjoy a full and productive life," including "because of discrimination," both "threatens the rights and proper privileges of [the State's] inhabitants" and broadly "menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare." Executive Law § 290(3). The City Council similarly recognized in enacting the City HRL that given New York City's "great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants" than prejudice and discrimination, which "threaten the rights and proper privileges of [the City's] inhabitants and menace the institutions and foundation of a free democratic state." N.Y.C. Admin. Code § 8-101.

To combat the grave dangers that discrimination poses both to individual victims and to the public interest, the HRLs declare equality of opportunity to be a civil right, *see* Executive Law § 291, and outlaw discrimination in a variety of spheres including employment, housing, public accommodations, and education, *see id.* § 296; N.Y.C. Admin. Code § 8-107. As directly relevant here, the HRLs declare that it is an "unlawful discriminatory practice" for an employer "to refuse to hire or employ" an individual, "to bar or to discharge [an] individual from employment," or "to discriminate against [an] individual in compensation or in terms, conditions or privileges of employment" based on specified discriminatory factors—including (but not limited to) race and gender. Executive Law § 296(1)(a); *see* N.Y.C. Admin. Code § 8-107(1). Although certain sections of the HRLs make express reference to a person's or employer's geographic location,[2] the statutes both define the

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[2] *See, e.g.*, Executive Law § 292(5) (defining "employer" to include "all employers within the state"); *id.* § 298-a(1) (State HRL applies to "act[s] committed outside this state against a resident of this state or against a corporation organized under the laws of this state or authorized to do business in this state"); N.Y.C. Admin. Code § 8-107(5)(d)(1)-(2) (prohibiting discrimination by financial

(*continued on next page*)

term "unlawful discriminatory practices" without making distinctions among persons who already reside (or work) in the State or the City and those who reside (or work) outside New York. *See* Executive Law § 296(1)(a); N.Y.C. Admin. Code § 8-107(1).

The HRLs supply multiple remedies for violations of their respective antidiscrimination provisions. For one, each HRL broadly allows "any person" aggrieved by alleged discrimination to seek relief in court. Executive Law § 297(9); N.Y.C. Admin. Code § 8-502. Alternatively, "any person" may file a discrimination complaint with DHR or the City Commission. *See* Executive Law §§ 290(3), 295, 297; N.Y.C. Admin. Code §§ 8-101, 8-109. The HRLs empower DHR and the City Commission to investigate alleged or suspected violations of the HRLs over which they have jurisdiction, to hold hearings, and to issue orders addressing violations through compulsory directives, monetary fines, and damages awards. *See* Executive Law §§ 295(6)-(7), 297(2), (4); N.Y.C. Admin. Code §§ 8-109, 8-114,

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institutions "doing business in the city"); *id.* § 8-107(30)(b) (requiring persons "employed within the city of New York" to complete anti-sexual harassment training).

8-119, 8-120. As with the definitions of unlawful discrimination, the HRLs' remedial provisions broadly authorize "any person" to seek judicial or administrative relief, without regard for where the aggrieved person resides or works when the discrimination occurs. *See* Executive Law § 298; N.Y.C. Admin. Code § 8-123.

Both HRLs broadly direct that their provisions "shall be construed liberally," to accomplish their remedial purposes and to "maximize deterrence of discriminatory conduct." Executive Law § 300; N.Y.C. Admin. Code § 8-130. These liberal-construction rules mean that the courts are duty-bound "to make sure that the Human Rights Law works," *see City of Schenectady v. State Div. of Human Rights*, 37 N.Y.2d 421, 428 (1975), and to construe the HRLs "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible," *see Albunio v. City of New York*, 16 N.Y.3d 472, 477-78 (2011).

2. This Court's decision in *Hoffman*

In *Hoffman v. Parade Publications*, 15 N.Y.3d 285 (2010), this Court addressed the State and City HRLs' territorial reach, and held that to invoke the HRLs' protections a "nonresident plaintiff must demonstrate that the alleged discriminatory conduct had an 'impact' within" the State or the City, respectively. *Id.* at 290-91. But the Court in *Hoffman* did not consider how this impact requirement may apply where an employer discriminates against a nonresident plaintiff with respect to a State- or City-based job.

Hoffman involved a plaintiff who lived in Georgia and who had been employed in a Georgia-based job by the defendant, a company headquartered in New York City. The defendant company terminated the plaintiff's employment, making the decision at the New York City headquarters and communicating it via telephone from New York to the plaintiff in Georgia. Although the plaintiff both lived and had been employed by the defendant company in Georgia, he sued the defendant company for unlawful age discrimination under the State and City HRLs. *Id.* at 288.

This Court ruled that the HRLs did not permit the out-of-state plaintiff to pursue a discrimination claim based on the termination of his out-of-state employment. The Court held that an HRL plaintiff "must plead and prove that the alleged discriminatory conduct had an impact within" the State or the City. *Id.* at 289. In support of this conclusion, the Court cited the HRLs' broad statements that the laws served to protect "the public welfare, health and peace of the people of this state" and "the city and its inhabitants." *See id.* at 289, 291 (citing N.Y.C. Admin. Code §§ 8-101, 8-104(1) and Executive Law § 290(2), (3), respectively) (emphases omitted). The Court also expressed concern that without any impact requirement, the HRLs would "cover any plaintiff who is terminated pursuant to a decision made by an employer from its New York City headquarters regardless of where the plaintiff works." *Id.* at 290. The Court concluded that such a result would be "impractical, would lead to inconsistent and arbitrary results, and expands [the HRLs'] protections to nonresidents who have, at most, tangential contacts with" the State or the City. *See id.* at 291.

Applying the impact requirement to the facts alleged in *Hoffman*, the Court determined that the plaintiff's wrongful-termination claim failed because he "was neither a resident of, nor employed in, the City or State of New York," and did not otherwise "state a claim that the alleged discriminatory conduct had any impact in either of those locations." *Id.* at 292. As the Court explained, the plaintiff in *Hoffman* had lived in Georgia and had worked in a Georgia-based job; the fact that he was terminated by a New York-based company presented no more than "a tangential connection to the city and state." *Id.* at 285, 292.

In *Hoffman*, the Court was not presented with (and thus did not decide) the question whether the impact requirement is satisfied when a defendant discriminates against a nonresident plaintiff in failing to hire the plaintiff for a State- or City-based job. Nor has this Court resolved that question in any subsequent case. But prior to the present case, at least three federal cases had ruled that *Hoffman's* impact requirement is satisfied under such circumstances, i.e., where a nonresident plaintiff applies for an employment position located in the State or the City and is denied that job

because of unlawful discrimination. *See Scalercio-Isenberg v. Morgan Stanley Servs. Group Inc.*, No. 19-cv-6034, 2019 WL 6916099, at *4 (S.D.N.Y. Dec. 19, 2019); *Chau v. Donovan*, 357 F. Supp. 3d 276, 284 (S.D.N.Y. 2019); *Anderson v. HotelsAB, LLC*, 2015 WL 5008771, at *3 (S.D.N.Y. Aug. 24, 2015).[3]

B. Factual and Procedural Background

Syeed, a woman of South Asian heritage, alleges that in March 2018, while living in the District of Columbia and working as a reporter in Bloomberg's Washington, D.C. news bureau, she pursued several employment positions located in Bloomberg's New York City offices, including one as a reporter in Bloomberg's United Nations bureau. (A. 3, 17-18, 22-24.) Syeed was not hired for any of these New York-based employment positions. (A. 23-24.) The

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[3] *See also Williams v. Firequench, Inc.*, No. 21-cv-4112, 2022 WL 3571752, at *1-2 (S.D.N.Y. Aug. 19, 2022) (nonresident obtained default judgment in HRL suit alleging discriminatory failure to hire in New York); Decl. of J. Robbins (Sept. 9, 2022), Ex. F, Indeed job posting, *Williams*, ECF No. 31-6; *Kraiem v. JonesTrading Inst. Servs. LLC*, 492 F. Supp. 3d 184, 199 (S.D.N.Y. 2020) (impact requirement could be satisfied by nonresident alleging discriminatory deprivation of a particular job in New York, but "unspecified future career prospects" do not suffice).

complaint alleges that Bloomberg filled the U.N. reporter position by hiring a male applicant with less experience and fewer educational qualifications than Syeed. (A. 23.) In a subsequent conversation, Syeed's managing editor allegedly told her that Bloomberg had "considered making the New York UN job a 'diversity slot,' but it 'didn't work out that way.'" (A. 24.) Syeed understood this comment to mean that Bloomberg would only consider hiring her for a New York-based position if it was designated as a "diversity" position. (A. 24.)

After Syeed sued Bloomberg in Supreme Court, New York County, *see Syeed v. Bloomberg, L.P.*, No. 156215/2020 (Sup. Ct. N.Y. County, filed Aug. 9, 2020), Bloomberg removed the case to the U.S. District Court for the Southern District of New York under the Class Action Fairness Act (*see* A. 53). The operative Second Amended Complaint asserts (inter alia) claims for damages under the State and City HRLs on the basis of alleged discrimination on the basis of race and sex. (A. 34-37.) Bloomberg moved to dismiss the complaint for failure to state a claim. (A. 44, 54.)

The federal district court granted Bloomberg's motion to dismiss in relevant part, ruling that the alleged discrimination did not have a sufficient impact in the State or the City and that Syeed's HRL claims therefore failed as a matter of law. *Syeed v. Bloomberg L.P.*, 568 F. Supp. 3d 314 (S.D.N.Y. 2021) (reprinted at A. 44-89). The court interpreted *Hoffman* to mean that Syeed "did not experience the impact of the alleged discrimination in New York" (A. 57) because she did not yet "live or work in" the State or the City when the alleged discrimination occurred (A. 59-60, 64).

Syeed appealed to the Second Circuit, which sua sponte certified the question presented to this Court. *Syeed v. Bloomberg L.P.*, 58 F.4th 64, 71 (2d Cir. 2023) (reprinted at A. 111-126). The Second Circuit concluded (contrary to the district court) that *Hoffman* does not control because that case did not address whether the impact requirement is satisfied where, as here, a nonresident plaintiff alleges that an employer discriminated against her in refusing to hire her for a State- or City-based job. (*See* A. 117-123.) Finding no clear guidance on this question in *Hoffman* or any other

authoritative decision, the Second Circuit certified this question of state law to this Court. (A. 123.)

This Court accepted the Second Circuit's certification. *Syeed v. Bloomberg L.P.*, 39 N.Y.3d 1061 (2023) (reprinted at A. 127).

ARGUMENT

UNLAWFUL DISCRIMINATION HAS AN IMPACT IN NEW YORK WHEN IT AFFECTS A NEW YORK-BASED EMPLOYMENT OPPORTUNITY

This Court should hold that *Hoffman*'s impact requirement is satisfied in failure-to-hire cases like this one, in which a New York-based employer is alleged to have unlawfully discriminated in declining to hire a plaintiff for an employment position located in the State or the City—regardless of where that plaintiff happens to live or work when the discrimination occurs. That result best comports with the HRLs' plain language and purpose, and is consistent with the post-*Hoffman* cases that confronted this scenario prior to the case at bar. It also comports with Amici's own practice, including DHR's and the City Commission's longstanding interpretations of the statutes that they administer and enforce.

A. The Human Rights Laws Apply to Discriminatory Practices in Hiring for New York-Based Jobs, Including When the Applicant is a Nonresident.

1. *Hoffman* did not resolve the question presented here.

At the outset, Bloomberg is incorrect in contending (Br. at 9-17) that *Hoffman* resolves this case. To the contrary, the Second Circuit certified the question presented to this Court precisely because *Hoffman* did not consider (let alone decide) how the impact requirement applies to the scenario presented here—a nonresident's claim that a New York-based employer unlawfully discriminated against her in denying her a State- and City-based job opportunity. (*See* A. 117-118.)

Bloomberg's argument on this score seeks improperly to extend *Hoffman*'s holding well beyond the facts of that case—which were limited to a nonresident's claim that he was unlawfully terminated from an *out-of-state* job. In asking this Court to overread isolated snippets from *Hoffman*, Bloomberg disregards that "the language of an opinion is not always to be parsed as though we were dealing with language of a statute," *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979), and that opinions "dispose of discrete cases

and controversies and they must be read with a careful eye to context," *National Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023).

In particular, Bloomberg errs in focusing (Br. at 9-11) on *Hoffman*'s references to the HRLs' general statements of purpose to protect "persons in" the City and "inhabitants" of the State, *see* 15 N.Y.3d at 289, 291 (quotation marks omitted). Bloomberg fails to account for this Court's repeated observations in *Hoffman* that a nonresident HRL plaintiff could state a claim by alleging that "the alleged discriminatory conduct had an impact in" the State or the City, *id.* at 291; *see id.* at 289-290, 292 (all similar). As the Second Circuit correctly noted, this language "allow[s] for the possibility that a plaintiff could satisfy the impact requirement without living or working in New York City or State at the time of the discriminatory acts." (A. 119.)

