CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

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In the Matter of the Complaint of

MARY COLON,

Complainant,

Complaint No.
E91-0215/16F-91-0293

- against -

RECOMMENDED DECISION AND ORDER

DEL BUSINESS SYSTEMS, INC.,
And GARY DEL PRIORA,

Respondents.

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BEFORE: **Rosemarie Maldonado**
Chief Administrative Law Judge
Hearing Division

Rachel Pomerantz, Esq.
Law Clerk, Hearing Division

APPEARANCES:

For the Complainant

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299 Broadway - Suite 15
New York, New York 10007

By: Patrick H. Barth, Esq.
Teresa Nacci, Esq.

For the Commission

Robert Hammel, Esq.
Deputy Commissioner for Law Enforcement
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By: Fernando Morales, Esq.

For the Respondents

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By: Douglas Menagh, Esq.

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RECOMMENDED DECISION AND ORDER

I. COMPLAINT AND HEARING

Mary Colon filed a verified complaint with the New York City Commission on Human Rights on March 20, 1991, alleging that Respondents Del Business Systems, Inc. ("Del Business") and Gary Del Priora ("Del Priora") violated §8-107(a)(1) of the Administrative Code of the City of New York ("Code") and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §2000e et seq., by terminating her employment when she became pregnant. Respondents filed a verified answer on May 31, 1991, denying the allegations.

The complaint was referred to the Hearings Division on November 14, 1994. A hearing was held by Chief Administrative Law Judge Rosemarie Maldonado on June 8, 9, and 12, 1995. After evaluating the testimony and documentary evidence presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds for Complainant.

II. SUMMARY OF THE PARTIES' CONTENTIONS

A. Complainant

Complainant alleges that she satisfactorily performed the duties of office manager at Del Business for over one year prior to her termination. In support of this claim, she presented evidence that her outstanding job performance was rewarded with bonuses and high praise from her employer, Gary Del Priora. Complainant alleges that she informed Del Priora of her pregnancy on January 29, 1991, and was fired 5 days later after being wrongly accused of stealing

money from the company. Complainant denies stealing money and contends that she was terminated solely because she was pregnant.

B. Respondents

Respondents contend that Complainant stole money from Del February 1, 1991. Respondents assert that the decision to terminate Complainant's employment was based solely on these incidents. They also contend that Complainant's pregnancy could not have been a factor in the disputed employment decision because no one at the company knew that Complainant was expecting a baby at the time of her termination.

III. FINDINGS OF FACT

1. Respondent Del Business is a wholesale dealer of photocopiers and facsimile machines (T. 52-53, 62).[1] Respondent Gary Del Priora is president of Del Business (T. 372).

2. On October 3, 1988, Del Priora hired Complainant Mary Elizabeth Colon ("Complainant") as a sales representative at a base salary of $400 per week. Complainant earned commissions on sales in addition to her salary (T. 52-53; Cx. 10).

3. In October 1989, Del Priora's wife resigned from her position as Del Business' office manager because she was pregnant (Cx. 11, at par. 2). Del Priora offered to promote Complainant to his wife's former position. Complainant accepted and her salary

[1] **Numbers is parentheses preceded by "T." refer to pages in the transcript; numbers and letters preceded by "Cx." And "Rx." refer respectively to the exhibits received in evidence from Complainant and Respondents**.

was increased to $42,000 per year (T. 53-55, 261-262, 372-374).

4. As office manager, Complainant was responsible for in-house paperwork, handling customer complaints and service inquiries, selling to walk-in customers, generating computer orders and invoices, tracking accounts receivables and pursuing delinquent accounts (T. 57-59, 60-61, 515-517).

5. In November 1989, Respondents' receptionist, Lisa Albanese, trained Complainant to use the computer system (T. 59-60). Thereafter, Albanese was put in charge of wholesale operations. When Albanese left Del Business in mid-1990, Complainant's responsibilities expanded (T. 62-65). In addition to her office manager duties, Complainant processed payments from retail and wholesale customers. This entailed recording payments against customer invoices in the computer and entering purchase amounts on deposit slips. During this period, Complainant received a salary increase of $50 per week (T. 67-68, 196-197; Cx. 10 at par. 1).

6. Complainant's system for maintaining payments was as follows. She kept deposit slips, along with the checks and cash received, in the top right hand drawer of her desk. Respondents' accountant collected the money and checks and made the bank deposits (T. 68-70, 158-159). If Complainant was too busy to record the payments immediately, she left the payments in the drawer with a note that she had not yet entered the information into the computer (T. 69-70).

7. When Complainant was hired by Del Business in October

1988, all employees were covered by a major medical health insurance plan (T. 85). Sometime thereafter, Respondents switched employee coverage to a health maintenance organization (T. 86). Complainant told Del Priora that she preferred a major medical plan and he asked her to research alternatives (T. 86, 152). In July 1990, Complainant's coverage was discontinued (T. 86-87, 152; Cx. 14).

8. After only a few months as office manager, Complainant received a $100 bonus from Del Priora (T. 72). In December 1990, Complainant received a $1,000 bonus and a card with the following inscription: "Mary thanks for all your dedication concern & loyalty to this company, Gary" (T. 72-74, 276-278; Cx. 3). Del Priora had never given an employee a $1,000 bonus and did so because he was very pleased with Complainant's performance (T. 277-278, 463).

9. In 1990, Complainant used two vacation days for an extended family vacation in Vermont during the New Year's weekend (T. 74-75, 141, 238, 395-398; Cx. 4, Rx. 6). She was not feeling well that weekend, and on the way home realized that her period was late. She and her husband stopped at a drugstore to purchase a home pregnancy test (T. 77-78, 238-239). The test result was positive (T. 78-79, 140-141, 238-239, 244-245).

10. Complainant returned to work on Wednesday, January 2, 1991, and called her gynecologist to make an appointment. The earliest appointment available was for Monday, January 28, 1991 (T. 79-80). Complainant asked Del Priora for this day off. Although he expressed annoyance, she was able to make her appointment (T.

93, 224-226). Complainant did not work on Monday, January 28, 1991. On that day, her gynecologist confirmed that Complainant was eight weeks pregnant (T. 80-81; Cx. 1).

11., Complainant and her husband discussed her apprehension about informing Del Priora of her pregnancy. She decided to tell him immediately. Complainant decided that it was in her best interest not to hide the pregnancy because she did not want "to work in fear" of having Del Priora find out through rumors, (T. 93-94, 191-192, 245-247).

12. On Tuesday, January 29, 1991, Complainant returned to work. She entered Del Priora's office at approximately 10:00 a.m.. and closed the office door for a private discussion. Complainant told him that she was two months pregnant. She also articulated her plan to work until she gave birth and to return to work soon after the baby was born (T. 81-82, 148-149). Complainant brought up' the fact that she was no longer covered by Respondents' health insurance plan. Del Priora said he would discuss it with the company's accountant (T. 82-83).

