Comm'n on Human Rights ex rel. McIntosh v. Vance

OATH Index Nos. 2018/11 & 2019/11 (July 18, 2011), *adopted*, Comm'n Dec. & Order (Nov. 9, 2011), ***appended***

Petitioner established that respondents discriminated against complainant by denying her a public accommodation because of her race. ALJ recommended $7,500 in compensatory damages and a civil penalty of $15,000.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of

COMMISSION ON HUMAN RIGHTS EX REL. TIFANY MCINTOSH

Petitioner

- against -

MARINA VANCE & A BRIDAL HAIR & MAKE-UP SALON BY MARINA VANCE

Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

This proceeding was brought by petitioner, the New York City Commission on Human Rights ("Commission") on behalf of complainant, Tifany McIntosh. The verified complaint (Pet. Ex. 2) alleges that respondents, Marina Vance and A Bridal Hair & Make-Up Salon by Marina Vance ("Salon"), discriminated against Ms. McIntosh by denying her a public accommodation because of her race, in violation of section 8-107 of the Administrative Code of the City of New York ("Human Rights Law" or "HRL"). Ms. Vance filed an answer verified on January 26, 2010, stating that she is not operating a salon in New York City and denying all allegations of discrimination (ALJ Ex. 2).

A conference and hearing were scheduled for May 10, and June 13, 2011, respectively. Respondents failed to appear. At the hearing petitioner presented proper proof of service of the complaint and notice of hearing upon respondents (Tr. 6-18; Pet. Exs. 1-5). Such evidence established the jurisdictional prerequisites for finding respondents in default and the matter proceeded in the form of an inquest.

At the hearing petitioner presented documentary evidence, two Commission witnesses, and complainant. I find that respondents discriminated against complainant by denying her the rights, privileges and advantages of a public accommodation because of her race. Complainant should be awarded $7,500 for mental anguish and the Commission $15,000 as a civil penalty.

BACKGROUND

Ms. McIntosh testified that she visited respondents' website on September 3, 2009 (Tr. 26). According to the website (Pet. Ex. 6), the Salon is located at 433 Avenue of the Americas (between 58th and 59th Streets) in Manhattan and offers hair and make-up services for weddings and other occasions. The website further states that the Salon and Ms. Vance have done make-up and hair for top named fashion designers, magazines, television shows, and celebrities.

Ms. McIntosh testified that after visiting the website she called the Salon to schedule a hairstyling appointment for her upcoming wedding. She spoke to Ms. Vance who asked what her race was. Ms. McIntosh testified that she hesitantly stated she is African-American assuming the question had to do with her type of hair. They made an appointment for Sunday, September 6 (Tr. 26-27). Ms. Vance gave Ms. McIntosh an address located between 58th and 59th Street for the appointment (Tr. 39).

Ms. McIntosh testified that she missed her appointment because of a family emergency and that she did not call the Salon in advance. When she later went to call the Salon she saw a voicemail from Ms. Vance. Ms. McIntosh listened to the message before calling (Tr. 28).

At the hearing, petitioner played the message that Ms. McIntosh had saved. In the message Ms. Vance stated in sum and substance:

> Hello Tifany, this is Marina Vance. We had an appointment today at 11:30 – why you didn't show up, or why you didn't call, alright? Ah, this is very common with the - - I'm sure you're a fucking nigger, ah, who doesn't care for anybody's time, alright? I wish, you know what, please, that you don't show up for your appointment, ah, which is coming. Tifany with an "F," a fucking nigger, next time, or or a fucking Dominican bitch. Okay? Where the fuck is you that you thought you (inaudible) gonna kiss the fucking sweat off your ass. Good bye.

(Pet. Ex. 7).

Ms. McIntosh testified that she was very upset by Ms. Vance's message and that she immediately called her friends and family (Tr. 29). She then called Ms. Vance who asked why she did not keep the appointment. Before answering, Ms. McIntosh tried to address the message Ms. Vance had left on her voicemail. However, Ms. Vance cut her off, said she should have kept the appointment, and hung up. According to Ms. McIntosh when she called back, Ms. Vance stated, "I do not want to talk with you, I don't do business with niggers" and hung up (Tr. 36). Ms. McIntosh testified that she never obtained any hair services from respondents (Tr. 36).