There is no support for Bloomberg's assertion (Br. at 14-15) that *Hoffman*'s language referred only to the possibility that a nonresident might happen to be subject to discriminatory conduct while physically present in New York City or State. Nothing in

Hoffman suggests such a limitation. And contrary to Bloomberg's suggestion (*see id.* at 14), holding that the impact requirement is satisfied where a nonresident is discriminatorily denied a State- or City-based job would not "wipe away" *Hoffman*'s holding that a person who does not work or reside in the City or the State cannot assert an HRL claim based on the alleged discriminatory termination of his out-of-jurisdiction employment. Rather, the correct interpretation of the HRLs makes clear that discrimination may have the requisite impact in New York either because a plaintiff already lives or works in New York, or because she was denied a State- or City-based job on discriminatory grounds (a fact-pattern that *Hoffman* did not address).

In any event, given that *Hoffman* was not presented with the fact pattern presented by this case, any dicta that might appear to apply to Syeed's allegations is not binding here and does not foreclose this lawsuit. *See, e.g.*, *Knapp v. Hughes*, 19 N.Y.3d 672, 677 (2012); *Matter of Obregon*, 91 N.Y.2d 591, 603 (1998).

2. The HRLs' plain language and purpose demonstrate that their protections extend to nonresidents who suffer discrimination in being denied a New York-based job.

The question presented—which is one of statutory construction—should be decided based on the HRLs' plain language and express purpose. Each of these considerations supports the conclusion that discrimination against a person on the grounds enumerated in the statutes by a State- or City-based employer in connection with a State- or City-based job has the requisite impact in New York, whether or not the individual happened already to be living or working in the State or the City when the discrimination occurred.

First, the HRLs' plain language squarely contradicts Bloomberg's contention that the statutes protect only individuals who already live or work in New York against discrimination in hiring for State- or City-based jobs. Both HRLs broadly state that it is unlawful to discriminate against "any person" or "individual[]" in making employment decisions—without any geographic requirement concerning the location of the victim's residence or employment when the discrimination occurs. Executive Law § 296(1)(a);

N.Y.C. Admin. Code § 8-107(1). The HRLs similarly prohibit discrimination against "any person" in a variety of other spheres including public accommodation, education, and housing. *See, e.g.*, Executive Law § 296(2)(a) (public accommodation); *id.* § 296(4) (education); *id.* § 296(5) (housing); N.Y.C. Admin. Code § 8-107(4) (public accommodation); *id.* § 8-107(5) (housing and lending practices). And both HRLs also expressly extend their remedial provisions to "any person" aggrieved by an act of discrimination—without any limitation based on place of residence or employment. Executive Law § 297(1), (9); N.Y.C. Admin. Code §§ 8-109, 8-502.

The Legislature and the City Council could have expressly imposed location-based limitations on the HRLs' substantive or remedial provisions, if they had intended to include such limitations. In the State HRL, for example, the Legislature was clear in defining the term "employer" to include "all employers *within the state*." Executive Law § 292(5) (emphasis added). Other provisions of the HRLs similarly make express reference to a person or entity's location where the Legislature or the City Council deemed location to be a relevant consideration. *See id.* § 298-a(1); N.Y.C. Admin.

Code §§ 8-107(5)(d)(1)-(2), 8-107(30)(b). See *supra* at 6-7 n.2. But the HRLs' operative substantive and remedial provisions contain no New York residency or employment requirement for plaintiffs. The conspicuous absence of any such language is a significant indication that the omission was intended, *see Commonwealth of the N. Mariana Is. v. Canadian Imperial Bank of Commerce,* 21 N.Y.3d 55, 60 (2013), and that the HRLs' protections are not limited solely to job applicants who already live or work in the State or the City when the discrimination occurs.

Second, the statutory provisions setting forth the HRLs' public purposes, on which Bloomberg relies (Br. at 19-21), further confirm that the HRLs apply to employers that discriminate in refusing to hire a nonresident for a New York-based job. *See* Executive Law § 290(3); N.Y.C. Admin. Code §§ 8-101, 8-401. Bloomberg errs in focusing solely on these provisions' references to protecting "inhabitants" or "persons in" or "within" the State and the City. *See* Executive Law § 290(3); N.Y.C. Admin. Code § 8-101. These same provisions expressly state that HRLs also protect the

State and the City themselves, and the public welfare within their jurisdictions, from unlawful discrimination.

For example, the State Legislature found and declared that unlawful discrimination "not only threatens the rights and proper privileges of its inhabitants" but also "menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants." Executive Law § 290(3). The City Council similarly found and declared that "there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of" unlawful discrimination. N.Y.C Admin. Code § 8-101. And the City Council further found that the "existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon, the city" itself, "distinct from the injury sustained by individuals as an incident of such discrimination." *Id.* § 8-401.

In view of these express legislative determinations, acts of discrimination in connection with State- or City-based jobs satisfy *Hoffman*'s impact requirement because the harms from such discrimination have the necessary impact on the State and the City.

First, job applicants subjected to such discriminatory hiring practices experience the harm in New York because they have been deprived of an opportunity to work in a New York based job. Second, by preventing rejected job applicants from moving to New York to work (and live) here, and by deterring other similar job applicants from applying, such discrimination harms the State and the City themselves by depriving Amici of such individuals' talents, economic participation, and civic contributions. Such discrimination also impairs the diversity of the State's and City's workforces and populations by preventing members of protected classes from becoming New York workers and residents. The State and the City—and all of their inhabitants—feel the impacts of such discrimination, even if (perhaps especially if) an applicant for employment does not yet live or work in New York.

Such State- and City-based impacts were not present in *Hoffman*. The Georgia-focused discrimination alleged in that case did not affect anyone's ability to be employed in New York, did not deprive the State or the City of the plaintiff's economic and civic contributions, and did not otherwise impair the general welfare of

the State or the City. *See* 15 N.Y.3d at 288, 291-92. Here, by contrast, the alleged discrimination harmed Syeed in New York by denying her an opportunity to be employed in the State and the City (*see* A. 3, 17, 24), and also harmed the State, the City, and all of their inhabitants. If Syeed's allegations are proven true, Amici have lost Syeed's individual contributions to New York's workforces and communities, as well as the broader benefits of increased diversity in the media (in particular, the media covering the United Nations). The HRLs protect both Syeed and Amici from these harms.

Third, given the plain statutory language and express legislative purposes discussed above, the presumption that statutes do not apply extraterritorially[4] does not foreclose a claim like Syeed's. That is because, contrary to Bloomberg's suggestions (Br. at 19-21), the location of the plaintiff's current residence or employment is not the relevant consideration for extraterritoriality purposes. Rather, as Bloomberg's cited authority makes clear, the

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[4] *See Global Reins. Corp.-U.S. Branch v. Equitas Ltd.*, 18 N.Y.3d 722, 735 (2012); *Goshen v. Mutual Life Ins. Co. of N.Y.*, 286 A.D.2d 229, 230 (1st Dep't 2001), *aff'd,* 98 N.Y.2d 314 (2002).

question is whether the statute is directed to *conduct* having a sufficient connection to the relevant jurisdiction. *See Goshen*, 286 A.D.2d at 230 (claim under General Business Law § 349(h) requires "deceptive acts or practices which took place in New York State").

In this case and others like it, the relevant conduct is closely connected to the State of New York and City of New York—that is both where the defendant made the allegedly unlawful employment decision and where the job in question was located (*see* A. 3, 17-18, 22-24). In these circumstances, affording protection and relief to Syeed under the HRLs does not impermissibly extend the statutes' reach beyond the jurisdictions of the State and the City. Rather, it effects a valid domestic application of the statutes to cover the New York impacts of a New York employer's allegedly discriminatory decision (made in New York) not to hire the plaintiff for a job located in New York—thus depriving the plaintiff of a New York-based opportunity and inflicting the harms caused by discrimination upon the State and the City. The presumption against extraterritoriality poses no bar to Syeed's claims in this case.

Finally, even if the HRLs' plain langauge and purposes left any doubt about how to apply the impact requirement (which they do not), any ambiguity should be resolved in favor of Syeed and other similarly situated HRL plaintiffs. The statutes expressly direct courts to construe their terms liberally to "maximize deterrence of discriminatory conduct." Executive Law § 300; N.Y.C. Admin. Code § 8-130; *see Matter of Cahill v. Rosa*, 89 N.Y.2d 14, 20 (1996); *Albunio*, 16 N.Y.3d at 477-78. Permitting employers to engage in racial and gender discrimination against nonresidents applying for New York-based jobs would not "maximize deterrence." Rather, such an approach would permit harmful discrimination to persist, harming not only individual applicants but also the general welfare and all of the inhabitants of the State and the City.

3. Extending the HRLs' protection to nonresidents seeking employment in New York leads to predictable results and avoids arbitrary outcomes.

Interpreting the HRLs to cover failure-to-hire discrimination claims like those alleged here also best comports with this Court's concern in *Hoffman* that the rules for determining the HRLs' coverage should be "simple for courts to apply and litigants to follow" and should "lead[] to predictable results." *See* 15 N.Y.3d at 291. An impact requirement focusing on the location of a lost employment position is straightforward: if the employment position is based in New York State (or New York City), then the HRLs prohibit discrimination with respect to hiring for that position. But if the employment position is in another State, then a nonresident may not invoke the HRLs' protections (unless there is some other basis for finding a substantial impact on New York). Put simply, the impact of employment discrimination is felt where the work is done, or is to be done. This rule leads to predictable and intuitive results: The HRL claims in *Hoffman* failed because the job at issue was located in Georgia; but the claims in this case survive because the job was to be located in New York City.

In contrast, the rule espoused by Bloomberg and the federal district court here—under which a person must always live or work in New York *before* invoking the HRLs' protections (*see* A. 58-59; Bloomberg Br. at 1-2, 9)—improperly "lead[s] to inconsistent and arbitrary results," *see Hoffman*, 15 N.Y.3d at 291. Indeed, such a rule would have absurd consequences. For example, a New York employer that wished to maintain an all-male or all-white workforce could readily evade the HRLs by interviewing and hiring only out-of-state candidates who fit the employer's discriminatory criteria. The HRLs should not be interpreted in a manner that would permit such unreasonable, inequitable, and "potentially absurd results." *Lubonty v. U.S. Bank N.A.*, 34 N.Y.3d 250, 255 (2019) (quotation marks omitted).

Even less extreme examples lead to arbitrary results under the federal district court's rule that the HRLs' protections are limited to "individuals who live or work in New York City and State" (A. 60). For example, suppose that two New Jersey residents apply for the same New York-based job. One applicant already commutes into New York for a job with another company, while the

other is unemployed. The New York-based employer rejects both applications on the basis of race. In this scenario, the federal district court's rule would appear only to prohibit the employer from discriminating against the applicant who currently works in New York—even if that applicant's current New York employment is entirely unrelated to the job to which all three applicants applied. The unemployed applicant would be unprotected, despite having suffered the same discrimination in connection with his application for the same job. Nothing in the HRLs—which are, after all, *antidiscrimination statutes*—calls for drawing such an arbitrary distinction.

Similarly arbitrary results would abound if the impact requirement were applied to HRL claims outside the employment context.[5] For instance, the HRLs prohibit discrimination on enumerated grounds against "any person" in relation to the provi-

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[5] At least one court has applied the impact requirement to dismiss a City HRL claim alleging unlawful discrimination in education where the relevant events had taken place on Long Island. *See Schimkewitsch v. New York Inst. of Tech.*, No. 19-cv-5199, 2020 WL 3000483, at *6 (E.D.N.Y. June 4, 2020).

sion of housing and public accommodation. Executive Law § 296(2), (5)(a)(1); N.Y.C. Admin. Code § 8-107(4)(a)(1), (5)(a)(1). If courts were to apply the federal district court's version of the impact requirement in cases alleging housing discrimination, the HRLs would protect only persons seeking to move from one New York residence to another, and not to persons seeking to move to New York from another State. Such a rule would deny the HRLs' protections to the many thousands of prospective New Yorkers who each year seek housing in the State or the City so that they can relocate to take new jobs in New York.[6] Similarly, if the federal district court's impact requirement were applied in cases alleging discrimination in public accommodation, the HRLs would provide no protection to the many millions of tourists who visit New York each year from all over the country when they attempt to book hotel rooms and other forms of public accommodation.[7] There is no basis to conclude that the Legislature or the City Council intended such

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[6] *See, e.g.*, U.S. Census Bureau, *State-to-State Migration Flows* (last updated Sept. 21, 2023).

[7] *See, e.g.*, New York City Tourism + Conventions, *NYC Travel & Tourism Outlook* (July 2023).

absurd results. *See Lubonty*, 34 N.Y.3d at 255; *see also Matter of Walston & Co. v. New York City Commn. on Human Rights*, 41 A.D.2d 238, 241 (1st Dep't 1973) (applying HRLs to persons who "come into New York" and suffer discrimination in public accommodations).

The approach that best comports with the legislation's text and purpose focuses on the location of the opportunity with respect to which discrimination is alleged. Under this approach, every applicant for a New York-based job enjoys the HRLs' protections against employment discrimination, every person who seeks a New York apartment or hotel room enjoys the statutes' protections against discrimination in housing and public accommodations, and so on. This approach appropriately ties the impact requirement to the particular forms of discrimination that the HRLs prohibit. It also best advances the State's and City's interests in preventing and remedying discrimination within their borders. And it is readily administrable, drawing clear lines based on the subject matter of a dispute rather than something as arbitrary as a discrimination victim's residence.

4. Precedent supports a broad interpretation of *Hoffman*'s impact requirement.

Applying the HRLs to the type of failure-to-hire discrimination alleged here is also supported by the on-point judicial authority. Prior to the district court's ruling in this case, every decision addressing the question presented here had determined that a nonresident alleging discrimination in relation to an application for employment in New York satisfies *Hoffman*'s impact requirement.