13. Shortly after her meeting with Del Priora, Complainant went to the women's room and ran into Mindy Novick, a sales representative at Del Business. Novick told Complainant she was engaged and asked Complainant how long she and her husband had been married and when they planned to have children. Complainant told Novick that she was pregnant and that she had just told Del Priora (T. 87-88, 183-186, 193-194, 218-220).

14. On Friday, February 1, 1991, Complainant stayed late to

complete the company's monthly report (T. 90-91). Del Priora left the office but told Complainant he would be back later to lock up (T. 207-208). After his departure, Complainant answered a phone call from Mrs. Del Priora who wanted to speak to her husband. Complainant informed her that he had left. Mrs. Del Priora congratulated Complainant on her pregnancy and hung up (T. 90-91).

15. At approximately 8:00 a.m.. on Sunday, February 3, 1991, Del Priora called Complainant at home and accused her of stealing money from Del Business. Complainant was shocked and denied the accusation (T. 92). Del Priora fired Complainant and told her he was not going to pay her last week's salary (T. 96, 97, 92, 202, 281, 425-426; Cx. 10 at par. 5). Del Priora admitted that he refused to allow Complainant and her husband into the office to pick up personal belongings valued at approximately $479.00 (T. 96-98, 205-206; Cx. 5). These items were never returned to Complainant (T. 282; Cx. 5).

16. At the time of her discharge, Complainant's annual salary was $45,500 (Cx. 10 at par. 1). Complainant received $1,040.00 in unemployment benefits for the five week period between February 4, and March 13, 1991 (T. 110; Cx. 10 at par. 7). Del Priora did not oppose her application for benefits (T. 428). Complainant filed a complaint with the Commission on February 5, 1991 (T. 110).

17. A week after her termination, Complainant took a four day WordPerfect course to enhance her marketability because many job listings required this skill (T. 111-113, 139). The following week, Complainant visited an employment agency. The agency tested

her WordPerfect skills and interviewed her. Complainant explained that she was seeking temporary employment because she was pregnant. She was told that they could not help her, and suggested that she come back once the baby was born (T. 110-111). This confirmed her fear that it would be difficult to find a new job while she was pregnant (T. 134-135). *Complainant* did not seek employment as an office manager (T. 125).

18. On March 13, 1991, Complainant started a temporary job with American International Group ("AIG") earning $12.50 per hour. Her brother worked there as a security guard and had given the person in charge of hiring her resume (T. 113). Within a week, Complainant was given a permanent position at an annual salary of $27,000. She earned $18,449.65 in 1991; $27,645.80 in 1992; $26,421.41 in 1993; $31, 999.10 in 1994; and, $38,000 pro rata from January 1 to April 9, 1995. As of April 10, 1995, Complainant was promoted to the position of office manager and her annual salary was increased to $40,000 (T. 124, Cx. 10 at paragraph 2).

19. Complainant incurred $802.79 in medical expenses as a result of having been dropped from Del Business' insurance policy (Cx. 10 at paragraph 6). In addition, she has had to contribute $65.41 per paycheck for her share of the medical benefits premium. For the period April 1, 1991 to June 9, 1995, the total paid by Complainant for coverage was $4,673.52. No such deduction was made from Complainant's paycheck while she was employed by Del Business (Cx. 10 at par. 9).

20. Complainant was earning most of the money in her family

when terminated. Her husband was trying to establish his home improvement business and was doing odd jobs (T. 122-123). Complainant was "devastated" at being fired and accused of theft. Her emotional distress subsided once she was able to get another job (T. 126, 241). However, Complainant remained "mad, angry, real angry" that Del Priora threw away her personal items, and the "same and ten times over" about being accused of being a thief (T. 127).

IV. ANALYSIS OF EVIDENCE AND CONCLUSIONS OF LAW

Commission precedent, as well as state and federal precedent, requires that women be accorded the basic right to participate fully and equally in the workplace without being denied the fundamental right to have a family. For this reason, the Code's prohibition against sex discrimination in employment encompasses discrimination based on the gender specific condition of pregnancy and childbirth. Accordingly, pregnancy may not play any role in an adverse employment decision. Czechowicz v. Hamilton, NYCCHR Compl. No. 08176354-EP, Dec. & Ord. (June 28, 1991), aff'd sub nom., In the Matter of Hamilton, NYLJ 4/20/92, at p. 1, col. 3 (Sup. Ct. N.Y. Cty. Apr. 20, 1992).

This case turns on the role of Complainant's pregnancy in Respondents' decision to terminate her employment. Complainant alleges that Respondents violated Code §8-107(1)(a)[2] by firing her

[2] **Code § 8-107(1)(a) states, in pertinent part:**

It shall be an unlawful discriminatory practrice for an employer or an agent thereof, because of the actual or perceived . . . gender . . . of ay person, to . . . discharge from employment such person or to discriminate against sucha person in compensation or in terms, conditions or privileges of employment.

because she was pregnant. Respondents admit that Complainant was terminated, but allege that they had no knowledge of her pregnancy and that they fired her for a legitimate reason.

The resolution of this complaint rests almost entirely on the parties relative credibility. This is a difficult judicial determination, but one with which all tribunals must wrestle. It is, however, "the exclusive province of the administrative trier of fact to pass upon the credibility of witnesses." Boyce v. Cable Estates, NYCCHR Compl. No. 06073261-EP, Dec. and Ord. at p. 49 (Aug. 15, 1986) quoting Manhattan Scene, Inc. v. State Liquor Authority, 58 A.D. 1010, 397 N.Y.S.2d 495, 342 N.E.2d 524 (4th Dept. 1977).[3] This responsibility rests with the trier of fact because:

> [t]he hearing officer before whom a witness has appeared is able to perceive the inflections, the pauses, the glances and gestures--all the nuances and manner that combine to form an impression of either candor or deception. Berenhaus v. Ward, 70 N.Y.2d 436, 517 N.E.2d 193, 522 N.Y.S.2d 478 (1987).