ANALYSIS

In the verified complaint, petitioner alleges that respondent, a public accommodation, discriminated against complainant by denying her a public accommodation based on her race.

Human Rights Law section 8-107(4)(a) provides that it shall be an unlawful discriminatory practice for a provider of a public accommodation to deny a person a public accommodation or make a person feel unwelcome based on an actual or perceived disability. Under the Local Civil Rights Restoration Act of 2005 ("Restoration Act"), the law is to be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof." Admin. Code § 8-130 (Lexis 2011); *Albunio v. City of New York*, 16 N.Y.3d 472, 477-78 (2011); *Williams v. NYC Housing Auth.*, 61 A.D.3d 62, 67-68 (1st Dep't 2009).

The Commission bears the burden of establishing a *prima facie* case of discrimination. To do so, petitioner must show that: (1) the complainant is a member of a protected class as defined by the HRL and has been denied privileges or advantages by respondents; (2) respondents are a public accommodation; and (3) respondents acted in such a manner and circumstances as to give rise to the inference that its actions constituted discrimination in violation of section 8-107(4). *Comm'n on Human Rights ex rel. Whittacre v. Northern Dispensary*, OATH Index Nos. 380/87 & 381/87 at 3-4 (Mar. 30, 1988) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973)), *adopted*, Comm'n Dec. & Order (Aug. 17, 1988). Petitioner has met its burden.

Here, Ms. McIntosh described herself as African-American (Tr. 24). She is a member of a protected class by virtue of her race. *Comm'n on Human Rights ex rel. Okoumou v. County Recovery Corp.*, OATH Index No. 445/09 at 9 (Feb. 6, 2009), *modified on penalty*, Comm'n

Dec. & Order (July 7, 2009). Moreover, there is sufficient evidence to conclude that she was denied privileges or advantages by respondents. The audio recording and Ms. McIntosh's testimony demonstrate that when she missed her appointment, Ms. Vance left a message telling her not to come for any future appointments.

The record also establishes that respondent qualifies as a public accommodation. Under the Human Rights Law "public accommodation" is defined as "providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available." Admin. Code § 8-102 (Lexis 2011). Hair salons are considered public accommodations within the meaning of the HRL. *Spencer v. Kings Plaza Unisex Palace of Hair Design*, CHR Complaint No. at 6 FH82030990DN-PA, Dec. & Order (Nov. 8, 1991).

Ms. Vance's assertion in the verified answer that she was not operating a salon in New York City was unconvincing. Ms. Vance instructed Ms. McIntosh to go to a salon located between 58th and 59th Street in Manhattan for her appointment. Moreover, respondents' website states that the Salon operated by Ms. Vance is a "full-service hair and make-up salon" and gives a Manhattan address (Pet. Ex. 6). Additionally, when a Commission employee called the phone number on the website posing as a prospective customer, she was told to go to 18 West 56th Street in Manhattan for the appointment (Tr. 13; Pet. Ex. 5). Accordingly, I find that respondents are public accommodations operating in New York City under the HRL.

With regard to the third element the "crucial issue is whether the evidence is sufficient to show that the denial of services occurred under circumstances giving rise to an inference of discrimination." *Lizardo v. Denny's, Inc.*, 270 F.3d 94, 101 (2d Cir. 2001). Based on Ms. McIntosh's testimony as corroborated by the taped voicemail message, I find that the reason Ms. Vance told her not to come for any more appointments was because of Ms. McIntosh's race and perceived national origin. While it is understandable that Ms. Vance was annoyed that Ms. McIntosh had not called to cancel her appointment, the evidence of discrimination is in the distasteful language used by Ms. Vance in the message and subsequent conversation with Ms. McIntosh. In the message Ms. Vance repeatedly used the word "nigger" and referred to Ms. McIntosh as a "fucking Dominican bitch." The nasty, profanity laden message betrays an ugly

and reprehensible bias against Ms. McIntosh. This bias was repeated when Ms. Vance spoke to Ms. McIntosh and said that she does not "do business with niggers."