For example, in *Anderson*, the federal district court correctly determined that the City HRL applied to a Connecticut resident who alleged that the defendant engaged in unlawful discrimination in refusing to hire her for a job located in New York City. *See* 2015 WL 5008771, at *1-3 & n.2. As the court rightly explained, the City HRL's applicability turned on "a practical substantive consideration of how and where the [discrimination] actually affected the plaintiff with respect to her employment," rather than on something as arbitrary as where the plaintiff happened to be working at the time of the alleged wrongdoing. *See id.* at *3-4. Accordingly, the denial of an "opportunity to work in New York City . . . provid[ed] the necessary New York City workplace nexus" for a City HRL

claim. *Id.* at *4; *accord Chau*, 357 F. Supp. 3d at 283-84 (extending *Anderson*'s interpretation of City HRL to State HRL); *Scalercio-Isenberg*, 2019 WL 6916099, at *4 (same).

While Bloomberg criticizes *Anderson*'s "practical substantive considerations" analysis (Br. at 16), it does not supply any reason to conclude that *Anderson* is wrong. Nor does Bloomberg offer a persuasive defense of its own proposal (*see* Br. at 19-21)—which is impractical and nonsubstantive in asking the Court to focus arbitrarily on the physical location of the victim's preexisting job (or residence), rather than on the subject matter of the claimed discrimination.

In parting ways with *Anderson, Chau,* and *Scalercio-Isenberg* (A. 59), the federal district court here leaned heavily on *Hoffman* and its statements that the HRLs protect "individuals who work 'in the city,' and 'within the state'" (A. 63 (quoting *Hoffman*, 15 N.Y.3d at 289-90)). But as explained, *Hoffman* does not resolve the certified question because it did not address whether the HRLs' protections extend to nonresidents seeking employment within the State or the City. See *supra* at 16-18. And as discussed, the HRLs' plain

language and broad statements of public purpose make clear that the HRLs' protections apply to nonresidents who are denied a New York-based job on discriminatory grounds. See *supra* at 19-26.

Bloomberg misplaces its reliance (Br. at 12-13, 15-17) on inapposite cases that involved discrimination affecting an *ongoing* employment opportunity that was located *outside* the HRLs' jurisdictional reach. In *Vangas v. Montefiore Medical Center*, for example, the nonresident plaintiff "worked in Yonkers, was supervised in Yonkers, was terminated in Yonkers, and d[id] not allege that she ever went to NYC for work." 823 F.3d 174, 183 (2d Cir. 2016). Her City HRL claim was thus foreclosed by *Hoffman* because the alleged wrongful termination of her employment had its impact in Yonkers, where the job was based, not in the City. *Id.* at 182-83. Nearly all of Bloomberg's cited cases similarly involved nonresidents who alleged discrimination as to their employment outside New York.[8] And while the plaintiff in *Hardwick v.*

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[8] *See Jarusauskaite v. Almod Diamonds, Ltd.*, 198 A.D.3d 458, 459 (1st Dep't 2021), *lv. denied,* 38 N.Y.3d 904 (2022); Br. for Defs.-Appellants at 1, 9-10, *Jarusauskaite,* No. 2020-04756 (1st Dep't Dec. 21, 2020), NYSCEF No. 5 (Mexico); *Pakniat v. Moor*, 192

(*continued on next page*)

Auriemma lived and principally worked in New York, the discrimination she alleged pertained to only a temporary assignment in London—and it had no impact on her principal employment in New York. *See* 116 A.D.3d 465, 465-68 (1st Dep't 2014). Here, by contrast, the alleged discrimination had direct and negative impacts in New York—both on Syeed (who lost the opportunity for to be employed in New York) and on Amici themselves (who suffered the harms that discrimination inflicts on the State, the City, and all of their inhabitants). Properly construed, the HRLs protect against and provide remedies for injuries of this nature.

A.D.3d 596, 596-97 (1st Dep't 2021), *lv. denied,* 37 N.Y.3d 917 (2022) (Canada); *Wolf v. Imus*, 170 A.D.3d 563, 564 (1st Dep't 2019) (Florida); *Benham v. eCommission Solutions, LLC*, 118 A.D.3d 605, 606 (1st Dep't 2014); Reply Br. for Defs.-Appellants at *2, *Benham*, No. 12852, 2014 WL 4492687 (1st Dep't Apr. 25, 2014) (Kentucky); *Shah v. Wilco Sys., Inc.*, 27 A.D.3d 169, 171, 175-76 (1st Dep't 2005) (New Jersey); *Shiber v. Centerview Partners LLC*, No. 21-cv-3649, 2022 WL 1173433, at *1, 4 (S.D.N.Y. Apr. 20, 2022) (New Jersey).

B. Amici's Enforcement Experience Supports Applying the HRLs to Discrimination in Failing to Hire an Applicant for a New York-Based Job.

Amici's substantial experience enforcing the HRLs also supports the conclusion that the statutes protect nonresidents from discriminatory refusals to hire for State- or City-based employment positions—irrespective of where the applicant happens to live or work at the time of such discrimination. DHR and the City Commission have long interpreted their respective HRLs as applying to such discrimination. In keeping with that interpretation, DHR routinely investigates and adjudicates allegations of discrimination brought by nonresidents who are denied State- or City-based employment. *See, e.g.*, *Seawick v. WeWork Cos. Inc.*, No. 10208611 (DHR 2022); *Liou v. Shanghai Huazhi Enter. Mgt. Consulting Ltd*, No. 10182638 (DHR 2018); *Liou v. Smiles Park Ave. Dental PLLC*, No. 10181267 (DHR 2018); *Seawick v. Trustpilot, Inc.*, No. 10161171 (DHR 2014).[9] DHR also frequently investigates and adjudicates allegations of unlawful discrimination against nonresidents

[9] DHR case documents are reproduced in the addendum.

regarding, for example, State- or City-based housing and public accommodations. *See, e.g.*, *Lane-Allen v. D. Auxilly NYC LLC*, No. 10205884 (DHR 2022) (nonresident alleging sexual-orientation discrimination in public accommodation). And the City Commission has formally adopted a rule defining the term "applicant" to include all "persons seeking initial employment" as well as "current employees who are seeking or being considered for promotions or transfers"—without reference to or any limitation based on the location of the applicant's current residence or place of employment. 47 Rules of the City of N.Y. § 2-01; *see also Matter of Walston & Co.*, 41 A.D.2d at 240-41 (City Commission correctly asserted jurisdiction over nonresident's claim of discrimination in New York-based public accommodation)

This longstanding agency interpretation and practice is rational and consistent with the HRLs' plain language and purpose. It should be accorded deference. *See, e.g.*, *James Sq. Assoc. LP v. Mullen*, 21 N.Y.3d 233, 251 (2013); *Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 79 (2008).

Finally, the federal district court's narrow view of *Hoffman*'s impact requirement should be rejected for the additional reason that it would risk undermining DHR's and the City Commission's ability to enforce the HRLs in situations where a nonresident is refused New York-based employment (or housing, public accommodations, educational opportunities, etc.). A ruling that the impact requirement is not satisfied in the type of failure-to-hire discrimination claim alleged by a private plaintiff here would raise doubts about whether DHR and the Commission have jurisdiction over similar claims of discrimination brought by nonresidents. This Court should adopt an interpretation of the HRLs that avoids such outcomes.

CONCLUSION

The certified question should be answered in the affirmative.

Dated: New York, New York
December 28, 2023

Respectfully submitted,

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Cleland B. Welton II, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,905 words, which complies with the limitations stated in § 500.13(c)(1).

/s/ Cleland B. Welton II
Cleland B. Welton II

Addendum

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B4-80.0 **Queens: change certain street name.**—The following street name is designated as hereinafter indicated:

New name	Old name	Limits
Lefrak Memorial square	none	Queens boulevard and 65th avenue, Forest Hills, Long Island

§ 2. This local law shall take effect immediately.

LOCAL LAW No. 96

A local law to amend the administrative code of the city of New York, in relation to capacity of flush tanks.

Became a law with the approval of the mayor, November 22, 1965. Passed by the local legislative body of the city of New York. Filed in the office of the secretary of state November 24, 1965.

Be it enacted by the council as follows:

Section 1. Subdivision i of section C26-1277.0 of the administrative code of the city of New York is hereby amended to read as follows:

§ C26-1277.0. **i. Capacity of flushtanks.**—Each water-closet and urinal shall be supplied with a volume of water adequate to flush and clean the fixture and to refill the trap seal at each flushing, and flush tanks shall be of sufficient capacity to supply the required volume.

§ 2. This local law shall take effect immediately.

LOCAL LAW NO. 97

A local law to amend the administrative code of the city of New York, in relation to the powers and jurisdiction of the city commission on human rights.

Became a law with the approval of the mayor, December 13, 1965. Passed by the local legislative body of the city of New York. Filed in the office of the secretary of state December 17, 1965.

Be it enacted by the council as follows:

Section 1. Section B1-1.0 of title B of chapter one of the administrative code of the city of New York as last amended by local law number eleven for the year nineteen hundred sixty-two is hereby amended to read as follows:

TITLE B

City Commission on Human Rights

§ B1-1.0 **Policy.** In the city of New York, with its great cosmopolitan population consisting of large numbers of people of every race, color, creed, national origin and ancestry, there is no greater danger to the health, morals, safety and welfare of the city, and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of differences of race, color, creed, national origin or ancestry. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundations of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space because of race, creed, color or national origin, and to take other actions against discrimination because of race, creed, color or national origin, as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 2. Section B1-2.0 of the administrative code of the city of New York, as last amended by local law number eleven of nineteen hundred sixty-two is hereby **repealed** and reenacted to read as follows:

§ B1-2.0 **Definitions.** When used in this title:

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful discriminatory practice" includes only those practices specified in section B1-7.0 of this title.

5. The term "employer" does not include any employer with fewer than four persons in his employ.

6. The term "employee" and this title does not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

7. The term "commission" unless a different meaning clearly appears from the context, means the city commission on human rights created by this title.

8. The term "national origin" shall, for the purposes of this title, include "ancestry."

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bathhouses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies, or bureaus; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owners and one or more tenants. Such term shall not include public libraries, kindergartens, primary and secondary schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility, supported in whole or in part by public funds or by contributions solicited from the general public; or any institution, club or place of accommodation which is in its nature distinctly private.

No institution, club, organization or place of accommodation which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements shall be deemed a private exhibition within the meaning of this section.

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.

11. The term "publicly-assisted housing accommodations" shall include all housing accommodations within the city of New York in:

(a) Public housing.

(b) Housing operated by housing companies under the supervision of the state commissioner of housing, or the city housing and redevelopment board.

(c) Housing constructed after July first, nineteen hundred-fifty, within the city of New York.

(1) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the Federal Housing act of nineteen hundred forty-nine,

(3) which is constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

(d) Housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole in or part by a loan, whether or not secured by a mortgage the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(e) Housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodation is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (a) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

12. The term "multiple dwelling," as herein used, means a dwelling which is occupied, as a rule, for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be

deemed to include a hospital, convent, monastery, asylum or public institution, or a fire-proof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families. The term "family," as used herein, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder," "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.

14. The term "real estate broker" means any person, firm or corporation who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction, or otherwise, exchange, purchase or rental of an estate or interest in real estate or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

15. The term "real estate salesman" means a person employed by a licensed real estate broker to list for sale, sell or offer for sale at auction or otherwise to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rents for the use of real estate for or in behalf of such real estate broker.

§ 3. Section B1-5.0 of the administrative code of the city of New York, as added by local law fifty-five of the year nineteen hundred fifty-five, is hereby amended to read as follows.

§ B1-5.0 **Powers and duties.** The powers and duties of the commission shall be:

1. To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious intergroup relations within the city of New York.

2. To enlist the cooperation of the various racial, religious and ethnic groups, community organizations, labor organizations, fraternal and benevolent associations and other groups in New York city, in programs and campaigns devoted to eliminating group prejudice, intolerance, bigotry and discrimination.

3. To study the problems of prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby in all or any fields of human relationship.

4. To receive, investigate and pass upon complaints and to initiate its own investigations of:

(a) Racial, religious and ethnic group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby.

(b) Discrimination against any person, group of persons, organization or corporation, whether practiced by private persons, associations, corporations and, after consultation with the mayor, by city officials or city agencies. Upon its own motion, to make, sign and file complaints alleging violations of this title.

5. To hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith to require the production of any evidence relating to any material under investigation or any question before the commission.

6. To issue publications and reports of investigations and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby.

7. To appoint an executive director. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury.

8. To recommend to the mayor and to the council, legislation to aid in carrying out the purpose of this title.

9. To submit an annual report to the mayor and the council which shall be published in the City Record.

§ 4. Chapter one of the administrative code of the etiy of New York is hereby amended by adding thereto six new sections to be sections B1-7.0,* B1-8, B1-9*, B1-10.0, B1-11.0 and B1-12.0 to follow section B1-6.0, to read as follows:

* So in original.

§ B1-7.0 **Unlawful discriminatory practices.** 1. It shall be an unlawful discriminatory practice:

(a) For an employer, because of the age, race, creed, color, national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of his age, race, creed, color or national origin, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the age, race, creed, color, national origin or sex of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this title or because he had filed a complaint, testified or assisted in any proceeding under this title.