Upon careful review of the entire record, it is this tribunal's assessment that Complainant's testimony was credible and that Respondents' evidence was riddled with inconsistencies and half truths. Accordingly, Respondents' proffered nondiscriminatory

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[3] See also, Hageb v. Impeduglia, NYCCHR Compl. No. H-92-0111, Rec. Dec. & Ord. (April 30, 1992), aff'd, Dec. & Ord. (June 10, 1992); Moloney v. All County Transportation, NYCCHR Compl. No. GA00258020690-PA, Dec. & Ord. (July 26, 1991), aff'd sub nom., Matter of All County Transportation, Sup. Ct. N.Y. Cty., NYLJ 12/31/91, p. 30, col. 4.

reason for the termination must be rejected for lack of credibility.

a. Burden of Proof

Complainant established a prima facie case of employment discrimination by proving by a preponderance of the evidence that she was: (1) a member of a protected class and that Respondents had knowledge of her status; (2) performing her job satisfactorily; (3) fired by Respondent;[4] and, (4) replaced by a person outside the protected class.[5] McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Pace v. Commission on Human Rights, 38 N.Y.2d 28, 339 N.E.2d 880, 377 N.Y.S.2d 471 (1975).[6] Only the first element was contested at the hearing.

b. Complainant proved that she was a member of a protected class and that Respondents were aware of her status.

It is not contested that Complainant was pregnant on the date of her termination. Respondents, however, dispute Complainant's assertion that she informed Del Priora of her pregnancy on January 29, 1991 -- five days prior to her termination. In DeNardo v. Clarence House Imports, 870 F. Supp. 227, 231 (N.D. Ill. 1994), the

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[4] Respondents do not contest that Complainant's employment was involuntarily terminated.

[5] Respondents do not assert that Complainant was replaced by another pregnant woman (T. 363-364). Furthermore, there is federal case law supporting the removal of this element of proof in pregnancy related employment termination cases. See e.g., Hargett v. Delta Airlines, 765 F. Supp. 1487, 1493 (N.D. Ala. 1991).

[6] Complainant has proffered no direct evidence of discriminatory intent. Since the evidence of discrimination was circumstantial in nature, this case is properly examined under the conventional "shifting burdens" analysis set forth in McDonnell Douglas.

court faced similar facts and spoke to the issue as follows:

> **This question is trickier than it appears. Unlike other protected classes . . . pregnancy, especially in its early stages, is not always' readily discernible. It is therefore possible for an individual to qualify as a member of the protected class, as a pregnant woman, even though her employer has no actual knowledge that she is *pregnant.* In these cases it hardly seems fair or even rational to infer discrimination based on the burden shifting formula laid out in McDonnell Douglas. The rationale behind the McDonnell Douglas presumption is that when an employer takes an action against a member of a protected class, without legitimate nondiscriminatory reasons for doing so, it is reasonable to presume that such action was motivated by impermissible factors [citations omitted]. Id. at 231.**

The facts concerning Complainant's pregnancy test and her conversation with Del Priora are set forth in detail in the Findings of Fact above. In sum, Complainant's credible testimony established that she took a home pregnancy test on or about January 1, 1991, and had her gynecologist verify the positive result on January 28, 1991. She was apprehensive about telling Del Priora and discussed her reservations with her husband. Complainant concluded that, despite her fears, it was best to tell Del Priora immediately.

The next morning Complainant requested time to speak with Del Priora. At approximately 10:00 a.m. on January 29, 1991, she entered his office, closed the door and informed him she was pregnant. He appeared distracted during the conversation, but congratulated her. After informing Del Priora of her intention to continue working, she informed him that her medical insurance coverage had not been reinstated. Respondent agreed to straighten out the problem. Shortly thereafter, she ran into a co-worker in

the bathroom and told her that she was pregnant.[7] Within days, Respondent's wife offered her congratulations.[8] Del Priora testified under oath that the January 29, 1991

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[7] **The co-worker was identified as Mindy Novick. Novick testified on behalf of Respondents and denied having had such a conversation with Complainant. She testified that she became aware of Complainant's pregnancy only after her termination. For the reasons set forth below, this tribunal found that Novick was a biased witness with little credibility.**

First, Novick is currently employed by Respondents and earns approximately $70,000 annually as a sales representative (T. 330-331). Her testimony and demeanor at the hearing made it clear that she has a vested interest in *maintaining* her job. For example, Novick's contract with Del Business includes a noncompetition clause which prohibits her from taking her clients to another company (T. 285-286). After eleven years with Del Business she has established a substantial client base. Novick freely admitted that it was not in her interest to lose these clients and stated that she had once left Del Business but returned because she lost money (T. 314-316).

Second, Novick's testimony contained inconsistencies. For example, she firmly asserted that Complainant could not have told her she was pregnant in the bathroom after 10:00 a.m. because Del Priora required that salespeople be out of the office by that hour. She also claimed never to have violated that policy (T. 325-327). However, only moments earlier, Novick proudly testified that she does not defer to her employer's authority: "I talk back, I have a horrible attitude, I don't show a lot of respect, I curse, I scream . . ." (T. 316-317). This self-description is not consistent with an employee who strictly observes her employer's rules.

Third, Novick's testimony was undermined by what appears to be an intense preoccupation with her own self-interests. This preoccupation may have caused her to forget her discussions with Complainant about her pregnancy. Novick's testimony concerning a call she received from Complainant supports this assertion. Complainant, distressed, called Novick to discuss her termination. Novick's, testimony makes clear that her lasting impression of the call was that it interfered with the privacy she enjoys on Sundays and that she was not at all concerned about Complainant's problem (T. 316-317, 335-336). Moreover, Novick made contradictory statements regarding these events and stated that she did not have a good memory (T. 323-324, 331-332).

[8] **Del Priora's wife submitted an affidavit affirming that she had never spoken to Complainant on the phone (Cx. 11). This exhibit carries little probative weight.**

meeting with Complainant never took place. Del Priora's blanket denial of wrongdoing and his claim to total ignorance of Complainant's pregnancy was purely self-serving and unbelievable in light of the circumstances. As will be discussed below, Del Priora's lack of forthrightness in this and other areas of testimony, as well as his demeanor at trial, undermined his overall credibility.

During the hearing, Respondents attempted to discredit Complainant by arguing that it was wholly unlikely for a woman to inform her boss of her pregnancy before telling her own mother. Respondents also attempted to establish that it was illogical for Complainant to immediately tell her employer she was pregnant when she was her family's primary breadwinner and may have feared reprisal. These arguments are without merit.

Complainant explained that she was scheduled to see her entire family at a function within a few weeks after confirming her pregnancy. Although Complainant was excited about her pregnancy, she thought it best to surprise everyone with the news at the family function (T. 95-96). Complainant testified that if her mother had known before the family event, she would not have been able to keep the secret and Complainant would have had to talk to everyone individually (T. 140-147, 175-177). The tribunal accepts as reasonable Complainant's explanation for her plan to tell her mother at a date certain.