Once petitioner has made its *prima facie* case, the burden shifts to respondents to articulate a clear and specific non-discriminatory reason for their actions. *Whittacre*, OATH 380/87 at 4. Because respondents' failed to appear at the hearing, petitioner's *prima facie* case is unrebutted.

FINDINGS AND CONCLUSIONS

1. Respondents were properly served with the petition and notice of hearing.

2. Petitioner established that respondents violated section 8-107(4)(a) of the Administrative Code.

RECOMMENDATION

Under section 8-120(a) of the HRL, the Commission may fashion legal and equitable remedies for a complainant, which include payment of compensatory damages to the person aggrieved. Compensatory relief may include mental anguish damages. *Comm'n on Human Rights ex rel. Latif v. New Master Nail, Inc.*, OATH Index Nos. 1576/10 & 1577/10 at 9 (Aug. 10, 2010), *adopted*, Comm'n Dec. & Order (Nov. 16, 2010); *Comm'n on Human Rights ex rel. De La Rosa v. Manhattan & Bronx Surface Transportation Operating Auth.*, OATH Index No. 1141/04 at 10-11 (Dec. 30, 2004), *adopted*, Comm'n Dec. & Order (Mar. 11, 2005).

For the discrimination proven, petitioner seeks mental anguish damages in the amount of $15,000. An award for mental anguish damages must be based on a demonstration that "a reasonable person of average sensibilities could fairly be expected to suffer mental anguish from the incident." *Batavia Lodge v. NYS Division of Human Rights*, 35 N.Y.2d 143 (1974), *rev'g and adopting diss. opin. reported at* 43 A.D.2d 807, 810 (4th Dep't 1973). Further, "[t]here must be some evidence of the magnitude of the injury, to assure that the Commissioner's damage award is neither punitive nor arbitrary." *NYC Transit Auth. v. NYS Division of Human Rights*, 78 N.Y.2d 207, 217 (1991).

The record supports a finding that Ms. McIntosh suffered emotional distress resulting from the incident and is entitled to recover damages pursuant to section 8-120(a)(8) of the HRL.

See NYC Transit Auth., 78 N.Y.2d at 216 ("Mental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct"); *DaSilva v. New York Racing Ass'n*, CHR Compl. No. E95-0668/16F-95-0141, Dec. & Order (June 25, 1996), *aff'd. sub nom. New York Racing Ass'n v. NYC Comm'n on Human Rights*, No. 016449/1996 (Sup. Ct. Queens Co. Dec. 16, 1996) (credible testimony by complainant concerning mental anguish sufficient to sustain an award for pain and suffering).

In recent years in cases involving acts of discrimination by a public accommodation, emotional distress damages have ranged from $1,000 to $12,000. *See, e.g.*, *New Master Nail, Inc*., OATH 1576/10 & 1577/10 ($7,500 in mental anguish damages awarded where nail salon refused service to a woman in a wheelchair); *Comm'n on Human Rights ex rel. Alvarez v. Gerardo's Transportation*, OATH Index No. 2045/09 (May 22, 2009) ($7,000 for mental anguish after a car service refused to transport disabled complainant); *Comm'n on Human Rights ex rel. Okoumou v. County Recovery Corp.*, OATH Index No. 445/09 at 9 (Feb. 6, 2009), *modified on penalty*, Comm'n Dec. & Order (July 7, 2009) ($1,000 for mental anguish after a car-towing company discriminated against a motorist on the basis of race and national origin); *Comm'n on Human Rights ex rel. Gardner v. I.J.K. Service, Inc.*, OATH Index No. 1921/08 at 10 (Oct. 10, 2008), *adopted in part, rev'd in part*, Comm'n Dec. & Order (Feb. 19, 2009) ($1,000 for mental anguish after for-hire driver made complainant pay up front, refused to drop him off at his destination, made several racial comments, and accused him of robbery); *Manhattan & Bronx Surface Transportation Operating Auth.*, OATH 1141/04 ($12,000 and $10,000 awarded to disabled passengers for mental anguish after a bus driver refused to assist them).