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review.

(b) To deny to or withhold from any person because of his race, creed, color, national origin or sex the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program.

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin or sex.

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of appli-

cation for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color or national origin of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodation,* advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

3. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodation or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color or national origin of such person or persons.

(b) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

3-a. It shall be an unlawful discriminatory practice:

a. For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

b. For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective

* So in original. [Evidently should read "accommodations".]

employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five, or any intent to make any such limitation, specification or discrimination.

c. For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this title or because he has filed a complaint, testified or assisted in any proceeding under this title. But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, by reason of his race, color or religion.

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color or national origin of such person or persons.

(2) To discriminate against any person because of his race, creed, color or national origin in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations, or (2) to the rental of a room or rooms in a housing accommodation, if such

rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such land or commercial space because of race, creed, color or national origin of such person or persons.

(2) To discriminate against any person because of race, creed, color or national origin in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color or national origin of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withheld* any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color or national origin of such person or persons.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record of inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

* So in original. [Evidently should read "withhold".]

d. It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space, or any officer, agent or employee thereof:

(1) To discriminate against any such applicant or applicants because of the race, creed, color or national origin of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such financial assistance.

(2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin.

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this title, or to attempt to do so.

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this title or because he has filed a complaint, testified or assisted in any proceeding under this title.

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section B1-8.0 of this title to violate the terms of such agreement.

9. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

§ B1-8.0 **Procedure.** 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney-at-law, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the

person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission upon its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the commission is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the Civil Practice Law and Rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this title, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

2. After the filing of any complaint, the commission shall make prompt investigation in connection therewith. If the commission shall determine after such investigation that probable cause does not exist for crediting the allegations of the complaint that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice, the commission shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent. The complainant may, within thirty days of such service, apply for review of such action of the commission. Upon such application, the chairman shall review such action and determine whether there is probable cause to credit the allegations of the complaint and accordingly shall enter an order affirming, reversing or modifying the determination of the commission, or remanding the matter for further investigation and action, a copy of which order shall be served upon the complainant. If the commission after such investigation shall determine that there is probable cause to credit the allegations of the complaint, or if the chairman after such review, shall determine that there is probable cause, and if in complaints of discrimination in housing, the property owner or his duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations for a period of ten days from the date of said finding of probable cause, the commission may cause to be posted for a period of ten days from the date of the said finding, on the door of said housing accommodations, a notice stating that said accommodations are the subject of a complaint before the commission and that prospective transferees will take said accommodations at their peril. Any destruction, defacement, alteration or removal of the said notice by the owner of* his agents, servants and employees, shall be a misdemeanor punishable on conviction thereof by a fine of not more than five hundred dollars or by imprisonment for not more than one year or by both. If the commission, after such investigation, shall determine that there is probable cause to credit the allegations of the complaint, or if the chairman after such review, shall determine that there is such probable cause,

* So in original. [Evidently should read "or".]

the commission shall immediately endeavor to eliminate such unlawful discriminatory practice by proceeding in the following manner:

a. If in the judgment of the commission circumstances so warrant, it may endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. The terms of such conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the commission and the respondent, including a provision for the entry in court of consent decree embodying the terms of the conciliation agreement. The members of the commission and its staff shall not disclose what transpired in the course of such endeavors. Whenever a complaint is filed, pursuant to subdivision five (d) of section B1-7.0 of this title, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where the express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the commission or any review by a court of competent jurisdiction of any order or decision by the commission.

b. In case of failure to eliminate such unlawful discriminatory practice complained of, or in advance thereof as determined by the commission, it shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint at a hearing before two members of the commission, designated by the chairman and sitting as the commission, at a time and place to be fixed by the chairman and specified in such notice. The place of any such hearing shall be the office of the commission or such other places as may be designated by the chairman. The case in support of the complaint shall be presented before the commission by one of its attorneys. Endeavors at conciliation by the commission shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

c. If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory

practice as defined in this title, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, payment of compensatory damages to the person aggrieved by such practice, as, in the judgment of the commission, will effectuate the purposes of this title, and including a requirmeent* for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereof.

3. Any complaint filed pursuant to this section must be so filed within one year after the alleged act of discrimination.

4. At any time after the filing of a complaint alleging an unlawful discriminatory practice under subdivision three or under paragraphs (a), (b) or (c) of subdivision five of section B1-7.0 of this title, if the commission determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commission may enter in such proceeding, the commission may direct the corporation counsel to apply in the name of the commission to the Supreme Court in any county within the city of New York where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, for an order requiring the respondents or any of them to show cause why they should not be enjoined from selling, renting, leasing or otherwise disposing of such housing accommodation, land or commercial space to anyone other than the complainant. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual a commission order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper.

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* So in original. [Word misspelled.]

§ B1-9.0 **Judicial review and enforcement.** Any complainant, respondent or other person aggrieved by such order of the commission may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the Supreme Court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order occurs 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. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable at a special term of such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence before the commission. The findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the Supreme Court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the Supreme Court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within thirty days after the service of the order of the commission.

§ B1-10.0 **Penal provision.** Any person, employer, labor organization or employment agency, who or which shall wilfully resist, prevent, impede or interefere with the commission or any of its members or representatives in the performance of duty under this title, or shall wilfully violate an order of the commission, shall be

guilty of a misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such wilful conduct.

§ B1-11.0 **Construction.** The provisions of this title shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this title shall be deemed to repeal any of the provisions of the Civil Rights law or any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section B1-7.0 of this title, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this title, he may not subsequently resort to the procedure herein.

§ B1-12.0 **Separability.** If any clause, sentence, paragraph or part of this title or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not effect,* impair or invalidate the remainder of this title.

§ 5. Title C and title D of chapter one of the administrative code of the city of New York are hereby **repealed.**

§ 6. This local law shall take effect immediately.

LOCAL LAW No. 98

A local law to amend the administrative code of the city of New York, in relation to supplemental pensions or retirement allowances to certain retired employees.

Became a law with the approval of the mayor, December 22, 1965. Passed by the local legislative body of the city of New York. Filed in the office of the secretary of state December 29, 1965.

Be it enacted by the city council as follows:

Section 1. Sections D49-30.0 and D49-31.0 of title D of article four of chapter forty-nine of the administrative code of the city of New York, having been added by local law number ninety-nine of the city of New York for the year nineteen hundred sixty-four are hereby amended to read, respectively, as follows:

ARTICLE 4

§D49-30.0 **Definitions.** As used in this article: 1. The term "fire retired employee" shall mean any person who was retired for

* So in original. [Evidently should read "affect".]

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

TIFFANY LANE-ALLEN,

Complainant,

v.

D AUXILLY NYC LLC,

Respondent.

NOTICE AND FINAL ORDER

Case No. 10205884

Federal Charge No. 16GC001383

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by the Honorable Maria L. Imperial, Commissioner of the New York State Division of Human Rights ("Division"), after a hearing held before Thomas S. Protano, 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, New York 10458. Please do not file the original Notice or Petition with the Division.

DATED: September 21, 2023
Bronx, New York

MARIA L. IMPERIAL
COMMISSIONER

TO:

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[redacted]
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Respondent
D Auxilly NYC LLC
Attn: Dominique Galbraith, Owner
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Hon. Letitia James, Attorney General
Attn: Civil Rights Bureau
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New York, New York 10005

State Division of Human Rights
Robert Goldstein, Director of Prosecutions
September 26, 2022, Senior Attorney
Lilliana Estrella-Castillo, Chief Administrative Law Judge
Thomas S. Protano, Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel

Division of Human Rights

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

TIFFANY LANE-ALLEN,

Complainant,

v.

D AUXILLY NYC LLC,

Respondent.

FINAL ORDER

Case No. **10205884**

Federal Charge No. 16GC001383

SUMMARY

Complainant alleged Respondent discriminated against her by refusing to make a garment for Complainant's fiancée because it was to be worn in a same-sex wedding. Complainant has proven her claim and is awarded $5,000 in emotional distress damages. Civil fines and penalties in the amount of $20,000 are also assessed.

PROCEEDINGS IN THE CASE

On September 17, 2019, Complainant filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to public accommodation 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 December 23, 2021, Complainant moved to add a second corporate entity to the caption as a respondent. Complainant's motion was denied on June 30, 2022. On June 28, 2022, Respondent moved to dismiss for lack of jurisdiction. Decision was reserved on Respondent's motion until after the public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge ("ALJ") of the Division. A public hearing was held via videoconference on July 13, 2022. At hearing, the caption was amended pursuant to 9 N.Y.C.R.R. § 465.4 to reflect Complainant's current name, Tiffany Lane-Allen.

Both parties appeared at the hearing. Complainant was represented by Ian Shapiro, Esq., Kaitland Kennelly, Esq., Valeria M. Pelet del Toro, Esq., Kathleen Hartnett, Esq., and Brett Figlewski, Esq. Respondent was represented by Barry Black, Esq., and Sarah E. Child, Esq.

At hearing, the parties jointly submitted a stipulation of facts that was entered into the record as ALJ's Exhibit 7.

On September 28, 2022, ALJ Protano issued a Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order").

Dated October 19, 2022, Respondent filed Objections to the Recommended Order with the Commissioner's Order Preparation Unit.

FINDINGS OF FACT

1. Complainant identifies as gay. (Tr. 20)

2. Complainant is currently a resident of Texas. At the time she filed this complaint, she resided in Missouri. (Tr. 19-20; ALJ's Exhibit 2)

3. Respondent is an active business operating New York State. (ALJ's Exhibit 7)

4. Respondent was formed on December 30, 2010, in New York State by Dominique Galbraith (formerly known as Dominique Auxilly). (ALJ's Exhibit 7)

5. Galbraith is Respondent's owner. (ALJ's Exhibit 7)

6. Respondent also, at one point, operated from a storefront in New York. (ALJ's Exhibit 7)

7. Respondent sells and markets clothing, including wedding attire, through its own website, Etsy and various social media platforms, including Instagram and Facebook. (Tr. 26, 59; ALJ's Exhibit 7; Complainant's Exhibit 1)

3. Respondent markets the D. Auxilly brand as "Made in New York," including on its website. (ALJ's Exhibit 7)

4. During the relevant time, Respondent sold "non-custom" and "custom" wedding dresses. Non-custom dresses were produced in a customer's size while custom dresses were tailored to a customer's specific measurements. (ALJ's Exhibit 7)

7. Galbraith identifies as Christian and believes she is called to make her faith in Jesus Christ known to others through her business pursuits. (ALJ's Exhibit 7).

8. On January 26, 2018, Complainant and Angel Lane-Allen ("Lane-Allen") became engaged to be married. (Tr. 21)

9. After a year of searching for a wedding outfit for Lane-Allen, Complainant and Lane-Allen found a jumpsuit Respondent had previously designed on Respondent's Instagram feed. On June 13, 2019, Complainant emailed Respondent about the jumpsuit. Complainant

explained that her fiancée had "fallen in love" with the garment and inquired about Respondent's payment policies. (Tr. 23, 25-26, 29-30, 59; Complainant's Exhibit 2)

10. On June 19, 2019, Galbraith responded as follows:

> Hi Tiffany!
>
> Thank you for reaching out! I apologize for the late response. Yes, we accept payments. 50% upfront and the remaining balance upon completion. However, I wouldn't be able to make a piece for a same-sex wedding. It goes against my faith in Christ. I believe Jesus died for our sins so that we would live for him according to His Holy word. I know you both love each other and that this feels right but I encourage you both to reconsider and see what the Lord has to say and the wonderful things He has in store for you both if you trust and obey Him.
>
> God Bless and be with you both!
>
> I'm available to talk and share more about Jesus if you'd like. Feel free to call me.

(Complainant's Exhibit 2)

11. Galbraith believes the Bible defines marriage as between a man and a woman and that it would violate her religious beliefs to make an outfit for a same-sex wedding. (ALJ's Exhibit 7)

12. Complainant was initially in disbelief. She felt hurt that someone would tell her to reconsider given that marriage had not previously been available to her and, after waiting for so long to find an appropriate outfit for Lane-Allen, she felt defeated when she learned Respondent refused to provide it. (Tr. 31-32)

13. A few weeks later, an Instagram post inquired if Galbraith had refused to make a jumpsuit because Complainant "happened to be engaged to another woman," asking, "is that fake???" Galbraith replied, "it's not fake." (Complainant's Exhibit 6)

14. Complainant and Lane-Allen married on October 23, 2019. (Tr. 40; Complainant's Exhibit 4)

OPINION AND DECISION

The Human Rights Law prohibits owners of a places of public accommodation from withholding goods and services directly or indirectly to any person because of that person's sexual orientation. *See* Human Rights Law § 296.2(a).

When Galbraith wrote "I wouldn't be able to make a piece for a same-sex wedding," she acknowledged it was because the wedding between Complainant and Lane-Allen was going to be a wedding between two people of the same sex. "The act of entering into a same-sex marriage is 'conduct that is inextricably tied to sexual orientation' and, for purposes of the Human Rights Law, . . . there is 'no basis for distinguishing between discrimination based on sexual orientation and discrimination based on someone's conduct of publicly committing to a person of the same sex.'" (internal citations omitted) *Gifford v. McCarthy*, 137 A.D.3d 30, 37 (3d Dept. 2016); *see also, Christian Legal Soc'y. Chapter of the Univ. of California, Hastings Coll. of the Law. v. Martinez*, 561 U.S. 661, 689 (2010) ("[o]ur decisions have declined to distinguish between status and conduct in this context").

