

o c { "dg" j gctf "cv" y g'Eqwt y qwug. "42" Gci ng'Ut gg v. "Cndcp { . "P gy " [qtni34429 "hqt "

Ngcxg "vq" "Crr gcn" y ku' o cwgt "vq" y ku'Eqwt v0

"

" Vj g's wguvku pu"qh'rcy "qh" y j lej "y g'F kxkukqp"uggmu' t gxlky "ht qo "y ku'Eqwt v'ctg <

"

K0 Kp'cppwukpi "y g'F kxkukqp" a' f gvt o kpcvku p "y cv" y g'ngwt "Rgvkukp gtu" ugpv'vq'Eqo r nckpcpw' y tgcvgkpi "c"rcy ukv' hqt "y gk" j cxkpi "r t gxlkwun { "hrgf "c"

F kxkukqp'eqo r nckpv' y cu'cp' wprcy hwi'cev'qh' t gvcnkcvku p. "f k" "y g" "Vj kf "

F gr ctwo gpv'gtt "d { "uwdukwkpi "ku" lwi o gpv' hqt "y cv" qh' y g'F kxkukqp a' "

Eqo o kukqp g t gi ctf kpi "c" s wguvku p "qh" hcev. "y wu" gze g g f kpi "ku" gzt go gn { "

pcttqy "lwf leknt gxlky "cwj qtk { A"

"

K0 F k" "y g" "Vj kf "F gr ctwo gpv'gtt "y j gp. " j cxkpi "hqwpf "y cv" y g'F kxkukqp a' "

CNL' of k" "pqv' wpf gtvcng" cp { "cpcn { uku' cu' vq" y j gvj gt "Ek { Xkukqp' t gcuqpcdn { "

dgrkxgf "y cv" Rkpg' Tk i g' y cu' gpi ci kpi "k" c' f kuetko kpcvqt { "r tcevkg" f wtkpi "y g" "

wgr j qpg' ecmlk" s wguvku p. o' k' hckrgf "vq" tgo kv' y ku' o cwgt "vq" y g'F kxkukqp' hqt "

hwtj gt "r tqeggf kpi u' t gi ctf kpi "y ku' s wguvku p "qh" hcev A"

"

"

"

4244_0"C"eqr { "qh'y j g"Vj kf "F gr ctvo gpw'u'O go qtcpf wo "cpf "Lwf i o gpv'y kj "

P qvleg'qh'Gpvt { 'y cu'ugtxgf "qp'Lwn'3: ."4244."cpf "eqpukwgu'Gzj kdk'CO"

Vj ku'ku'c'r tqeggf kpi 'hqt'lwf lekcn'tgxky "qh'c"Notice and Final Order"y j g"

F kxkukqp'kuwgf "chgt"cp'cf o kpkutcvkxg'j gctkpi "qp'Lwp'3."4242."qp'y j g'eqo r nkp'v"

qh'Ek'Xkukqp"Ugtxlegu."Kpe0*Ek'Xkukqp+"cpf "Ngki j "Tgppgt"*Tgppgt+"*eqmgevkn'."

Eqo r nkp'cpw+"*Final Order+"c"eqr { "qh'y j lej 'ku'cwe'j gf "cu'Gzj kdk'D0"Vj g"

F kxkukqp'hqwpf "Rgvk'kqp'gtu/T gur qpf gpw'Erk'kqp"Rctm'Cr ctvo gpw.'NNE."cu'Qy pgt"

qh'Rk'p'g'Tk'f i g"K'Cr ctvo gpw'*Rk'p'g'Tk'f i g+"cpf "F c'xk'f "J 0'Rgp'vny unk'Gus 0'

*Rgp'vny unk+'*eqmgevkn'."Rgvk'kqp'gtu+'h'cdng'hqt't'g'v'c'k'v'k'p'i "ci c'k'p'v'Ek'Xkukqp"cpf "