Among the factors to be considered are the number of instances of discrimination, the level of anguish caused by the misconduct, and prior awards for comparable discrimination. *Comm'n on Human Rights ex rel. Campbell v. Personal Employment Services*, OATH Index No. 1579/07 at 6 (Aug. 20, 2007), *adopted*, Comm'n Dec. & Order (Dec. 14, 2007); *Comm'n on Human Rights ex rel. Cherry v. Stars Model Management*, OATH Index No. 1464/05 at 16 (Mar. 7, 2006), *adopted*, Comm'n Dec. & Order (Apr. 13, 2006).

Ms. McIntosh testified that when she heard Ms. Vance's message she initially felt shock and then, pure hurt. She had never been a victim of discrimination and it was not easy to hear it

(Tr. 35). She could not believe that someone would be so bold and leave such remarks on a voicemail (Tr. 38). That evening Ms. McIntosh researched what she could do about the situation and saved the voicemail to an MP3 file (Tr. 29). The first few days after the incident Ms. McIntosh could not sleep or eat because she was focused solely on this incident. Her now-husband convinced her to put it behind her temporarily and focus on their up-coming wedding. She bought a wig because she did not feel comfortable using a hair stylist after her experience with Ms. Vance (Tr. 36-37). After her honeymoon, Ms. McIntosh contacted the Commission (Tr. 29, 38). She did not seek any professional counseling for her emotional distress but relied on her husband and family for support. Ms. McIntosh also testified that she is still bothered by the incident and wonders when she meets Caucasians whether they are having racist feelings about her. She thinks this will take some time to get over (Tr. 38).

Here, a reasonable person of ordinary sensibilities would feel some anguish after being subjected to such racist and nasty language directed at her. The fact that Ms. McIntosh had contacted Ms. Vance to look and feel her very best on such an important day as her wedding makes her discriminatory remarks all the more aggravating. I credited Ms. McIntosh's testimony that this incident left her emotionally distressed.

This was a one-time occurrence of discrimination. Taking into consideration all of the factors discussed and the prior case law, Ms. McIntosh's emotional distress damages fall in the middle of the spectrum. Accordingly, she should be awarded $7,500 for her mental anguish damages. *See New Master Nail*, OATH Index Nos. 1576/10 & 1577/10 ($7,500 in mental anguish damages awarded where nail salon refused service to a woman in a wheelchair where complainant got upset whenever the incident was discussed); *Gerardo's Transportation*, OATH 2045/09 ($7,000 awarded to disabled complainant for mental anguish after car service refused to transport her, where she remained anxious and fearful about public transportation a year after the incident); *Peters v. Cunningham's Florist*, CHR Complaint No. PA-92-0064, Rec. Dec. & Order (Aug. 31, 1993), *adopted*, Dec. & Order (Oct. 27, 1993) ($5,000 awarded to a disabled customer for mental anguish after a florist refused to admit him into his shop, causing him to become subdued and very depressed); *Estate of Campanella v. Hurwitz*, CHR Compl. No. GA-00021030487, Rec. Dec. & Order (July 31, 1991), *adopted*, Dec. & Order (June 30, 1993)

($7,500 awarded to patient with AIDS after dentist refused to treat him, causing him to become frightened and shattering his self-confidence at a vulnerable time in his life).

When unlawful discrimination is proven, the HRL also permits the Commission to impose a civil penalty of up to $125,000. Admin. Code § 8-126(a) (Lexis 2011). The imposition of a civil penalty is meant to "punish the violator" and "strengthen and expand the enforcement mechanisms of the law so the Commission could prevent discrimination from playing any role in actions related to employment, public accommodations, housing and other real estate." *119-121 East 97th St. Holding Corp. v. NYC Comm'n on Human Rights*, 220 A.D.2d 79, 88 (1st Dep't 1996).

In determining the amount, relevant considerations include the pervasiveness of the violations, the impact on the public, and the presence of aggravating factors, such as use of offensive language. *Compare Stars Model Management*, OATH 1464/05 at 14-15 ($15,000 civil penalty imposed where employment agency handled bookings for hundreds of companies, discriminated on the basis of race, and told complainant, "we don't take niggers"), *with Comm'n on Human Rights v. Silver Dragon Restaurant*, OATH Index No. 677/03 (May 30, 2003), *modified on penalty*, Comm'n Dec. & Order (July 28, 2003), *modified on penalty sub nom. Silver Dragon Restaurant v. NYC Comm'n on Human Rights*, N.Y.L.J., Mar. 31, 2004 at 24 (Sup. Ct. Kings Co.) (restaurant fined $5,000 for discriminating on the basis of race by requiring black customer to pay in advance for food, where similar restriction not imposed on white customers). Other factors to be considered in assessing a civil penalty include whether the violation was willful and whether there have been prior findings of discrimination against the same party. *Hudson Overlook*, OATH 137/06 at 15.