Accordingly, Respondent violated the Human Rights Law when it refused to produce the advertised clothing because its intended use was for a same-sex wedding ceremony.

This conduct is as much unlawful as it would be for Respondent to refuse to produce the clothing for a wedding between two people of different races or ethnicities. Indeed, a law that protects "gay persons, just as it can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions as are offered to other members of the public" is "unexceptional." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018)).

Respondent argues that it "does not object to providing her services to gay people. In fact, she has made non-wedding dresses for gay clients and worked with gay collaborators before." Respondent's Post-Hearing Brief at 25. "The Human Rights Law makes it unlawful to refuse, withhold from or deny, on the account of sexual orientation, '*any* of the accommodations, advantages, facilities or privileges' furnished by a place of public accommodation. Simply put, the statute 'does not permit businesses to offer a 'limited menu' of goods or services to customers on the basis of a status that fits within one of the protected categories." (emphasis in the original) (citations omitted) *Gifford v. McCarthy*, 137 A.D.3d at 37-38.

The Human Rights Law further prohibits an owner of a place of public accommodation from, directly or indirectly, publishing, circulating, issuing, displaying or posting any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges shall be refused, withheld from or denied to any person based on their sexual orientation or that the patronage of any person is unwelcome, objectionable, or not acceptable, desired or solicited because of their sexual orientation. *See* Human Rights Law § 296.2(a).

When Galbraith published on Instagram, a social media platform through which she marketed Respondent's products, that she in fact denied a sale on the basis of sexual orientation, it was a clear signal that the patronage of same-sex couples was unwelcome. This also violates the Human Rights Law.

That the Human Rights Law was established to assure that every individual "within the state" is entitled to live free of discrimination only supports this conclusion. Galbraith unequivocally declared that Respondent would not produce a jumpsuit for a same-sex wedding. This position was then made public through a social media channel Respondent used to market

its products. Thus, such goods and services were made as much unavailable to all same-sex couples in New York as to Complainant and her spouse. Eliminating such unequal treatment is the Law's very purpose.

Citing to this language in the enabling statute, Respondent proposes that "the argument begins and ends there." Respondent contends that the phrase "within the state" imposes a limitation on the Human Rights Law and that the Division lacks subject matter jurisdiction because the impact of the instant discrimination was felt out of state. In support of its position, Respondent cites to several employment cases, all of which rely on *Hoffman v. Parade Publications,* 15 N.Y.3d 285 (2010), which held that a plaintiff in an employment discrimination case must show that the impact of the alleged discrimination occurred in New York. *See* Respondent's Post-Hearing Brief at 2-12.

Hoffman and its progeny are inapposite. Neither the Division nor any court has applied the employment discrimination impact analysis in the public accommodation context. Because the nature of employment discrimination is different than that of public accommodation discrimination, each must be analyzed differently. This difference is particularly apparent in the digital age when employees frequently work from anywhere and goods and services are sold and marketed online.

In an employment context, the Law prohibits employers from refusing to hire, employ, bar from employment, discharge or discriminate in compensation, terms conditions or privileges of employment against employees or prospective employees based on their protected class memberships. *See* Human Rights Law § 296.1(a). Discrimination in an employment context tends to be specific to an individual employee or prospective employee or group of employees or prospective employees. Since employees now frequently telecommute, often an employer may

be based in New York, but its employees may be anywhere. Pursuant to the impact analysis, if an employee is out of state and the work is performed out of state, the impact of any alleged discrimination is out of state. As such, the effects of the discrimination are discrete and impact only the affected employees or prospective employees wherever they may be.

In a public accommodation context, the Law prohibits places of public accommodation from discriminating against any person. A place of public accommodation, by its very definition, holds itself out to serve the public in general. *See, e.g., Ness v. Pan Am. World Airways*, 142 A.D.2d 233, 240 (2d Dept. 1988) ("that the organization or facility was providing conveniences or services to the general public . . . is one of the characteristics identified by the Court of Appeals . . . as being descriptive of the term 'place of public accommodation'"). When a place of public accommodation denies its goods and services to a class of people, the harm is generalized and occurs where the goods and services are otherwise available and the harm is to all prospective and actual customers in the targeted protected class. *See U.S. Power Squadrons v. State Human Rights Appeal Bd.*, 59 N.Y.2d 401, 411 (1983) ("[a] place of the public accommodation need not be a fixed location, it is the place where petitioners do what they do").

The plaintiff in *Hoffman* was a Georgia resident with an office in Atlanta, who performed the job duties from which his employment was terminated outside of New York. The Court of appeals noted that, "[a]t most, Hoffman pleaded that his employment had a tangential connection to the city and state," *Hoffman, at 292,* whereas, the sale of goods in this matter had a far more substantial connection to New York. Respondent is a New York business selling goods in New York, goods which it marketed as "made in New York." The transaction that was refused would have occurred in New York. Respondent made its decision and would have done the required work in New York. The money paid for the garment would have landed in New York.

Likewise, Respondent was withholding its goods and services to everyone in Complainant's class who might potentially purchase an outfit for a same-sex wedding. "Analytically, [places of public accommodation] may discriminate by denying goods and services without denying individuals access to any particular place, e.g., home delivery service or services performed in the customer's home and mail order services," *U.S. Power Squadrons,* 59 NY2d at 411, or in this case, the internet. *See, e.g., Sullivan v. BDG Media, Inc.*, 71 Misc. 3d 863, 870 (N.Y. Sup. Ct. 2021) ("[p]laces of public accommodation now frequently sell and market their goods and services online. Given the modern prevalence of e-commerce, excluding online-only commercial enterprises from the definition of 'public accommodation' would severely frustrate the Legislature's intent to enable individuals . . . to fully enjoy the goods, services, privileges, and advantages available to the general public"); *see also Martinez v. Gutsy LLC.*, 2022 WL 17303830, at *5 (E.D.N.Y. 2022) ("[a]s an ever-greater proportion of the activities of everyday life and its myriad commercial transactions begin to take place online, a reading of the statute that limits its effect to entities transacting commerce in-person becomes one that renders the statute increasingly meaningless").

It is the fact that discrimination occurred in the State that is relevant here. *See Andrews v. Blick Art Materials, LLC*, 268 F. Supp. 3d 381, 392 (E.D.N.Y. 2017) ("it is the sale of goods and services to the public, rather than how and where that sale is executed, that is crucial when determining if the [public accommodation] protections of the ADA are applicable.") As the Court of Appeals stated in *Power Squadrons, supra,* a place of public accommodation is "where petitioners do what they do." Here, there is no question that Respondent "does what it does" in the State of New York and that the discrimination occurred here.

Respondent also argues that requiring it to provide a garment for a same-sex marriage would violate its right to free speech and the free exercise of religion under the First Amendment to the United States Constitution. Respondent's religious beliefs, and the right to object to the Human Rights Law, are indeed properly protected under the Constitution. Nevertheless, "it is a general rule that such objections do not allow business owners . . . to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law." *Masterpiece Cakeshop,* 138 S. Ct. at 1727; *see also Fulton v. City of Philadelphia,* 141 S. Ct. 1868, 1876 (2021). A law is "generally applicable" and "neutral" when it applies equally to religious and secular conduct and is not seen as "targeting religious beliefs" or "infring[ing] upon or restrict[ing] practices because of their religious motivation." *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 533 (1993).

Citing the Division's Rules of Practice at 9 N.Y.C.R.R. §§ 465.20(a) and 465.5(e) ("Rule 20" and "Rule 5.5," respectively), Respondent asserts that the Human Rights Law is not a neutral, generally applicable law. Respondent suggests that Rule 20 allows the Commissioner to "reopen or dismiss cases on a whim." *See* Respondent's Objections at 5.

Under Rule 20, "the commissioner, or any designee of the commissioner, including those specifically referred to in these rules, may, on his or her own motion, whenever justice so requires, reopen a proceeding." Under Rule 5.5, the Division may dismiss a complaint for "administrative convenience," when noticing the complaint would be "undesirable" or processing it "will not advance the State's human rights goals." Respondent claims these rules indicate that the Commissioner has discretion to grant "exemptions" which, under *Lukumi* and *Fulton* mean that the Human Rights Law "does not pass strict scrutiny when applied to Respondent" and that "New York's interest in eradicating discrimination cannot be considered

compelling when the Commissioner has the discretion to grant exemptions." Respondent misapprehends the Division's Rules.

Rule 5.5 outlines the process for withdrawals, discontinuances and dismissals prior to hearing. Subsection (e) provides that the Division can dismiss a complaint for "administrative convenience," and lists several possible reasons for such a dismissal. However, administrative convenience dismissals are procedural and, significantly, are subject to judicial review should the determination be arbitrary or capricious or if one or both of the parties object. *See* Human Rights Law§ 298. The Commissioner does not have authority to grant exemptions under Rule 5.5, as Respondent suggests.

Rule 20 provides the Commissioner, or the Commissioner's designee, the authority to reopen a closed matter. A decision to reopen is not a final determination. It merely sends a case back for further proceedings. Rule 20, like Rule 5.5, does not give the Commissioner, or any other Division employee, the authority to grant exemptions.

From whole cloth, Respondent asserts, "the [Human Rights Law] independently violates the First Amendment's prohibition on viewpoint discrimination, as it only punishes speech promoting one viewpoint regarding sexual orientation." Respondent's Post-Hearing Brief at 23. The Law would apply equally if Respondent had refused to serve heterosexual couples. The Human Rights Law is not intended to regulate religious conduct or beliefs and it does not punish speech. It is neutral and generally applicable. The Rules Respondent cite fail to support any contrary interpretation. *See Gifford v. McCarthy,* 137 A.D.3d at 39. The Division is not requiring Respondent to participate in or give affirmation to a same-sex wedding and Galbraith is free to practice her faith. But if Respondent is going to offer goods and services to the public, it must offer them to all members of the public.

"Discriminatory denial of equal access to goods, services and other advantages made available to the public not only 'deprives persons of their individual dignity,' but also 'denies society the benefits of wide participation in political, economic, and cultural life.' Assuring the citizens of New York 'equal access to publicly available goods and services [thus] plainly serves compelling state interests of the highest order.'" *Id.* at 40 (citing *Roberts v. United States Jaycees,* 468 U.S. 609 (1984)).

Finally, Respondent cites *Masterpiece Cakeshop,* 136 S. Ct. 1719, to support its argument that the First Amendment protects its rights to refuse service for a same-sex wedding. In *Masterpiece Cakeshop*, a cakemaker charged with violating Colorado's Anti-Discrimination Act argued that a "significant First Amendment speech component [implicating] deep and sincere religious beliefs" arose from his using "his artistic skills to make an expressive statement, a wedding endorsement in his own voice and his own creation." *Id.* at 1721. While the Court did not pass judgment on that argument, it did note that "if a baker refused to sell any goods or any cakes for gay weddings, that would be a different matter and the State would have a strong case under this Court's precedents that this would be a denial of goods and services . . . and is subject to a neutrally applied and generally applicable public accommodations law." *Id.* at 1728. It is not in question that Respondent's sartorial creations manifest her own artistic expression. However, unlike that cakemaker, Respondent was not asked to make an "expressive statement."

Nor is this a case where Respondent was making "customized and tailored creations . . . expressive in nature, designed to communicate a particular message." (internal quotations omitted) *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2307 (2023). Unlike that case, the parties here have not stipulated that Respondent's activities are "pure speech." *Id. at 2312.* Complainant asked Galbraith to duplicate a jumpsuit Galbraith had already designed that

Complainant and Lane-Allen found on Respondent's Instagram available for purchase. Galbraith refused because the jumpsuit was to be worn at a same-sex wedding. Even Respondent's "customized" outfits were not designed to a customer's specifications but were only reproduced to a customer's measurements.

An award of compensatory damages to a person aggrieved by an unlawful discriminatory practice may include compensation for mental anguish, which may be based solely on the complainant's testimony. *See Cosmos Forms, Ltd. v. State Div. of Human Rights*, 150 A.D.2d 442 (2d Dept. 1989). In determining the amount of damages to be awarded, the following is taken into consideration: the relationship of the award to the wrongdoing; the duration, consequence and magnitude of a complainant's mental anguish, including physical manifestations or psychiatric treatment; and consideration of comparable awards for similar injuries. *See N.Y.C. Transit Auth. v. State Div. of Human Rights*, 78 N.Y.2d 207, 216 (1991); *Father Belle Cmty. Ctr. v. State Div. of Human Rights,* 221 A.D.2d 44 (4th Dept. 1996); *Bronx County Med. Group, P.C. v. Lassen*, 233 A.D.2d 234, 235 (1st Dept. 1996).

As a result of Respondent's discriminatory conduct, Complainant suffered emotional distress. Lane-Allen found an outfit; she and Complainant married. However, there was at least some period during which Complainant felt "defeated" and "hurt," while she was forced to alter her wedding plans. Indeed, "such distress follows such bias and exclusion as night follows day." *300 Gramatan Ave. Assoc. v. State Div. of Human Rights,* 45 N.Y.2d 176, 184 (1978). Considering the nature and circumstances of the conduct and the degree of Complainant's suffering, an award of $5,000 to Complainant for mental anguish she suffered as a result of Respondent's discriminatory conduct is warranted. Such an award will effectuate the purposes of the Human Rights Law. *See Gifford* at 433.