Tgppgt."k'x'k'q'v'k'p'qh'y j g"J wo cp'Tk'j w'Ncy ."hqt"j c'x'k'p'i "h'k'g'f "c'r t'g'x'k'q'w'v' "

f kuo ku'gf "eqo r nkp'v."y j gp'y j g' { "ugp'v'c'h'g'w'g't'uggn'k'p'i "f co ci gu'hqt'oh'cnug.'h'c'w'f'w'g'p'v"

cpf "h'd'g'm'w'v'o"cn'gi c'v'k'p'u'0"Vj g'F kxkukqp"q't'f'g't'g'f "y c'v'Rgvk'kqp'gtu'r c { "Ek'Xkukqp"

f co ci gu'hqt'y j g'f'k'x'g't'k'p'p'qh't'g'u'q'w't'eg'u'k'w'v'h'g't'g'f "cu'c't'g'u'w'v'qh'Rgvk'kqp'gtu'0"

w'p'rc'y h'w'v't'g'v'c'k'v'k'p'cpf "r c { "Ek'Xkukqp'u'c'w'q't'p'g' { u't'g'c'u'q'p'c'd'ng'c'w'q't'p'g' { u'h'g'g'u'cpf "

g'z'r'g'p'u'g'u'0"C'f'f'k'k'p'c'm'."y j g'F kxkukqp"cu'g'u'g'f "c"e'k'k'i'h'k'p'g'cpf "r'g'p'c'm' { "ci c'k'p'v"

Rgvk'kqp'gtu."v'q'd'g'r'c'k'f "v'q'y j g"U'c'v'g'qh'P gy "l q't'n'0"

Vj g'F kxkukqp"eqpen'f gf "y c'v'Ek'Xkukqp"cpf "Tgppgt'h'k'g'f "y j g'k'k'p'k'c'n"

eqo r nkp'v'c'v'y j g'F kxkukqp"ci c'k'p'v'r'c't'v'k'g'u'y j g' { "k'p'i'q'q'f "h'c'k'y "d'g'k'g'x'g'f "j c'f "x'k'q'v'g'f "

y j g'J wo cp'Tk'j w'Ncy ."g'x'g'p'k'h'y j g'F kxkukqp"v'w'k'o'c'v'g'n' { "f'k'uc'i't'g'g'f "cpf "f'k'uo'ku'gf "

y j c'v'eqo r nkp'v'hqt'ic'em'q'h'r'q'd'c'd'ng'ec'w'ug'0'k'p't'g'v'c'k'v'k'p'hqt'y j g'k'g'h'q't'v'."

Rgvkqpgtu."ecmkpi 'Eqo r rckpcpwø'cmgi cvkpu'ðhcng. 'Htcwf wgpv'cpf 'hkgmqwü"
vj tgcvgpgf "vj go 'y kj "ðf co ci guð'kh'Eqo r rckpcpw'f kf "pqv'eqpwcev'vj go "vq'ðf kwewu"
c't guqmwkqp"vq'vj ku'ercko 0""*see T062³]Final Order."HH/8⁴="HH/9_.'Gzj kdk/D0"
Hkpf kpi "vj cv'Eqo r rckpcpw'y gtg'xkewo u'qh'kngi cnt'gvrckvqp."vj g'F kxkukqp"
tgeqi pk gf "vj g'ko r qtvpeg"qh'gpuwtkpi "cp"gpvktqpo gpv'k'y j kej 'r gtuqpu'o c{ 'kø"
i qqf 'hckj 'tgr qtv'f kuetko kpcvqp'y kj qw'vj g'vj tgcv'qh'tgvrckvqt { 'ngi cn'cevqp"gxgp'kh"
vj gk'ercko u'ctg'wvko cvgn' 'pqv'uwwckpgf 0"