This tribunal also finds that Complainant's alleged rush to tell Del Priora that she was pregnant does not belie her testimony

that she was anxious about his reaction. Although Respondents attempted to discredit Complainant's testimony, this tribunal believed Complainant and her husband when they testified that she was struggling to figure out the best time to break the news. Her anxiety over the matter seems reasonable -- particularly in light of the undisputed fact that Complainant was promoted to office manager only after Del Priora's wife left the same position due to pregnancy. This fact alone would be sufficient to arouse anxiety in an employee.[9]

The record also establishes that Complainant had legitimate reasons for telling Del Priora about her condition within her first trimester. Complainant had asked for a day off to visit the doctor and knew that she would have to repeat this request with relative frequency during the upcoming months. Del Priora responded with annoyance. Complainant was a responsible employee whom Del Priora had praised for her dedication and consistent job attendance. It is reasonable that she would want to avoid giving her employer the impression that she was making unnecessary and excessive leave requests that were in fact based on legitimate medical needs.

Complainant was also concerned about her lack of major medical coverage when she informed Del Priora. Given her condition, and the reasonable expectation that she would be incurring substantial

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[9] Complainant testified that she was also apprehensive because Del Priora had told her "not to get pregnant" within the context of praising her reliability and telling her that she was a valued employee (T. 83-84, 149-151). Her testimony on this point, however, was not corroborated by her husband (T. 247-248). This inconsistency, however, did not diminish Complainant's overall credibility.

medical bills over the course of pregnancy, it is credible that she would tell her employer she was pregnant as soon as possible and ask that the error be corrected.[10]

It is also clear from Complainant's testimony at the hearing, and that of her husband, that she genuinely wanted to be the one to tell Del Priora. Although she was nervous, she did not want to hide her pregnancy or be the subject of rumors. Complainant believed it was his right to know and to hear it directly from her. In sum, this tribunal believes that Complainant was apprehensive about telling Del Priora but did so immediately because she thought it was in the best interests of herself and her employer.

c. Respondents allege that Complainant was terminated for legitimate nondiscriminatory reasons.

Once a prima facie case of discrimination has been established, the burden of production shifts to the respondent to articulate a legitimate, non-discriminatory reason for the termination. Texas Department of Community Affairs v. Burdine, 460 U.S. 248 (1981); St. Mary's Honor Center v. Hicks, _ U.S. _ , 113 Sup. Ct. 2742 (1993). In Burdine, the Supreme Court held that a respondent must offer a clear explanation of its actions which "raise a genuine issue of fact as to whether they discriminated

[10] Del Priora testified at the hearing that Complainant asked to be dropped from Del Business' insurance plan in exchange for a salary increase. He further testitified that he had expressed concern about Complainant and that she said she was covered by her father's plan (T. 382-384, 442-444, 446-449). Del Priiora's testimony was not credible. In a prior inconsistent statement, Del Priora testified: [s]he never explained any concern being on any [health] plan . . . I didn't know if she was on, off, I don't know." (T. 448).

against" complainant. 460 U.S. at 254-255.

A respondent need not prove the existence of a nondiscriminatory reason by a preponderance of the evidence. However, the evidence presented must be sufficient to provide a complainant with a fair opportunity to demonstrate that the nondiscriminatory reason is merely pretextual. If a respondent carries this burden, the presumption of discrimination is rebutted. Id. Determining whether Respondents met their burden of production involves no assessment of credibility. St. Mary's Honor Center, supra.

Respondents rebuttal to the prima facie case is that Complainant was terminated because she stole money from Del Business on three occasions. Respondents deny that her pregnancy was a factor in this employment decision. The following is a summary of Del Priora's testimony with respect to the alleged thefts.

The first incident allegedly took place on December 27, 1990. Del Priora testified that a technician named Win approached him with cash from a service call. Del Priora allegedly told him to give Complainant the money and saw him hand it to her. Del Priora noticed that the cash was not included in the deposit slips for December 27 or December 28 (T. 393). He observed that the cash was also omitted from the deposit slip for January 2, 1991, the first work day after the New Year's Day holiday (T. 398-399).

Del Priora testified that he became suspicious of Complainant and that prompted him to set up a dummy transaction to ascertain her honesty (T. 399-400). Del Priora avers that on January 3,

1991, he called his friend, Dave Wallack, and asked him to place an order, the details of which Del Priora subsequently faxed to him (T. 400-402). Del Priora asserted that he met with Wallack's employee at a coffee shop and gave him cash for the dummy purchase (T. 401). He claims to have witnessed Colon receiving the cash, and claims that she failed to deposit it thereafter (T. 408-409).

Del Priora contends that he made the decision to fire Complainant on January 3, 1991, but that he did not do so because he feared that she would tamper with Respondents' computer system and erase his client list (T. 402-404, 502-503). He decided it was better to let her continue working until he found a computer literate person to replace her (T. 413-414).

Del Priora further claims that he contacted Elizabeth Hamilton about replacing Complainant sometime in early January 1991 (T. 494). Because Hamilton could not start immediately, he placed an ad in the Staten Island Advance for a part-time data entry clerk, at a salary of $8.00 per hour (T. 491-492; Cx. 17). Hamilton started working on or about March 9, 1991 (T. 367). In addition, two other employees started work at Del Business on February 4, 1991 (T. 499-500; Cx 18).

Del Priora alleged that a third theft occurred on January 28, 1991. He contends that a Del Business technician approached him with cash and was instructed to give Complainant the money (T. 410-412, 420). From Tuesday, January 29, 1991, to Friday, February 1, 1991, Del Priora checked Complainant's desk drawer and saw the undeposited cash (T. 421). At the hearing Del Priora testified

that Complainant was the last employee to leave the office on Friday, February 1, 1991 (T. 422-423). He returned to the office on Saturday, February 2, 1991, checked Complainant's drawer and discovered that the money was gone and had not been deposited (T. 423-424). Del Priora called Complainant on Sunday, February 3, 1991 and fired her (T. 425-426).

Respondents have satisfied their burden of articulating a legitimate reason for their employment action. As set forth below, however, their evidence was riddled with lies and inconsistencies. Accordingly, their proffered reason is rejected as pretext by this tribunal.

d. Respondents' articulated reason for discharging Complainant is a pretext for discrimination.

Under the McDonnell Douglas shifting burden analysis, a complainant is required to put forth facts sufficient to show that the reason advanced by a respondent was a pretext for unlawful discrimination or was substantially influenced by impermissible discrimination. 411 U.S. at 253. The trier of facts' rejection of an employer's asserted reason, however, does not entitle a complainant to judgment as a matter of law. St. Mary's Honor Center v. Hicks, _ U.S. _, 113 Sup. Ct. 2742 (1993). This tribunal, however, finds that *Complainant* has met her burden on the ultimate question to be decided and has shown by a preponderance of the evidence that Respondents' proffered explanation is unworthy of credence and was merely a pretext for terminating her because she

was pregnant.[11]

Respondents' contention that Complainant stole money on December 27, 1990, is refuted by the facts. At his deposition, Del Priora stated that Complainant stole approximately $595 and insisted that he had proof of the transaction (T. 465-467, 474475). Subsequently, Respondents' counsel wrote a letter to Complainant's counsel stating that: "after a diligent search and much pressure, my client, Mr. Del Priora, has at long last located a copy of the December 27, 1990 service ticket" (Cx. 15). Respondents produced a December 27, 1990, service ticket filled out by a technician named Win in the amount of $595.38 for work done on an order from the Stanhope Hotel (T. 475-476; Cx. 15).