Human Rights Law§ 297(4)(c)(vi) allows 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."

Human Rights Law§ 297(4)(e) states 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 factors that determine the appropriate amount of a civil fine and penalty include the goal of deterrence; the nature and circumstances of the violation; the degree of respondent's culpability; any relevant history of respondent's actions; respondent's financial resources; and other matters as justice may require. *See Gostomski v. Sherwood Terrrace Apartments.,* Case Nos. 10107538 and 10107540, (November 15, 2007), *aff'd, Sherwood Terrace Apartments v. State Div. of Human Rights (Gostomski),* 61 A.D.3d 1333, (4th Dept. 2009); *119-121 East 97th Street Corp. v. New York City Comm'n on Human Rights,* 220 A.D.2d 79 (1st Dept.1996).

Here, the goal of deterrence, the nature and circumstances of Respondent's violation and the degree of Respondent's culpability warrant a penalty. Respondent's admitted refusal to provide Complainant with a garment for a same-sex wedding constituted unlawful discrimination against Complainant solely on the basis of her sexual orientation in violation of the Human Rights Law. Respondent would not have refused service to Complainant if Complainant were marrying a male, which Galbraith admitted when she wrote that she "wouldn't be able to make a piece for a same-sex wedding," and suggested that Complainant "reconsider." Galbraith, as Respondent's owner, unambiguously stated her disapproval of same-sex marriages, and refused

service to Complainant. She then confirmed to the public via Instagram, that she had indeed refused to provide the garment because Complainant "happened to be engaged to another woman." Thus, Respondent's culpability is evident and indisputable. The record offers no evidence of Respondent's relevant history, financial resources, or other matters that might also be considered in assessing a penalty. Accordingly, a civil fine of $20,000, payable to the State of New York, will effectuate the purposes of the Human Rights Law. *See Gifford* at 433.

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 Respondent, its agents, representatives, employees, successors, and assigns, shall cease and desist from unlawfully discriminatory practices; and

IT IS FURTHER ORDERED, that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Within sixty days of the date of this Final Order, Respondent shall pay Complainant an award of compensatory damages for mental pain and suffering in the amount of $5,000. Interest shall accrue at a rate of nine percent per year from the date of this Order until the date payment is made;

2. Payment to Complainant shall be made by Respondent in the form of a certified check payable to Complainant, and delivered by certified mail, return receipt requested, to her attorneys at Cooley LLP, 55 Hudson Yards, New York, NY 10001-2157. Respondent shall furnish written proof of its compliance with the directives contained in this Final

Order to the New York State Division of Human Rights, Caroline Downey, Esq., General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

3. Within sixty days of the date of this Final Order, Respondent shall pay a civil fine and penalty to the State of New York in the amount of $20,000 for having violated the Human Rights Law. Payment of the civil fine and penalty 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 New York State Division of Human Rights, Caroline Downey, Esq., General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

4. Within sixty days of the date of this Final Order, Respondent is directed to post a copy of the Division's poster, which can be found at https://dhr.ny.gov/sites/default/files/pdf/posters/poster.pdf, in a prominent place in its offices. The poster must be in color, no smaller than 8.5 inches by 14 inches, and posted where all staff are likely to view it.

5. Within sixty days of the date of this Final Order, Respondent shall establish in its place of business both anti-discrimination training and procedures. Respondent shall simultaneously submit proof of its compliance with these directives in the form of affidavit or attorney affirmation to Office of General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458.

6. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: September 21, 2023
Bronx, New York

_____
MARIA L. IMPERIAL
Commissioner

New York State Division of Human Rights
Complaint Form

RECEIVED
JUL 18 2016
BROOKLYN SATELLITE OFFICE

CONTACT INFORMATION

My contact information:

Name: Glenn Liou

Address: [redacted] Apt or Floor #: _____

City: Phoenix State: AZ Zip: 85015

REGULATED AREAS

I believe I was discriminated against in the area of:

- ☑ Employment
- ☐ Education
- ☐ Volunteer firefighting
- ☐ Apprentice Training
- ☐ Boycotting/Blacklisting
- ☐ Credit
- ☐ Public Accommodations *(Restaurants, stores, hotels, movie theaters amusement parks, etc.)*
- ☐ Housing
- ☐ Commercial Space
- ☐ Labor Union, Employment Agencies
- ☐ Internship

I am filing a complaint against:

Company or Other Name: MICI Group

Address: 315 5th avenue Room 507, NY, NY

City: New York State: NY Zip: 10016

Telephone Number: 646 801 6680 (area code)

Fax 646 726 4037

Individual people who discriminated against me:

Name: _____ Name: _____

Title: _____ Title: _____

DATE OF DISCRIMINATION

The most recent act of discrimination happened on: 07 (month) 12 (day) 2016 (year)

BASIS OF DISCRIMINATION

Please tell us why you were discriminated against by checking one or more of the boxes below.

STOP You do not need to provide information for every type of discrimination on this list. Before you check a box, make sure you are checking it only if you believe it was a reason for the discrimination. Please look at the list on Page 1 for an explanation of each type of discrimination.

Please note: Some types of discrimination on this list do not apply to all of the regulated areas listed on Page 3. (For example, Conviction Record applies only to Employment and Credit complaints, and Domestic Violence Victim Status is a basis only in Employment complaints). These exceptions are listed next to the types of discrimination below.

I believe I was discriminated against because of my:

☑ **Age** *(Does not apply to Public Accommodations)* Date of Birth:	☐ **Genetic Predisposition** *(Employment only)* Please specify:
☐ **Arrest Record** *(Only for Employment, Licensing, and Credit)* Please specify:	☐ **Marital Status** Please specify:
☐ **Conviction Record** *(Employment and Credit only)* Please specify:	☐ **Military Status:** Please specify:
☐ **Creed / Religion** Please specify:	☐ **National Origin** Please specify:
☐ **Disability** Please specify:	☐ **Race/Color or Ethnicity** Please specify:
☐ **Pregnancy-Related Condition:** Please specify:	☑ **Sex** Please specify: ☐ **Female** ☑ **Male** ☐ **Pregnancy** ☐ **Sexual Harassment**
☐ **Domestic Violence Victim Status:** *(Employment only)* Please specify:	☐ **Sexual Orientation** Please specify:
☐ **Familial Status** *(Does not apply to Public Accommodations or Education)* Please specify:	☐ **Retaliation** *(if you filed a discrimination case before, or helped someone else with a discrimination case, or reported discrimination due to race, sex, or any other category listed above)* Please specify:

STOP Before you turn to the next page, please check this list to make sure that you provided information ***only*** for the type of discrimination that relates to your complaint.

EMPLOYMENT OR INTERNSHIP DISCRIMINATION

Please answer the questions on this page only if you were discriminated against in the area of employment or internship. If not, turn to the next page.

How many employees does this company have?

a) 1-3 b) 4-14 c) 15 or more d) 20 or more e) Don't know

Are you currently working for the company?

☐ **Yes**

Date of hire: (_____ Month _____ day _____ year) What is your job title? _____

☐ **No**

Last day of work: (_____ Month _____ day _____ year) What was your job title? _____

☑ **I was not hired by the company**

Date of application: (06 Month 12 day 2016 year)

ACTS OF DISCRIMINATION

What did the person/company you are complaining against do? Please check all that apply.

☑ Refused to hire me

☐ Fired me / laid me off

☐ Did not call me back after a lay-off

☐ Demoted me

☐ Suspended me

☐ Sexually harassed me

☐ Harassed or intimidated me (other than sexual harassment)

☐ Denied me training

☐ Denied me a promotion or pay raise

☐ Denied me leave time or other benefits

☐ Paid me a lower salary than other workers in my same title

☐ Gave me different or worse job duties than other workers in my same title

☐ Denied me an accommodation for my disability

☐ Denied me an accommodation for my religious practices

☐ Gave me a disciplinary notice or negative performance evaluation

☐ Other: _____

DESCRIPTION OF DISCRIMINATION - for all complaints *(Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)*

Please tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory.
PLEASE TYPE OR PRINT CLEARLY.

On 06/12/2016 I applied for an Administrative Assistant position online on Indeed website. On my resume I identified myself as a 55 year old male from Taiwan originally. I was qualified for the position. Respondent never contacted or interviewed me. According to Respondent's job posting, "This position is for Ladies only." I believe that I was denied hire due to my gender, male.

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. ***PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.***

NOTARIZATION OF THE COMPLAINT

Based on the information contained in this form, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment), or filing my housing/credit complaint with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing),as applicable. This complaint will protect your rights under Federal Law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained the in aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

Glenn Lioi

Sign your full legal name

Jorge Salgado
Notary Public
Maricopa County, Arizona
My Comm. Expires 08-05-16

Subscribed and sworn before me
This 8th day of July, 2016

Signature of Notary Public

County: Maricopa Commission expires: August 05, 2016

Please note: Once this form is notarized and returned to the Division, it becomes a legal document and an official complaint with the Division of Human rights. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are accusing of discrimination.

ADDITIONAL INFORMATION

The next three pages are for the Division's records and ***will not be sent out*** *with the rest of your complaint.*

Contact information

My primary telephone number:

480 [redacted]
(area code)

___home phone
___work phone
_✓_cell phone
___other _____

My secondary telephone number:

_____ _____ _____
(area code)

___home phone
___work phone
___cell phone
___other: _____

My email address: glennlwin@gmail.com

Last four digits of my Social Security number: [redacted]

Contact person *(someone who does not live with you but will know how to contact you if the Division cannot reach you):*

Name: _____

Telephone number: _____ _____ _____
(area code)

Relationship to me: _____

Special Needs

I am in need of: a) A translator *(if so, which language?)*: _____

b) Accommodations for a disability: _____

c) Other: _____

Settlement / Conciliation:

To settle this complaint, I would accept: *(Please explain what you want to happen as a result of this complaint. Do you want a letter of apology, your job back, lost wages, an end to the harassment, etc?)*

I'm seeking for a financial settlement.

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

GLENN LIOU,

Complainant,

v.

SHANGHAI HUAZHI ENTERPRISE MANAGEMENT CONSULTING LTD,

Respondent.

NOTICE AND FINAL ORDER

Case No. 10182638

Federal Charge No. 16GB603505

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 November 27, 2018, by Thomas S. Protano, 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 HELEN DIANE FOSTER, 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, 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:
Bronx, New York

_____
HELEN DIANE FOSTER
COMMISSIONER

TO:
Complainant
Glenn Liou
1545 Crosby Avenue, Front 1,
Bronx, NY 10461

Respondent
Shanghai Huazhi Enterprise Consulting Ltd
4107 Bowne Street Apt 5L
Flushing, NY 11355

Respondent Secondary Address
Shanghai Huazhi Enterprise Consulting Ltd
Attn: LINGPING HU, DOS Registered Agent
4107 Bowne Street Apt 5L
Flushing, NY 11355

Respondent Attorney
Aihong You, Esq.
9 Mott Street, Suite 600
New York, NY 10013

Hon. Letitia James, Attorney General
Attn: Civil Rights Bureau
28 Liberty Street
New York, New York 10005

State Division of Human Rights
Robert Goldstein, Director of Prosecutions
Robert Alan Meisels, Senior Attorney
Lilliana Estrella-Castillo, Chief Administrative Law Judge
Thomas S. Protano, Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

GLENN LIOU,
Complainant,

v.

SHANGHAI HUAZHI ENTERPRISE MANAGEMENT CONSULTING LTD,
Respondent.

Federal Charge No. 16GB603505

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10182638**

SUMMARY

Complainant asserted that Respondent discriminated against him when it placed a job advertisement seeking "Ladies only" and then failed to hire Complainant. Complainant has not shown he was discriminated against. However, Respondent placed an advertisement that violates the Human Rights Law, and is assessed a civil fine and penalty as a result of its actions.

PROCEEDINGS IN THE CASE

On July 18, 2016, Complainant filed a verified 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 Thomas S. Protano, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on March 20, 2018.

Complainant and Respondent appeared at the hearing. The Division was represented by Robert Alan Meisels, Esq. Respondent was represented by Aihong You, Esq.