In this case, the Commission seeks a civil penalty of $15,000. This request is reasonable, is supported by the record, and is consistent with prior case law.

The evidence established that respondents willfully discriminated against Ms. McIntosh. Ms. Vance's discriminatory refusal to provide Ms. McIntosh with salon services was aggravated by her insulting, crude, and racially offensive language.

Additionally, respondents' website suggests that respondents have a large clientele including fashion designers and celebrities. Respondents' work has been featured in several prominent and widely circulated magazines, as well as on a cable television show. The website

also mentions respondents' "expertly trained staff," including "several . . . artists" (Pet. Ex. 6), suggesting that the Salon is "not a small, one-person operation." *See Comm'n on Human Rights v. Park West Realty*, CHR Compl. No. MH-93-0877, Rec. Dec. & Order at 40 (Mar. 17, 1995), *aff'd sub nom. Rosenshein v. NYC Commission on Human Rights*, No. 15481/95 (Sup. Ct. Kings Co. Dec. 13, 1995) (finding that company with five salespersons presumably handled a large amount of business). Accordingly, respondents' discriminatory acts have a significant impact on the public. *See New Master Nails*, OATH 1576/10 at 12.

Another factor to consider is respondents' failure to cooperate with the Commission and appear at this proceeding. It is in the public interest to have individuals respond and participate in a process designed to cure discriminatory practices in the City of New York. *See Hudson Overlook*, OATH 2094/04 at 15-16.

Considering these factors and prior case law, $15,000 is an appropriate civil penalty. *See, e.g., Gerardo's Transportation*, OATH 2045/09 ($15,000 civil penalty where transportation service refused to transport a woman because she was in a wheelchair and compounded the problem by making disparaging remarks about people with disabilities); *Comm'n on Human Rights ex rel. Okoumou v. County Recovery Corp.*, Comm'n Dec. & Order (July 7, 2009), *modifying on penalty*, OATH Index No. 445/09 (Feb. 6, 2009) ($15,000 penalty against car-towing company in light of the severity of the racial comments it directed at a customer and the lack of evidence of provocation); *Star Models Management*, OATH 1464/05 ($15,000 civil penalty where the evidence showed respondent used offensive language; the single act of discrimination was willful; and it significantly impacted the public because respondent handled hundreds of modeling opportunities).

In sum, I recommend that respondents be ordered to pay $7,500 in compensatory damages and a civil penalty of $15,000.

Alessandra F. Zorgniotti
Administrative Law Judge

July 18, 2011

SUBMITTED TO:

PATRICIA L. GATLING
Commissioner

APPEARANCES:

SHEETAL KALE, ESQ.
Attorney for Petitioner

No Appearance by Respondents

Comm'n Dec. & Order (Nov. 9, 2011)

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
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In the Matter of Complaint # 10-1022636
TIFFANY McINTOSH,
Petitioner,
-against-
MARINA VANCE,
and
A BRIDAL HAIR AND MAKE-UP
SALON BY MARINA VANCE,
Respondents.
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DECISION AND ORDER

On November 16, 2009, the petitioner filed a Verified Complaint with the New York City Commission on Human Rights (hereafter referred to as the "Commission") alleging violations of the Administrative Code of the City of New York. Specifically, the petitioner alleged that on or about September 6, 2009 she was denied a public accommodation because of her race.

A trial before Administrative Law Judge Alessandra F. Zorgniotti was conducted at the New York City Office of Administrative Trials and Hearings ("OATH") on June 13, 2011. The Commission's Law Enforcement Bureau ("LEB" or "the Bureau") presented the case against Respondents, who did not appear at trial. Upon taking testimony and receiving exhibits concerning LEB's efforts to serve Respondents with notice of the trial, ALJ Zorgniotti declared Respondents in default and the matter proceeded in the manner of an inquest.

