



THE CITY OF NEW YORK
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

NYC DEPARTMENT OF CONSUMER
AND WORKER PROTECTION,

Petitioner,

-against-

MR COCO 162 INC. d/b/a MR. COCO and
BOOYOUNG CHEONG,

Respondents.

OATH Index No. 1672/20

Final Agency Decision

On January 28, 2022, Administrative Law Judge Susan J. Pogoda of the Office of Administrative Trials and Hearings (“OATH”) issued a Report and Recommendation in the above-captioned matter. OATH recommended that the Respondents be directed to pay the Petitioner \$3,550 in civil penalties and to pay the complainant Reyna Martinez Ramirez (“Ms. Martinez”) \$29,931.14 (\$25,041.14 in back pay plus \$2,500 for unlawful termination¹ and \$2,390 in sick time compensation) plus interest on back wages.

The Department of Consumer and Worker Protection (“Department”) now issues this Final Agency Decision pursuant to section 2203(h)(l) of the New York City Charter and section 6-02 of title 6 of the Rules of the City of New York. The Department did not receive any written arguments from the parties to this matter. Following review of the record, the Department adopts OATH’s Report and Recommendation subject to the modifications explained below.

DISCUSSION

The Petitioner alleged that the Respondents violated the Earned Safe and Sick Time Act (“ESSTA”) and its rules by, among other things, failing to pay Ms. Martinez for sick time and terminating her employment in retaliation for exercising her sick time rights. Following trial, at which the Respondents failed to appear, OATH recommended that all five counts alleged by the Petitioner be sustained. The Department adopts the award amount, \$29,931.14, that OATH

¹ The final section of OATH’s Report and Recommendation includes a list of recommended amounts to be ordered. This list erroneously excludes \$2,500 in employee relief for unlawful termination under count 3 pursuant to NYC Admin. Code § 20-924(d)(iv). Despite this oversight, the overall amount of employee relief recommended by the OATH decision on page 16 (\$29,931.14) does include this \$2,500. The OATH decision also recommends this \$2,500 award in addressing count 3 on page 13. Accordingly, the final amount of employee relief ordered here also includes a \$2,500 award under count 3.



recommended the Respondents pay to Ms. Martinez. However, as explained below, the Department modifies the time period of the back pay and also adds interest on the back pay.

I. The Time Period of Back Wages

On the Petitioner's claim of retaliatory termination, OATH recommended that Ms. Martinez be entitled to back pay from August 15, 2018, the day following her illegal termination, until she started her new job in May 2019, resulting in a total award of \$25,041.14 in back pay. OATH Dec. at 13 (Jan. 28, 2022); *see also* NYC Admin. Code § 20-924(d). This calculation of the total back pay amount, however, included a period starting in May 2019 and lasting until August 15, 2019, during which Ms. Martinez had started a new job but was paid \$76 less per week than she had been making while working for Respondents. *See* OATH Dec. at 13 (Jan. 28, 2022). Accordingly, the Department adopts the amount of back pay recommended by OATH but modifies the relevant time during which back pay accrued to be August 15, 2018, until August 15, 2019.

II. Calculation of Interest on Back Pay

On the Petitioner's claim for retaliatory termination, OATH found that Ms. Martinez should be entitled to back pay and stated that "it is the Department, not this tribunal, that is tasked with making a final determination as to the amount of damages, if any, the complainant is entitled to be awarded, including whether interest should be awarded, and the method of calculation." OATH Dec. at 14 (Jan. 28, 2022).

Here, Ms. Martinez is entitled to interest at a rate of 9% per year on the amount of back pay awarded. N.Y. C.P.L.R. § 5004(a); *see also Dep't of Consumer Affairs v. Brewer, Attorneys & Counselors*, No. 514/19, at 15 (OATH July 19, 2019). Where damages are incurred at various times, such as the case with back pay, "interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date." N.Y. C.P.L.R. § 5001(b). A reasonable intermediate date during the back pay period is February 13, 2019, halfway through the period.

The formula for simple interest can be written as: $(P \times n \times r / 100 \times 1/365)$, where 'P' is the principal amount, 'n' is the number of days, and 'r' is the rate of interest per year. Here, the number of days from February 13, 2019, to the date of this Final Decision, November 3, 2022, is 1,359 days. The interest awarded amounts to \$8,391.18. The total award of back pay with interest amounts to \$33,432.32 (\$25,041.14 in back pay plus \$8,391.18 in back pay interest). The total award due to Ms. Martinez amounts to \$38,322.32 (\$33,432.32 in back pay with interest plus \$2,500 for unlawful termination and \$2,390 in sick time compensation).



CONCLUSION

OATH's Report and Recommendation is adopted subject to the modifications explained above. The Respondents are ordered to pay \$3,550 in civil penalties to the Department and a total of \$38,322.32 in employee relief to Ms. Martinez.

A handwritten signature in blue ink, appearing to read "V. Vera Mayuga", written over a horizontal line.

Date: 11/3/2022

Vilda Vera Mayuga
Commissioner
Department of Consumer and Worker Protection