FINDINGS OF FACT

1. Complainant is male. (Tr. 6)

2. On June 11, 2016, Complainant applied for a position with Respondent as a part time administrative assistant. (Complainant's Exhibit 1; Tr. 6)

3. Complainant made the application by responding to an advertisement placed by Respondent on Indeed.com. (Complainant's Exhibit 1; Tr. 6-7)

4. The job advertisement stated "[t]his position is for Ladies only." (Complainant's Exhibit 1)

5. Complainant's application did not include a formal résumé. Instead, Complainant composed a letter that began "Dear Respectable Recruiters" and listed salient points about himself, his education and his experience. There were no headings or sections in the document, just a disjointed listing of Complainant's descriptions of his experience, education and personal traits. (Complainant's Exhibit 2)

6. Respondent filled the position in question on March 24, 2016, prior to the date Complainant made his application. (Tr. 95)

7. After filling the position, Respondent never opened any other résumés. (Tr. 95-96)

8. Respondent did not see Complainant's application until after he filed his complaint with the Division. (Tr. 90-91, 96)

9. Li Ping Hu is the owner of Respondent. She does not draw a salary, but serves as general manager of Respondent. (Tr. 98)

10. In addition to Hu, Respondent had four employees in both the second and third quarters of 2016. Hu admitted this during cross examination. (Tr. 98)

11. In the first month of the fourth quarter of 2016, Respondent had four employees, in addition to Hu. (Tr. 102)

12. In the fourth quarter of 2016, Respondent hired another employee, bringing their total to five employees, in addition to Hu. (Complainant's Exhibit 19)

13. Longmei Jia worked for Respondent from March of 2016 until January 5, 2017. (Complainant's Exhibits 9 & 10)

14. Tianqi Zhang began working for Respondent on January 10, 2016. Zhang remained employed by Respondent through the fourth quarter of 2016. (Complainant's Exhibits 11 & 19)

15. Wang Jing worked for Respondent through the third and fourth quarters of 2016. (Complainant's Exhibit 19; Respondent's Exhibit 5)

OPINION AND DECISION

Respondent claims that it is not an employer under N.Y. Exec. Law, art. 15 ("Human Rights Law"). Human Rights Law §292.5 states that "[t]he term 'employer' does not include

any employer with fewer than four persons in his employ."

In order to determine if a respondent has the requisite number of employees, the Division looks to all those employed by a respondent during the calendar year in which the discrimination allegedly took place, and the preceding year. Temporary and part-time workers are included in this analysis. However, workers should be counted only if their "employment continues for a reasonably definite period of time, and is not casual." *See Adams v. Ross*, 230 A.D. 216, 243 N.Y.S. 464, 467 (3d Dept. 1930).

The Division has relied on the body of law that has arisen under Title VII of the Civil Rights Act of 1964. This has provided the Division with a guideline to determine whether an employee is considered "casual." *Liou v. Gogo Jeans, Inc.,* DHR Case No. 10179328 (December 5, 2017); *Laboy v. David Kenan d/b/a Kenan Financial*, DHR Case No. 10124156 (May 3, 2010); *Dembeck v. Clemson Park Condominium*, DHR Case No. 10118173 (March 22, 2010). Under Title VII, a business is covered if it employs the minimum required number of workers each working day for at least 20 or more calendar weeks in the year of the alleged discrimination or the previous year. 42 U.S.C. §2000 (e) (b). The evidence in this record, based on the testimony and documents, established that Respondents had at least four employees for at least three quarters during the calendar year 2016. Three quarters is equal to 39 weeks, which is well beyond the 20-week standard the Division has adopted. As a result, the Division has jurisdiction over this matter.

Human Rights Law § 296.1(a) provides that it is an unlawful discriminatory practice for an employer "because of an individual's sex…to refuse to hire or employ…or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

To prevail, Complainant must first make out a prima facie case. In order to make out a

prima facie case in the failure to hire context, Complainant must show: 1) membership in a protected class; 2) that he applied for and was qualified for a job for which Respondent was seeking applicants; 3) that despite his qualifications Complainant was rejected; and 4) after Complainant's rejection, Respondent continued to seek applicants. *Classic Coach v. Mercado,* 280 A.D.2d 164, 166, 722 N.Y.S.2d 551, 553 (2d Dept. 2001).

Complainant in this case cannot make out a prima facie case of discrimination. Although he answered an advertisement seeking "Ladies only," his application was never seen by Respondent, because the position had already been filled by the time Complainant applied. Thus, Respondent was not seeking applications and did not continue to seek applications after it did not hire Complainant. As such, the circumstances do not give rise to an inference of discrimination. Therefore, Complainant has not made out a prima facie case and cannot prevail on his claim of discrimination.

With respect to the advertisement Respondent placed seeking "Ladies only," it is an unlawful discriminatory practice for employers and employment agencies "to print or circulate or cause to be printed or circulated any statement, advertisement or publication…which expresses directly or indirectly, any limitation, specification or discrimination, unless based upon a bona fide occupational qualification …as to sex…" Human Rights Law § 296.1(d). There is no dispute that Respondent violated this provision when it sought "Ladies only."

Human Rights Law § 297 (4)(c)(vi) permits 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."

When determining if a fine and penalty are to be assessed, the Division factors into its analysis the goal of deterrence, the nature and circumstances of the violation, the degree of a respondent's culpability, any relevant history of a respondent's action, such respondent's financial resources, and any other matter as justice may require. *See, Lindsey v. Belmont Management Co., Inc.*, DHR Case No. 10151502, (May 7, 2013).

In this case, Respondent unlawfully posted a job advertisement seeking female candidates, in violation of Human Rights Law § 296.1(d). The goal of deterrence, Respondent's degree of culpability, and the nature and circumstances of Respondent's violation warrant a penalty. There was no proof that Respondent was adjudged to have committed any previous, similar violation of the Human Rights Law or that Respondent was incapable of paying any penalty.

In the interest of deterring Respondent from further engaging in discriminatory practices, and taking the above factors into consideration, a penalty of $1,000.00 is appropriate in this matter. *See, Starr v. Hurlimann, et al.* DHR Case No. 10146477, (January 30, 2013) (award of $1,000.00 civil fine against respondent-employer for posting a discriminatory advertisement.)

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 Respondent, its agents, representatives, employees, successors, and assigns, shall cease and desist from printing, posting, or circulating any statement, advertisement or publication that discriminates because of sex; and

IT IS FURTHER ORDERED, that Respondent, its agents, representatives, employees,

successors, and assigns, shall take the following affirmative actions to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Within sixty days of the Commissioner's Final Order, Respondent shall pay to the State of New York, the sum of $1,000.00 as a civil fine and penalty for its violation of the Human Rights Law. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Final Order until payment is made by Respondent.
2. The payment of the civil fine and penalty shall be made by Respondent in the form of a certified check, made payable to the order of the State of New York, and delivered by certified mail, return receipt requested, 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.
3. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: November 27, 2018
Bronx, New York

Thomas S. Protano
Administrative Law Judge

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

GLENN LIOU,

Complainant,

v.

SMILES PARK AVENUE,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law, Article 15

Case No.
10181267

Federal Charge No. 16GB602529

I, Glenn Liou, residing at [redacted] Phoenix, AZ, 85015, charge the above named respondent, whose address is 121 East 60th Street, Ste.1B, New York, NY, 10022 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of age.

Date most recent or continuing discrimination took place is 4/2/2016.

The allegations are:

1. I am 55 years of age (D.O.B. [redacted]). Because of this, I have been subject to unlawful discriminatory actions.

SEE ATTACHED DESCRIPTION OF DISCRIMINATION

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of age, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating the Age Discrimination in Employment Act (ADEA) as amended (covers ages 40 years of age or older in employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

DESCRIPTION OF DISCRIMINATION - for all complaints *(Public Accommodation, Employment, Education, Housing, and all other regulated areas listed on Page 3)*

Please tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory.
PLEASE TYPE OR PRINT CLEARLY.

On 02/02/2016 I applied for a Sales Representative position online via www.indeed.com. According to Respondent's job posting, "Looking for a young Sales rep with 3 years of experience in Sales." I identified myself as a fifty five year old male from Taiwan originally on my resume. I was qualified for the position. Respondent didn't contact me. Respondent didn't interview me. I believe that I was denied hire due to my age 55.

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. ***PLEASE DO NOT WRITE ON THE BACK OF THIS FORM.***

http://www.indeed.com/cmp/Smiles-Park-Avenue-Dental-PLLC/jobs/Sales-Representative-f9b077c0bd02a8b0?q="Smiles+Park+Avenue+Dental+PLLC"

Sales Representative

Smiles Park Avenue Dental PLLC - New York, NY

Looking for a ***young*** Sales rep with 3 years of experience in Sales. You must be extremely well groomed, speak clearly and be able to learn fast. You must have computer skills and be able to learn software quickly. We are looking for a smart individual with common sense. This is a salary based commission position.

Job Type: Full-time

Required experience:

- Sales: 3 years

NOTARIZATION OF THE COMPLAINT

Based on the information contained in this form, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment), or filing my housing/credit complaint with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing),as applicable. This complaint will protect your rights under Federal Law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained the in aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

Glenn Lyon

Sign your full legal name

Subscribed and sworn before me
This 16th day of APRIL, 2019

Iris Marcela Montano

Signature of Notary Public

County: MARICOPA Commission expires: APRIL 20, 2019

Iris Marcela Montano
Notary Public
Maricopa County, Arizona
My Comm. Expires 04-20-19

Please note: Once this form is notarized and returned to the Division, it becomes a legal document and an official complaint with the Division of Human rights. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are accusing of discrimination.

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

GLENN LIOU,

Complainant,

v.

SMILES PARK AVENUE DENTAL PLLC, SHARDE HARVEY DDS PLLC D/B/A/ UPPER EAST DENTAL INNOVATIONS, UPPER EAST DENTAL INNOVATIONS PLLC,

Respondents.

NOTICE AND FINAL ORDER

Case No. 10181267

Federal Charge No. 16GB602529

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 April 26, 2018, 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 HELEN DIANE FOSTER, 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, 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:
Bronx, New York

_____
HELEN DIANE FOSTER
COMMISSIONER

TO:
Complainant
Glenn Liou
1545 Crosby Avenue, Front 1,
Bronx, NY 10461

Respondent
Smiles Park Avenue Dental PLLC
Attn: Dr. Sharde Harvey
121 East 60th Street, Ste.1B
New York, NY 10022

Respondent
Sharde Harvey DDS PLLC d/b/a/ Upper East Dental Innovations
121 East 60th Street, Ste. 1B
New York, NY 10022

Respondent
Upper East Dental Innovations PLLC
121 East 60th Street, Ste. 1B
New York, NY 10022

Respondent Secondary Address
Smiles Park Avenue Dental PLLC
209 Smith Street, Apt 2B
Brooklyn, NY 11201

Respondent Attorney
David Liston
Lewis Baach PLLC
The Chrysler Building
405 Lexington Avenue 62nd Floor
New York, NY 10174

Respondent Attorney
Lewis Baach PLLC
Attn: Anthony M. Capozzolo, Esq.
The Chrysler Building, 405 Lexington Avenue, 62nd Floor
New York, NY 10174

Hon. Barbara Underwood, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights
Robert Goldstein, Director of Prosecutions
Lilliana Estrella-Castillo, Chief Administrative Law Judge
Martin Erazo, Jr., Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

GLENN LIOU,

Complainant,

v.

SMILES PARK AVENUE DENTAL PLLC, SHARDE HARVEY DDS PLLC D/B/A/ UPPER EAST DENTAL INNOVATIONS, UPPER EAST DENTAL INNOVATIONS PLLC,

Respondents.

RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10181267**

SUMMARY

Complainant alleged that Respondents published an unlawfully discriminatory advertisement and did not hire him because of his age. Respondents asserted that the Division does not have jurisdiction because they do not have four or more employees and denied discriminating against Complainant. The Division has jurisdiction. However, Complainant did not prove that Respondents failed to hire him because of his age and, therefore, his claim must be dismissed. Nonetheless, Respondents published an unlawful advertisement and are assessed a civil fine.

PROCEEDINGS IN THE CASE

On May 3, 2016, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent Smiles Park Avenue Dental, PLLC, 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 Smiles Park Avenue Dental, PLLC, 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 Monique Blackwood, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on November 6, 2017.

Complainant and Respondents appeared at the hearing. The Division was represented by Luwick Francois, Esq., Senior Attorney. Respondents were represented by Anthony Capozzolo and David Liston, Esqs., of the law firm Lewis Baach Kaufmann Middlemiss, PLLC.

At the public hearing, ALJ Blackwood granted the Division's motion to amend the complaint to add a claim that Respondents violated Human Rights Law § 296.1(d). Respondents did not state any objection to the same. (Tr. 5-6)

At the public hearing, ALJ Blackwood accepted the parties' stipulation to correct Respondents' legal name to Smiles Park Avenue Dental PLLC and Sharde Harvey DDS PLLC d/b/a Upper East Dental Innovations. (Tr. 113)

On November 9, 2017, after the public hearing, Respondent Sharde Harvey DDS PLLC amended its name to Upper East Dental Innovations, PLLC. On November 17, 2017,

Respondent Sharde Harvey DDS PLLC made a motion to ALJ Blackwood to change its name in the caption to reflect the amendment. Respondent's Sharde Harvey DDS PLLC motion is marked and received in evidence as Joint Exhibit 1. The Division did not object to the motion as evidenced by the correspondence that is marked and received into the record as Joint Exhibits 2, 3, and 4.

In December 2017, ALJ Blackwood left state service. Pursuant to the Division's Rules of Practice, 9 N.Y.C.R.R. § 465.12(d), this matter was reassigned to ALJ Martin Erazo, Jr. ALJ Erazo amended the caption to include Upper East Dental Innovations, PLLC, as a named Respondent. (Joint Exhs 1, 2, 3, 4)

At the public hearing, Complainant submitted Respondents' payroll records that were heavily redacted. (Complainant's Exh. 5) On April 4, 2018, ALJ Erazo directed the parties to resubmit Respondents' payroll records, without the extensive redactions, to determine the number of individuals employed by Respondents during the relevant time period. ALJ Erazo's request is marked and entered into the record as ALJ Exhibit 4. Both parties failed to comply with ALJ Erazo's directive.