Hearing testimony and documentary evidence, however, establish that Respondents lied about this transaction. First, Complainant proved, and Respondent admitted, that Complainant could not have stolen $595 from the Stanhope Hotel's service order because the Stanhope Hotel paid exclusively by check (T. 470-472, 481-482; Cx. 2, 15). The Comptroller of the Stanhope Hotel, Joseph Estrella,

[11]Respondents argued that Complainant stole money because she was having financial problems. In support of their claim they elicited testimony from Complainant that: (a) she had filed bankruptcy in 1988; (b) her husband was attempting to establish a construction business but only did odd jobs; and, (c) she was the primary bread winner in her family (T. 138-139). These assertions have no foundation in fact. First, the bankruptcy proceeding was two years prior to the alleged events and without more cannot establish that Complainant was having financial difficulties in 1990. Second, Complainant asserted that she was not having financial problems and testified that her housing costs were $150 per month. This amount is easily covered by Complainant's salary of $45,000 per year. Third, that Complainant's husband was trying to start a business and that she was the primary breadwinner does not alone imply that the family had financial problems.

filed an affidavit confirming that their bills were generally paid by check (Cx. 2). He also submitted a copy of the Stanhope Hotel's cancelled check and the check receipt corresponding to the Del Business invoice in question. That check was paid on May 28, 1991 (Cx. 2).

In short, the documentary evidence produced in discovery by Respondents in support of their assertion that Complainant stole approximately $595 on December 27, 1991, contradicted their claim. In a futile effort to correct this obvious inconsistency, Del Priora testified that Win approached him with cash but without a service ticket. Del Priora did not know where the service ticket could be located (T. 489-490). This was a purely self-serving statement.

Second, Del Priora's testimony was inconsistent with respect to the identity of the technician who approached him with cash on December 27, 1990. At his deposition, Del Priora stated that the technician was named Terry. At the hearing, Del Priora identified the technician as Win (T. 463). During cross-examination he attempted to explain this inconsistency by stating that: "They both look alike. I mean they are both 5'3", Oriental, black hair" (T. 478-479).

Third, on cross-examination, Del Priora stated that he did not know whether the Stanhope Hotel service order was the one produced to substantiate his deposition testimony, but admitted that it was unlikely that there could be a second service order for $595.38 (T.

467, 471).[12] Although his attorney had forwarded this service ticket with a transmittal letter stating that "after a diligent search and much pressure, my client, Mr. Del Priora, has at long last located a copy of the December 27, 1990 service ticket" (Cx. 15), Del Priora testified at the hearing that he had never seen the Stanhope service ticket before the commencement of this hearing (T. 523-524). This testimony is contradictory and not credible.

Furthermore, at his deposition Del Priora stated that he waited until December 28 to determine whether Complainant deposited the cash. He observed that it was omitted from the deposit ticket (T. 479-482). It is not disputed, however, that Complainant was on vacation on the following day and that it would have been impossible for her to take any action with respect to a deposit on that day. Therefore, Del Priora's testimony on this point must be discounted.

As discussed in detail above, Del Priora contends that he orchestrated a sham cash transaction to test Complainant. In support of his contention, Del Priora submitted a telephone bill recording three phone calls and one fax transmittal to the New Jersey number of his friend Dave Wallack (Rx. 9). Also in evidence is a handwritten note from Del Priora to Wallack asking him to place the order (Rx. 7), as well as its alleged fax transmittal

[12] Del Priora explained that he testified with such specificity at his deposition because he had called the office of his former attorney to ask for the exact amount of the transaction. He claims that the secretary read to him from the wrong ticket (T. 476). However, as discussed above. Respondents have not produced any other service ticket to substantiate the alleged theft on that date.

report (Rx. 8).

Although at first blush, Rxs. 7, 8 and 9 seem to support Del Priora's version of the facts, the documents fail to pass close scrutiny. The fax transmittal report states that the "start time" of the transmittal was 10:02[13] and ended 51 seconds later (Rx. 8). Del Priora indicated that the phone number designated as 44 on his bill (Rx. 9) corresponded to the fax transmittal submitted as Rx. 8 (T. 407). Item 44 was highlighted on the exhibit.

The fax transmission recorded by the telephone bill, however, was placed at 8:39 a.m. -- at least one and a half hours prior to the time set forth in the transmittal report (Rx. 9). When asked whether the time recorded in the fax transmittal report and that recorded in the phone bill "correspond approximately," Del Priora agreed that they did. This tribunal disagrees. The one and a half hour gap is unaccounted for and is sufficient to cast serious doubt on both the reliability of the documentation submitted by Respondents and the veracity of Del Priora's testimony on this second alleged theft.

Furthermore, even if this tribunal had believed that Rxs. 7, 8 and 9 were trustworthy, those documents would only serve to prove that Del Priora told Wallack what to include in an order. There is no documentary proof or corroborative testimony that the order was actually placed. Respondents failed to produce a service ticket for the corresponding transaction or the employee with whom Del

[13] **Rx. 8 does not specify whether the transmittal was completed at 10:02 in the morning or the evening.**

Priora allegedly met to place the dummy order.[14] Without this corroboration, Respondents' evidence is not credible.[15]

Respondents' evidence supporting the third alleged theft is equally suspect. Respondents produced a service order dated January 28, 1991, to support their claim that a technician was paid cash and that the cash was given to Complainant (Rx. 10). Complainant, however, was not at work on January 28, 1991 (Cx. 1). Therefore, it was not possible for Complainant to have received that money and stolen it.

Upon learning that Complainant was not at the office on January 28, 1991, Del Priora testified that he allowed technicians to take cash payments home and turn them in the next day (T. 419-420). This testimony, however, was purely self-serving and in

[14] Del Priora testified that Wallack was not competent to appear at the hearing because he is suffering from Alzheimer's disease and has no recollection of whether he carried out the transaction (T. 503-504, 526-528). Respondents, however, produced no further evidence of Wallack's medical conditoin. Also, Wallack's condition did not prevent Respondents from producing the employee with whom Del Priora allegedly met.