For the reasons stated below, the Commission agrees with the ALJ's decision to proceed in this manner.

The Bureau produced an extensive record of its efforts to provide Respondents the opportunity to contest the allegations in the Complaint. On November 23, 2009 the Bureau served Respondents with a copy of the Verified Complaint, via First Class mail sent to 1433 6th Avenue, New York, NY 10019 ("the 6th Avenue address"), the address listed on Respondents' website. Respondents did not answer the complaint. In a letter to Respondent Vance dated

January 13, 2010, LEB attorney Alison Ferguson-Woods referenced a telephone conversation that she had with Respondent Vance on January 12, 2010, during which Respondent Vance initially indicated that she did not want to answer the complaint, but then stated that "George", her representative, would provide another address to which to send the complaint. A copy of the complaint was sent to Respondent Vance at that address, 1766 Gilda Way, Apartment 16, San Jose CA 95124 ("the San Jose address").

On February 3, 2010, Ms. Ferguson-Woods received a handwritten, two paragraph verified answer to the complaint, in which Respondent Vance denied the accusations against her, and denied that she operated a salon in New York City. The return address on the envelope containing the answer was the San Jose address.

During January and February 2011, by means including in-person visits to the 6th Avenue address and the acquisition of website registration and telephone records, LEB investigators determined that there were five addresses associated with Respondent Vance: The 6th Avenue address; the San Jose address; the Gloria Wan Hair Replacement Salon, 18 West 56th Street, New York, NY 10019 ("the 56th Street address"); 982 Arapaho Trail, Franklin Lakes, NJ 07417 ("the Franklin Lakes address"); and 927 Madison Avenue, New York, NY 10021, c/o Gary Vance ("the Madison Avenue address").

On March 22, 2011, LEB issued a Determination of Probable Cause and notice of intent to proceed to trial on the allegations in the Complaint; referred the case to OATH; and scheduled a settlement conference there for May 10, 2011 at 2 p.m. The Bureau mailed copies of the probable cause determination to the 56th Street address. Also on March 22, 2011, LEB attorney Asha Smith, posing as a customer, called Respondent Vance at the telephone number listed on Respondents' website. Respondent Vance then scheduled a hair styling appointment with Ms. Smith for 10 a.m. on March 26, 2011 at the 56th Street address. On that date, at the scheduled time, LEB's Executive Director, Carlos Velez, went to the 56th Street address to personally serve Respondent Vance with notice of the determination of probable cause and notice of the date, time and place of the settlement conference. Respondent Vance did not appear. Employees and customers at the 56th Street address confirmed that Respondent Vance was scheduled to work that morning, and pointed out her workstation. Director Velez left an envelope containing the notices at the workstation.

The Bureau mailed notice of the probable cause determination to Respondents at the Franklin Lakes address on March 29, 2011. The Bureau also mailed notice of the probable cause determination to the Franklin Lakes, 6th Avenue, San Jose, Madison Avenue and 56th Street addresses on April 20, 2011. Respondents did not respond in any manner. Respondent Vance did not appear at the conference on May 10, 2011 and did not contact OATH or the Bureau to explain her absence or to ask to reschedule the conference so that she could attend. ALJ Ingrid Addison then scheduled a trial for June 13, 2011 at 9:30 a.m.

On May 13, 2011 the Bureau mailed a notice of trial to the 6th Avenue, Franklin Lakes, Madison Avenue, San Jose and 56th Street addresses. The Bureau also mailed notice to 1433 Avenue of the Americas - the alternate street name for the 6th Avenue address. These notices included the date, time and place of the trial. Respondent Vance did not appear for the trial on June 13, 2011, and did not contact OATH or the Bureau prior to that date.

At trial, Petitioner testified that on September 3, 2009, after seeing Respondents' website, she contacted the salon at the telephone number listed there and spoke to a woman identifying herself as Marina Vance. Petitioner scheduled a hairstyling appointment with Respondent Vance for September 6, 2009. During their telephone conversation, Respondent Vance asked Petitioner what her race was. Hesitant to answer, but thinking that Respondent Vance had asked the question in order to determine the type of hair she had, Petitioner disclosed that she is African-American.