FINDINGS OF FACT

1. Complainant's date of birth is [redacted]. (Tr. 16)

2. Complainant was 55 years old during the time relevant to this complaint. (Tr. 14; ALJ's Exh.1; Complainant's Exh. 2)

3. Complainant's educational background includes a bachelor of science degree in electrical engineering in 1983, a master of science degree in electrical engineering in 1986, and a Ph.D. in electrical engineering in 1991. (Complainant's Exh. 2)

4. Respondents are a dental office. (Tr. 11)

5. Respondents' owner is Sharde Harvey, D.D.S. (Tr. 78)

6. Harvey is a dentist and office supervisor at Respondents' dental practice. (Tr. 98)

7. Harvey worked for Respondents as a dentist but did not draw a salary and her name did not appear on payroll or bank records as an employee. (Tr. 98, 158; Complainant's Exh. 5, Respondents' Exh. 11)

8. Harvey was compensated for her work by withdrawing the remaining funds from Respondents' account, if there was a profit, after all of Respondents' financial obligations had been met. Harvey reported that income to the taxing authorities as a sole proprietor. (Tr. 158)

9. In 2016, Kirsty McCallion was Respondents' front desk receptionist and administrative assistant. One of McCallion's duties was to place job advertisements on job search websites. (Tr. 93, 106)

10. Indeed.com is a job search website. (Tr. 10-11)

11. Harvey directed McCallion to place an advertisement on Indeed.com for a sales representative position. (Tr. 93)

12. McCallion posted a job opening for a sales representative. (Tr. 11-12, 93; Complainant's Exh. 1)

13. Harvey did not review the job advertisement's language prior to its placement on Indeed.com. (Tr. 93)

14. Respondents' Indeed.com job advertisement stated that it was "looking for a young Sales rep with 3 years of experience in Sales." (Tr. 11-12; Complainant's Exh. 1)

15. On February 8, 2016, Complainant applied for the sales representative position by electronically submitting a resume to Respondents through Indeed.com. (Tr. 13, 17, 64-65)

16. Complainant's resume indicated that he had:

> "four years of sales experience. I used to be an independent auto/home insurance agent. I have cold/hot calling experience in order to make a sale. I had to understand insurance products, policy and answer customers' questions accurately. I am full of sales and marketing concepts and strategies."

(Tr. 15; Complainant's Exh. 2)

17. Complainant had sales experience in the area of mortgage loans, commercial loans, and marketing experience promoting his former restaurant. (Tr. 15-16)

18. Complainant's resume also stated that, "I am a fifty five (55) year old, hard working male." (Tr. 34-35, 75: Complainant's Exh. 2)

19. Complainant was employed on a full-time basis, at IQOR, Inc., when he applied for the sales representative position. (Tr. 18-20, 71)

20. Complainant actively sought out, and applied to, job advertisements containing discriminatory language. (Tr. 12-13, 22; Respondents' Exhs. 1, 2, 3, 4, 5)

21. On May 10, 2016, Harvey had the word "young" removed from the job advertisement when she received the present complaint from the Division. (Tr. 93-94, 96-97; Respondents' Exh. 8)

22. Prior to May 10, 2016, Harvey was not aware of the word "young" in the job advertisement. (Tr. 93-94, 96-97; Respondents' Exh. 8)

23. Harvey now personally posts all job advertisements. (Tr. 104-06, 118-19)

24. Respondents did not interview or hire anyone for the sales representative position. (Tr. 97, 99)

25. Harvey decided that, given the small size of the practice, it would be too much demand on the staff to train a sales representative with little or no experience in dental terminology and procedure. (Tr. 98)

26. Respondents' payroll records indicate that in the years 2015-2016 there were a total of 25 employees. (Complainant's Exh. 5)

27. Of the 25 employees, 4 employees worked for Respondents for 20 weeks or more in the years 2015-2016: Albina Kosiorowska, Ildar Glimadiev, Melissa Andino, and Elmer Ramirez. (Complainant's Exh. 5, Respondents' Exh. 11)

28. Although Respondents' New York State tax records indicate they had three employees during each quarter, the documents do not identify the employees or how the term "employee" is defined for purposes of those tax documents, and the tax documents are inconsistent with the number of employees in its payroll and bank records. (Complainant's Exh. 5, Respondents' Exhs. 7, 11)

29. Respondents relies on its bank records to argue that it had fewer than four employees that worked less than 20 weeks during the years 2015-2016. However, Respondents' bank records only cover the time-period, May 2015 to May 2016, and are inconsistent with the greater number of employees identified in its payroll records for the calendar year 2015-2016. (Complainant's Exh. 5, Respondents' Exh. 11)

30. I do not credit Respondents' claim that Ildar Glimadiev was an independent contractor as it presented no credible evidence in support of that claim. (Tr. 81, 83)

OPINION AND DECISION

Respondents claim that they are not an employer under N.Y. Exec. Law, art. 15 ("Human Rights Law"). Human Rights Law §292.5 states that "[t]he term 'employer' does not include any employer with fewer than four persons in his employ."

In order to determine if a respondent has the requisite number of employees, the Division looks to all those employed by a respondent during the calendar year in which the discrimination allegedly took place, and the preceding year. Temporary and part-time workers are included in this analysis. However, workers should be counted only if their "employment continues for a reasonably definite period of time, and is not casual." *See Adams v. Ross*, 230 A.D. 216, 243 N.Y.S. 464, 467 (3d Dept. 1930).

The Division has relied on the body of law that has arisen under Title VII of the Civil Rights Act of 1964. This has provided the Division with a guideline to determine whether an employee is considered "casual." *Liou v. Gogo Jeans, Inc.,* DHR Case No. 10179328 (December 5, 2017); *Laboy v. David Kenan d/b/a Kenan Financial*, DHR Case No. 10124156 (May 3, 2010); *Dembeck v. Clemson Park Condominium*, DHR Case No. 10118173 (March 22, 2010). Under Title VII, a business is covered if it employs the minimum required number of workers each working day for at least 20 or more calendar weeks in the year of the alleged discrimination or the previous year. 42 U.S.C. §2000 (e) (b). The credible evidence in this record established that Respondents had more than four employees during the calendar years 2015 and 2016. As a result, the Division has jurisdiction over this matter.

It is unlawful for an employer to discriminate against an employee on the basis of age. Human Rights Law § 296.1(a). Complainant has the burden of establishing a prima facie case by showing that he is a member of a protected group, that he was qualified for the position, that he

suffered an adverse employment action, and that Respondents' actions occurred under circumstances giving rise to an inference of unlawful discrimination. Once a prima facie case is established, the burden of production shifts to Respondents to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its employment decision. The burden then shifts to Complainant to show that Respondents' proffered explanations are a pretext for unlawful discrimination. *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

Complainant was 55 years of age when Respondents posted a job advertisement, for a dental sales representative, in February of 2016. Based on the qualifications in the job advertisement, Complainant appeared to possess the requisite skills for the position. Complainant suffered an adverse employment action when Respondents failed to hire him. Respondents' actions occurred under circumstances that gave rise to an inference of unlawful age discrimination. Respondents' job advertisement clearly stated that they were seeking a candidate that was "young." Therefore, Complainant has satisfied the initial "*de minimis*" burden of establishing a prima facie case of unlawful discrimination. *See Schwaller v. Squire Sanders & Dempsey*, 249 A.D.2d 195, 196, 671 N.Y.S.2d 759, 761 (1st Dept. 1998).

The burden of production then shifts to Respondents to show that its actions were motivated by legitimate, nondiscriminatory reasons. Respondents have met its burden. The record shows that Respondents never interviewed or hired anyone for the sales representative position. Respondents reconsidered its need to establish a sales representative position and found that it did not need one. Respondents' articulated reasons for not filling the position are consistent with its actions. Respondents placed its job advertisement on the internet job search site, known as Indeed.com, in February 2016, and became aware of Complainant's

age-based complaint in May 2016. During that time, Respondents engaged in no hiring activity to fill the sales representative position.

The burden then shifts to Complainant to show that Respondents' reasons were a pretext for unlawful discrimination. Complainant failed to meet his burden. Accordingly, Complainant's claim of age-based discrimination must be dismissed.

The Human Rights Law also makes it an unlawful discriminatory practice for employers and employment agencies "For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to…age… or any intent to make any such limitation, specification or discrimination…" Human Rights Law § 296.1(d). Here, the Complainant asserts that Respondents violated this statutory provision when it sought only "young" candidates for its sales position. Respondents' job posting violates the Human Rights Law.

However, Complainant did not establish that he suffered any economic or emotional losses because of the job advertisement. The proof established that when Complainant applied for the sales representative position, he was employed on a full-time basis, at IQOR, Inc. In addition, contrary to Complainant's allegations at the public hearing, he was not deterred from applying with Respondents or negatively impacted by Respondents' discriminatory job advertisement. The proof established that Complainant actively sought out, and applied to, job advertisements with discriminatory language. Complainant's repeated behavior is inconsistent with Complainant's claims of emotional distress.

Human Rights Law § 297 (4)(c)(vi) permits 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."

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."

There are several factors that determine if civil fines and penalties are appropriate: the goal of deterrence; the nature and circumstances of the violation; the degree of respondent's culpability; any relevant history of respondent's actions; respondent's financial resources; other matters as justice may require. *119-121 East 97th Street Corp, et. al., v. New York City Commission on* Human Rights, et. al., 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept. 1996).

A civil fine and penalty of $1,000 is appropriate in this matter. *See Lindsey v. Belmont Management Co, Inc.*, SDHR Case No 10151502, May 7, 2013, (Commissioner awarded a $1,000 civil fine). *Starr v. Hurlimann, et.al.,* SDHR Case No. 10146477, January 30, 2013, (Commissioner awarded a $1,000 civil fine); *Jones v. NYS Office of Children & Family Services,* SDHR Case No. 10137251, November 15, 2007, (Commissioner awarded a $1,000 civil fine).

The goal of deterrence and the nature and circumstances of Respondents' violation of the Human Rights Law support the imposition of a civil fine.

Respondents cannot engage in a practice of only seeking "young" candidates for its job positions. However, Respondents' actions are mitigated by a few relevant factors. Respondents immediately removed the discriminatory language in its job posting when the Division's

complaint brought the matter to its attention. Furthermore, Respondents took additional corrective action to avoid future violations of law. The owner of Respondents, Harvey, assumed the responsibility of creating and placing job advertisements that had previously been assigned to a clerk. There was no proof that Respondents were found to have committed any previous similar violation of the Human Rights Law or incapable of paying any penalty.

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, and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and it is further

ORDERED that Respondents shall take the following action to effectuate the purposes of the Human Rights Law and the findings and conclusions of this Order:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay a civil fine and penalty to the State of New York in the amount of $1,000.00. This payment shall be made in the form of a certified check made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York, 10458. Interest on this award shall accrue at a rate of nine percent per year from the date of the Commissioner's Order until payment is actually made by Respondents; and

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

DATED: April 26, 2018
Buffalo, New York

Martin Erazo, Jr.
Administrative Law Judge

ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

ROBERT SEAWICK,

Complainant,

v.

TRUSTPILOT, INC., TRUSTPILOT A/S,

Respondents.

ORDER AFTER STIPULATION OF SETTLEMENT

Case No. 10161171

Federal Charge No. 16GB302603

On 4/2/2013, 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").

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 discrimination. Thereafter, the Division referred the parties for a public hearing.

Thereafter the parties advised that a settlement had been proposed and signed by the parties. The terms of said settlement agreed upon by the parties are incorporated into the Stipulation annexed hereto as Exhibit A. The agreed-upon terms set forth in the aforesaid Stipulation of Settlement are herein adopted and incorporated by reference. On the basis of the foregoing and pursuant to the Rules of Practice of the Division, it is hereby

ORDERED, that the settlement and discontinuance stipulated and agreed upon by the parties herein be, and the same hereby is, made the Order of the Commissioner.

PLEASE TAKE NOTICE that 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.

Dated:
Bronx, New York

_____
HELEN DIANE FOSTER
Acting Commissioner

TO:
Robert Seawick
[redacted]
Morristown, NJ 07960

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Deborah May, HRS II
Thomas S. Protano, Administrative Law Judge

Division of Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of

ROBERT SEAWICK,

Complainant,

v.

WEWORK COMPANIES INC.,

Respondent.

ORDER AFTER STIPULATION OF SETTLEMENT

Case No. 10208611

Federal Charge No. 16GC003418

On July 23, 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 discrimination. Thereafter, the Division referred the parties for a public hearing.

Thereafter the parties advised that a settlement had been proposed and signed by the parties. The terms of said settlement agreed upon by the parties are incorporated into the Stipulation annexed hereto as Exhibit A. The agreed-upon terms set forth in the aforesaid Stipulation of Settlement are herein adopted and incorporated by reference. On the basis of the foregoing and pursuant to the Rules of Practice of the Division, it is hereby

ORDERED, that the settlement and discontinuance stipulated and agreed upon by the parties herein be, and the same hereby is, made the Order of the Division. Pursuant to 9 N.Y.C.R.R. § 465.17(c)(3), Adjudication Counsel Peter G. Buchenholz has been designated by the Commissioner as the person who is fully empowered to decide this case.

PLEASE TAKE NOTICE that 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.

Dated: December 22, 2022
Bronx, New York

_____
Peter G. Buchenholz
Adjudication Counsel

TO:

Complainant
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[redacted]
Morristown, NJ 07960

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Michael T. Groben, Administrative Law Judge