[15] Although a party's failure to call a witness is not in itself evidence of any one event, it may give rise to an unfavorable inference by the finder of fact. 2 FRUMER-BISKIND-MILGRIM, NY Evidence, par. 48A.01. Also, "[W]here an adversary withholds evidence in his possession or control that would be likely to support his version of the case, the strongest inferences may be drawn against him which the opposing evidence in the record permits." Noce v. Kaufman, 161 N.Y.S. 2d 1, 5, 2 N.Y.2d 347, 353 (1957), (citing Perlman v. Schanck, 192 App. Div. 179, 182 N.Y.S. 767; Milio v. Railway Motor Trucking Co. , 257 App. Div. 640, 15 N.Y.S. 2d 73; Borman v. Henry Phipps Estates, 260 App. Div. 657, 23 N.Y.S. 2d 339). See also, Com'r of Social Services v. Philip De G., 59 N.Y. 2d 137, 141, 463 N.Y.S. 2d 761, 763, 450 N.E. 2d 681 (1983); Marine Midland Bank v. John E. Russo Produce, 50 N.Y. 2d 31, 43, 427 N.Y.S. 2d 961, 967, 405 N.E. 2d 205 (1980); Gill v. Anderson, 333 N.Y.S. 2d 49, 51, 39 A.D. 2d 941 (1972).

direct contradiction to his prior testimony concerning office policy. Del Priora specifically testified that on one occasion he told Complainant that she should not take money home (T. 388-391). His casual testimony reversing what he previously described as a violation of office policy cannot be credited.

Del Priora also gave contradictory versions of relevant details of events that allegedly took place during the week of January 28, 1991. First, at his deposition he testified that Win was the technician who approached him on January 28, 1991 (T. 487-488). In contradiction, he testified at the hearing that the technician was Terry (T. 487-488).

Second, Del Priora testified that he checked Complainant's desk drawer and saw the money before he left on Friday, February 1, 1991. He testified that Complainant was the last to leave the office that Friday (T. 421-423). On Saturday, Del Priora allegedly returned to the office, checked Complainant's desk and found the money missing (T. 423-424). However, during an interview with a Commission investigator, Del Priora stated that he left the office after Complainant that Friday (T. 508).

In sum, Respondents' allegations that Complainant stole cash on three occasions is unsupported by the record. Further, Respondents' attempt to bolster their defense through the use of false and misleading documentary evidence "bear[s] a striking resemblance to a smoking gun" and serves only to underscore the fact that their decision to fire Complainant was motivated by her pregnancy. See Harqett v. Delta Automotive, Inc., 765 F. Supp.

1487, 1494 (N.D. Ala. 1991) (court found that defendant's submission into evidence of a letter with a forged signature weighed in favor of a finding that the proffered reason for plaintiff's termination was pretextual).

This tribunal has considered and rejected all other grounds proffered by Respondents to avoid liability in this case. Accordingly, we find that Respondents violated Code §8-107(a)(1) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §2000 et seq..

V. DAMAGES AND AFFIRMATIVE RELIEF

a. Compensatory Damages

Code §8-109(2)(c) empowers this Commission to fashion both legal and equitable remedies for a prevailing Complainant. See Miller v. Ben Benson's Steakhouse, NYCCHR Compl. No. GA00024030897, Rec. Dec. and Ord. (May 31, 1989), modified, Dec. & Ord. (November 20, 1989); see gen. Batavia Lodge v. State Div. of Human Rights, 35 N.Y.2d 143, 316 N.E.2d 388, 359 N.Y.S.2d 25 (1974). Complainant seeks an award of $76,955.33 in lost wages, assuming no salary increases,[16] or $99,674.18, assuming salary

[16] **The parties have stipulated that the difference between Complainant's salary at Del Business at the time of her termination on February 3, 1991 and her salary at AIG is $27,050.35 for 1991; $17,854.20 for 1992; $19,078.59 for 1993; $13,500.90 for 1994; and $2,971.29 for January 1, 1995 to June 9, 1995 (Cx. 10 at par. 3). The total difference in gross pay is $80,455.29 (Cx. 10 at paragraph 3). Complainant was paid $3,500 by Del Business for the first month of 1991, brining the net total to $76,955.33 (Cx. 10 at par. 3).**

increases of 6.1% annually.[17] She also seeks $875.00 as compensation for her last week of work at Del Business, $479.00 for lost personal items, $5,476.31 for lost medical benefits, as well as front pay. All but the front pay award are justified in this case.

In awarding damages to a prevailing complainant in a discrimination case, this tribunal must attempt to "make whole victims of unlawful discrimination" by attempting to place the injured party in the position she would have enjoyed absent Respondents' discriminatory actions. Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975). To this end, a prevailing complainant is presumptively entitled to an award of back pay. Nord v. United States Steel Corp., 758 F.2d 1462, 1470 (11th Cir. 1985), citing Albemarle Paper Co. v. Moody, 422 U.S. at 421. See also, Kramer v. World Zionist Organization American Section, NYCCHR Compl. No. 11061-EP, Dec. and Ord. (May 5, 1986).

A prevailing complainant, however, must mitigate damages by using reasonable diligence to find substantially comparable employment following termination. Berg v. School Board of Education of the Chapel of the Redeemer Lutheran Church, NYCCHR

[17] The parties have stipulated that the differencre between Complainant's salary at Del Business and her salary at AIG from the period of her termination to June 9, 1995, assuming a 6.1% annual increase, the rate of the last increase Complainant received from Respondents is: $27,050.35 for 1991; $20,629.70 for 1992; $24,798.89 for 1993; $22,345.63 for 1994; and $8,349.61 for January 1, 1995 to June 9, 1995 (Cx. 10 at par. 4). The sum difference in gross pay is $103,174.18 (Cx 10 at par. 4) Complainant was paid $3,500 by Del Business for the first month of 1991, bringing the net total to $99,674.18 (Cx. 10 at par. 4).

Compl. No. 10296477-EP, Rec. Dec. and Ord. (October 27, 1989), aff'd, Dec. and Ord. (December 21, 1989). See also, Nord v. United States Steel Corp., 758 F.2d 1462, 1470 (11th Cir. 1985), citing Ford Motor Co. v. Equal Employment Opportunity Commission, 458 U.S. 219 (1982) (Title VII plaintiff must seek employment that is "substantially equivalent to the position she or he lost"). A complainant who fails to mitigate her losses runs the risk of having her monetary recovery reduced. Hunter v. Allis-Chalmers Corp., Engine Div., 797 F.2d 1417, 1427-1428 (7th Cir. 1986).