Petitioner missed her September 6th appointment - an appointment she made in order to prepare for her then-upcoming wedding - due to a family emergency. Respondent Vance left Petitioner a voicemail message, berating her for missing the appointment. Petitioner recorded a copy of the message, which was played at trial. Among other statements on the recording, Respondent Vance can clearly be heard saying, "Hello Tiffany, this is Marina Vance. We had an appointment today at 11:30 – why didn't you show up, or why you didn't call, alright? Ah, this is very common with the – I'm sure you're a fucking nigger, ah, who doesn't care for anybody's time, alright ... Tiffany with an 'F', a fucking nigger, next time, or a fucking Dominican bitch ... Good bye."

Minutes later, Petitioner, upset after hearing this message, called Respondent Vance, who again complained that Petitioner should not have missed the appointment. As Petitioner

attempted to ask Respondent Vance about the voicemail message, Vance cut her off, saying that Petitioner should have kept her appointment, then hung up the phone. Petitioner called back immediately. Respondent Vance then told her, “I do not want to talk with you, I don’t do business with niggers” before hanging up the phone again.

On July 18, 2011, ALJ Zorgniotti issued a Report and Recommendation, wherein she found that Respondents denied Petitioner a public accommodation because of Petitioner’s race; recommended that Petitioner be awarded $7,500 in damages for mental anguish; and recommended that Respondents be fined $15,000. On the same day, the Commission mailed a copy of the Report and Recommendation, with a cover letter inviting Respondents to submit comments, to the Franklin Lakes and 56th Street addresses. Days later, Respondent Vance's representative, her husband, Gary Vance, contacted the Commission, requesting copies of materials in the LEB investigative file and an extension of time to submit comments on the Report and Recommendation. At that time, Mr. Vance provided yet another mailing address through which to reach Respondents, P.O. Box 140, Grundy, VA 24614. Thereafter, Mr. Vance made numerous requests for additional documents and further extensions of time to file comments.

The Commission is satisfied that LEB gave Respondents ample notice and opportunity to contest Petitioner’s case at trial. Respondents’ requests for materials from the investigative file and for additional time to submit comments came only after copies of the Report and Recommendation were mailed to the 56th Street and Franklin Lakes addresses - addresses to which LEB had previously sent multiple notices of the probable cause determination, and of the date, time and location of the conference and the trial. This belies the contention that Respondent Vance now makes in her comments: that she failed to appear at the trial because she did not have notice of it. The Commission, therefore, finds that Respondent Vance in fact had notice of the trial, but refused to appear.

After a review of the trial transcript and exhibits, the Report and Recommendation of ALJ Zorgniotti, and the comments, the Commission agrees with ALJ Zorgniotti’s findings and recommendations and adopts them.

In relevant part, the Human Rights Law makes it unlawful for “any place or provider of public accommodation because of the actual or perceived ... race ... of any person directly or

indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof ..." The record shows that Respondents did exactly that, with a repulsive display of bigotry by Marina Vance. Respondent Vance's statements are unambiguous. She announced in the crudest and clearest way that because of Petitioner's race, her presence or patronage was unwelcome, objectionable and undesired, thereby denying Petitioner a public accommodation and violating the Human Rights Law. Respondent Vance's obvious irritation with Petitioner for missing her appointment cannot justify or excuse such blatant discrimination.

Petitioner is entitled to monetary damages for the mental anguish she suffered because of Respondent Vance, whose actions also warrant the imposition of a significant civil penalty. The ALJ recommended appropriate amounts for each.

IT IS HEREBY ORDERED, that the Respondents pay the Petitioner $7,500 damages for mental anguish; and pay the City of New York a fine in the amount of $15,000.

Pursuant to Section 8-123(h) of Title 8 of the Administrative Code of the City of New York, anyone aggrieved by this Order has thirty (30) days after service to seek review in the New York State Supreme Court.

Dated: New York, New York
November 9, 2011

SO ORDERED:
New York City Commission on Human Rights

Grace Lyu-Vo1ckhausen
Commissioner

Omar T. Mohammedi

Commissioner

Patricia L. Gatling
Commissioner