If the search for substantially equivalent employment is unsuccessful, the Complainant is "justified in accepting lesser employment." Nord, 758 F.2d 1462, 1471 [citations omitted]. As explained by the Fifth Circuit Court of Appeals:

> [B]y "lowering their sights" and accepting what might have been the best job available, the claimants were doing all that could reasonably be expected of them by way of mitigation. J.H. Rutter Rex Manufacturing Co., Inc. v. NLRB, 473 F.2d 223, 242 (5th Cir.), cert., denied, 414 U.S. 822 (1973).

A respondent in an employment discrimination case may raise as an affirmative defense that the complainant failed to mitigate her damages by not diligently seeking other employment. Respondent bears the "burden of producing further evidence on the question of damages in order to establish the amount of interim earnings or lack of diligence" 758 F.2d at 1470, citing Marks v. Prattco, 633 F.2d 1122 (5th Cir. 1981) (Unit A). See also, Smith v. American Service Co. of Atlanta, Inc., 796 F.2d 1430, 1 431 (11th Cir. 1986) ; Sias v. City Demonstration Agency,, 588 F.2d 692 (9th Cir. 1978); Sprogis v. United Air Lines, 517 F.2d 387 (7th Cir. 1975). Where

a respondent fails to raise this issue, or having raised the issue, fails to submit any evidence to support such a contention, the determination of a complainant's diligence must be made by this tribunal based upon its assessment of the complainant's credibility. 758 F.2d at 1471.

In the case at bar, Respondents have not raised this issue. Therefore, this tribunal must base its decision about whether Complainant has satisfied her duty to mitigate upon Complainant's testimony, and the tribunal's assessment of her credibility.

First, this tribunal finds that Complainant is entitled to an award for lost wages in the amount of $75,915.33.[18] This award is supported by the record's clear showing that Complainant "demonstrated a continuing commitment to be employed"[19] after her unlawful termination.[20]

[18] This represents the net different between Complainant's salary at Del Business and her salary at AIG for the period February 21, 1991 to June 9, 1995, less $1,040.00 in unemployment compensation which Complainant collected (Cx. 10 at par. 7). The request for back pay which incorporates annual raises ins denied. There was no evidence in the record to support a finding that Del Business employees were given a 6.1.% annual raise from 1991 to 1995.

[19] Belton, ed Remedies in Employment Discrimination Law, at §11.6, citing Donnelly v. Yellow Freight Sys., Inc., 682 F.2d 374, 375 (6th Cir. 1988).

[20] Complainant is also entitledto pre-judgement interest on her lost earning awar, calculated form the date of injury to the date to the final decision in this case. Such an award of interest my be made to prevailing complainant in discrimination actions to make them whole. See Gellis v. Cap Gemini America and Don Schatz, NYCCHR Compl. No. EM013112158-DE, Rec. Dec. And Ord. (August 6, 1992) ; Division of Human Rights v. Mead, 47 A.D.2d 187, 366 N.Y.S.2d 23 (1st Dep't 1975); McIntosh v. Irving Trust Co., 873 F. Supp. 872 (S.D.N.Y.1995). See CPLR Section 5004.

This tribunal finds that Complainant mitigated her damages. She began job hunting immediately after her termination. In an effort to make herself more marketable, Complainant enrolled in a WordPerfect training course only one week after receiving the devastating news that she was fired and falsely accused of stealing. Within days, she sought the services of an employment agency for placement.

Instead of assisting Complainant, however, the employment agency aggravated her injuries by refusing to assist her until after the baby's birth. Their refusal to accept her as a client confirmed Complainant's fear that no one would hire her while she was pregnant. Given this experience, Complainant was fortunate to have her brother circulate her resume to his employer -- AIG. AIG quickly offered her a temporary position which she accepted.

This tribunal finds that Complainant's decision to accept a job that paid less than she had been earning at Del Business was reasonable. At that time, Complainant was her family's primary breadwinner, was pregnant for the first time, and had no health insurance. It is clear that she and her family needed her income. Because of this, Complainant credibly testified that she was "ecstatic that AIG even offered me the permanent position" (T. 126). Complainant explained that her negative experience with the employment agency had prompted her to accept the AIG position immediately because she believed no other offers would soon be forthcoming.

It is important to underscore that Complainant mitigated her

damages even though she did not seek employment as an office manager of business comparable in size to Del Business. She credibly explained that her training on Respondents' computer system was industry specific and "would not have justified her salary unless she had done to work for one of [Del Priora's] competitors who was using the same system" (T. 125). Complainant hesitated to seek employment within the photocopier and facsimile machine industry because she feared that Respondents would falsely smear her reputation.

Prevailing complainant in discrimination actions are also entitled to compensation for out-of-pocket expenses incurred. See e.g., Berg, supra. These may include amounts for all medical or hospital services, as well as insurance premiums, for which a complainant would not have paid had her employment not been terminated. Id. Complainant seeks an award of $802.70 for medical expenses,[21] as well as $4,673.52 for contributions she was required to make for medical benefits in the period from April 1, 1991 to June 9, 1995.[22] Such out-of-pocket expenses are reasonable and are awarded to Complainant.

Complainant also seeks to be compensated in the amount of $479.00 for the value of personal belongings which Respondents never returned (Cx. 5). Del Priora admitted that Complainant's

[21] The parties have stipulated that Complainant incurred $802.70 in medical expenses as a result of her lack of medical insurance (Cx. 10 at paragraph 6).

[22] Complainant did not have medical benefit charges deducted from her salary while employed by Respondents (Cx. 10 at paragraph 9).

personal items were not returned. Accordingly, the total amount to be awarded is $479.00.

Complainant seeks an award of front pay in lieu of reinstatement. Front pay is an equitable remedy, the granting of which is within the sound discretion of the trial judge. Sellers v. Delgado Community College, 839 F.2d 1132, 1141 (5th Cir. 1988), cert. denied, 498 U.S. 987 (1990); Cassino v. Reichhold Chemical, Inc., 817 F.2d 1338, 1346 (9th Cir. 1987), cert. denied, 484 U.S. 1047 (1988); Davis v. Combustion Engineering, Inc., 742 F.2d 916,, 933 (6th Cir. 1984). The underlying purpose of such an award is to make Complainant whole; it is inappropriate to award it for any other purpose. Davis, 742 F.2d at 923. Such awards may be held improper when Complainant has obtained a position similar in mature to that from which she was terminated.

This tribunal finds that front pay is unnecessary to make the Complainant whole. She now holds the position of office manager at AIG. This position, and its accompanying salary, are comparable to the office manager position she held at Del Business. Moreover, a determination of similarity does not rest solely upon a comparison of salaries. Sellers v. Delgado Community College, 839 F.2d 1132 (5th Cir. 1988), citing Williams v. Albemarle City Board of Education, 508 F.2d 1242, 1243 (4th Cir. 1974) ("Comparability in status is often of far more importance -- especially as it relates to opportunities for advancement or for other employment -- than comparability in salary.")

2. Compensatory Damages for Mental Anguish

Compensation for mental anguish may be awarded on a sufficient showing of the existence and extent of such injury and the evidence must be sufficient to support a determination that "a reasonable person of average sensibilities could fairly be expected to suffer mental anguish from the incident." Batavia Lodge v. State Division of Human Rights, 43 A.D.2d 807, 810, 350 N.Y.S.2d 273, 278 (4th Dep't 1973) [dissenting opinion adopted by the Court of Appeals in reversing at 35 N.Y.2d 143 (1974)]. Credible testimony by Complainant concerning the mental anguish experienced can be sufficient to sustain an award for mental anguish. New York City Transit Authority v. State Division of Human Rights and Adrienne Nash, 27 N.Y.2d 207 (1991). The Commission has consistently awarded substantial damages for mental anguish in cases of wrongful termination. [23]

[23] **See, e.g., Polster v. ASPCA et al., NYCCHR Compl. No. EM02423-02/16/90-DE, Dec. & Ord. (October 11, 1995) ($60,000) to Complainantwho was wrongfully terminated after suffering harassment on the basis of her sex and sexual orientation); Lebron v. Caterair Int'l., NYCCHR aCompl. No. E90-02061, Rec. Dec. & Ord. (March 19, 1994), aff'd, sub nom. Caterair Int'l Corp. v. New York City Commission on Human Rights, NYLJ 2/22/94, at p. 34, col. 1 (2nd Dept. Sept, 22, 1994) ($75,000 to Complainant who suffered sexual harassment, including offensive physical incidents); Fernino v. Manufacturers Hanover Trust, Co. et al., NYCCHR Compl. No. EM01558-7/31/89-DN, Rec. Dec. & Ord. (December 31, 1992) ($30,000 to Complainant who left her job, as her asthma condition worsened when reasonable requests for accommodation for her disability were not met); Gellis v. CAP Gemini America et al., NYCCHR Compl. No. EM01312158-DE, Rec. Dec. & Ord. (November 23, 1992) ($40,000 to Complainant who wrongfully) ; Czechowicz v. Hamilton, M.D., et al., NYCCHR Compl. NO. 0817654-EP, Rec. Dec. & Ord. (June 28, 1991) ($20,000 to Complainant who was told, after her pregnancy that she no longer had a job).**

This tribunal finds that Complainant gave credible testimony concerning the mental anguish she suffered as a result of Respondents' wrongful termination of her employment. In the space of a little more than a month, Respondents treatment of Complainant dramatically changed. Before she became pregnant, Complainant was treated as a prized employee who was praised for dedication. Del Priora rewarded her hard work with the largest bonus ever given to a Del Business employee. Within days of telling Del Priora of her pregnancy, Complainant was subjected to an array of indignities.

Respondents actions were particularly callous and hurtful to Complainant. Respondent Del Priora called Complainant at home very early on a Sunday morning, accused her of being a thief and summarily fired her. He told Complainant that she did not deserve her last week's salary and claimed that he had a right to keep it because she had stolen money. Del Priora added insult to injury by not allowing her the dignity of collecting her personal belongings from the office, or sending her husband in her place. Instead of mailing Complainant's belongings to her as he had promised, Del Priora simply discarded them. Complainant credibly testified that she was "devastated" by being fired and accused of theft: "everything I had planned for, everything I felt good about, it wasn't to be anymore, it didn't exist" (T. 121-122). Complainant's desolation and fear were certainly warranted by the circumstances.

Respondents' treatment of Complainant is even more galling in light of the fact that she was under no obligation to inform Del Priora about her pregnancy when she did. She chose to tell him

within her first trimester believing that she owed him this courtesy. Respondents repaid her good faith forthrightness with bad faith accusations of theft and the termination of her employment.

Complainant's mental anguish was exacerbated by the fact that the firing came at a time when she was very vulnerable. As she explained: "it was my first time around with being pregnant and having to work being pregnant" (T. 191). In addition to being fearful about whether she would be able to find another job while she was pregnant, Complainant was also demoralized by Respondents' accusations, and their decision to terminate her. This distress subsided somewhat once she was able to get another job:

> I was ecstatic that AIG even offered me the permanent position, because I felt that they believed in me and they only saw me working there for a week. So I was pretty happy and I felt that they were decent enough and respectful of me to see me working one week and not to care as to what my situation was, to offer me a position there (T. 126, 141).

Complainant's husband confirmed her distress during this period. He testified that Complainant was very upset about being fired, and "was not herself again until a little while after she got her job at AIG" (T. 241).

Even though her acute distress lessened a fairly short time after she was fired, Complainant has continued to feel "mad, angry, real angry" that Del Priora threw away her personal items, and the "same and ten times" over about being accused of being a thief (T. 127). Accordingly, Complainant is awarded $35,000 as compensation for her mental anguish.

3. Affirmative Relief

This Commission is empowered by Code § 8-120 to grant affirmative relief to effectuate the purposes the Code. Affirmative relief is an appropriate remedy for redressing past and preventing future discrimination, Negron v. Obstfeld, NYCCHR Compl. No. 232184, Rec. Dec. & Ord. (June 28, 1989), modified Dec. & Ord. (August 22, 1989). Accordingly, this Commission directs Respondents to cease and desist from engaging in discriminatory employment practices. Respondents are further ordered to post the Commission's anti-discrimination poster "Employment Discrimination is Against the Law" in several prominent locations at the offices of Respondent Del Business.

VI. RECOMMENDED ORDER[24]

IT IS HEREBY ORDERED THAT RESPONDENTS:

1. Cease and desist from engaging in any discriminatory employment practices.

2. Post the Commission's anti-discrimination poster "Employer Discrimination is Against the Law" in several prominent locations at the offices of Respondent Del Business.

3. Pay Complainant Mary Colon $75,915.33 as compensation for lost wages, as well as pre-judgment interest on this sum at the statutory rate of nine per cent (9%) per annum, calculated from February 3, 1991 to the date of the final decision and order in this case.

4. Pay Complainant Mary Colon: $875.00 as compensation for her last week of work at Del Business; $479.00 as compensation for lost personal items; and $5,476.31 as compensation for lost medical benefits.

[24] **This Recommended Decision and Order must be read in conjuction with the final Decision and Order issued in this action.**

5. Pay Complainant Mary Colon $35,000 as compensation for mental anguish

6. Make all payments to Complainant Mary Colon within 90 days of the issuance of the final decision and order in this case.

Date: November 2, 1996 **SO ORDERED:**

_____
Rosemarie Maldanado
Chief Administrator Law Judge
Hearing Division