Kp'ku'O go qtcpf wo "cpf 'Lwf i o gpv'f cvgf 'Cr tkd'4: . '4244.'vj g'Vj kf "
F gr ctwo gpv' tcvpgf 'Rkpg'Tkf i g'cpf 'Rgpvny unku'Rgvkqpgtu."cpf "cppwngf "vj g"
F kxkukqpø"Final Order"Vj g'eqwtv'dngny 'hqw'f "vj g'gxf gpeg'cf f wegf "cv'vj g"
j gctkpi "ðhcngf "vq'uwr r qtv'vj g'hkpf kpi "vj cv'r gvkqpgtu"vqmq'cf xgtug'cevqp"ci ckpu"
Ekv' Xkukqp'í "Y g'ecppqv'eqpenw'f g'vj cv'w'pf gt'vj gug'ekewo ucpegu."vj g'o gtg"
ugpf kpi "qh'vj g'ngwt'tqug'vq'vj g'ngxgn'qh'tgvrckvqpö"*Clifton Park Apts., LLC."426"
CF 5f "cv'3582/3583.'Gzj kdk/C+0"

Cu'f kwewugf "dngny ."vj g'F kxkukqp"o ckpvckpu'vj cv'vj g'Vj kf 'F gr ctwo gpv'
gzeggf gf 'ku'ðgzvgo gn' 'pcttqy ö"*Matter of State Div. of Human Rights (Granelle)."
92"P [4f "322."328"]3; : 9_+lwf lekcn'tgxky "cwj qtkv' "vq'eqpukf gt'y j gj gt'vj g"
f gvgto kpcvqp"qh'vj g'F kxkukqpø'Eqo o kxkukp'gt'y cu'uwr r qtv'f "d{ 'uwwcvp'kcn'

³P wo dgtu'hqmqy kpi "vj g'ngwt'ðT0'tghgt'vq'r ci gu'qh'vj g'Rgvkqpgtuø'Record on Appeal"
⁴ P wo dgtu'hqmqy kpi "vj g'ngwtu'ðHH'r g'vckp'vq'vj g'pwo dgtgf "Hkpf kpi u'qh'Hcev'qh'vj g'Notice and
Final Order"

gxf gpeg"qp"vj g'tgeqtf ."cpf "kpuvgcf "ugv'cukf g'vj cvf gvgto kpcvkqp'dgecwug'vj g'Eqwtv"
 hqwpf "vj g"qr r qukg'f gekukqp"vq'dg'tgcuqpcdmg"cpf "uwuclpdmg"*see 300 Gramatan
 Ave. Assoc. v State Div. of Human Rights."67"P [4f "398"]3; 9: _="Matter of Mize v
 State Div. of Human Rights."55"P [4f "75"]3; 95 _="Rainer N. Mittl, Ophthalmologist,
 P.C. v New York State Div. of Human Rights."322"P [4f "548"]4225_0'

"Cffkkqpcmf . "vj g"Vj kf "F gr ctwo gpv'gttgf "y j gp'k'hckrgf "vq'tgo k'vj ku'o cwgt"
 vq'vj g'Fkkukqp"ht"cf gvgto kpcvkqp"qh'vj g'ohcewcn'kuuwgu"cu"vq'y j gj gt"
 Jeqo r mckpcpw_uwdlgevkxgn' "j grf "dgngh'vj cv"]vj g{ _'y gtg"gpvkrgf "vq'vj g'r tqvevkqp"qh'
 vj g"J wo cp"Tkij u'Ncy 'y cu'tgcuqpcdmgö"*Modiano v Elliman."484"CF 4f "445."445"
]3uv'F gr v3; ; ; _+. "chngt"kv'ucv'gf "vj cv'vj g'Fkkukqpai'Ego o kukqpgt"j cf "hckrgf "vq"
 o cng'uwej "cf gvgto kpcvkqp"cpf "vj cv'uwej "hckmtg'y qwf "övr kccmf "i 'tguwv'kp"
 tgo kvcmö"*Clifton Park Apts., LLC."426"CF 5f "cv'3582."cwcej gf "cu'Gzj kdk'C+0"Vj g"
 Ego o kukqpgt"j cf "eqpenmf gf "vj cv'vj g'eqo r mckpcpw'kp"vj g'kpuvcpv'o cwgt"j cf "o cf g"
 öc'i qqf "hckj "Fkkukqp"encko ö"*Final Order"cv'r r "7+0"

Facts

Tgur qpf gpv'Ekv'Xkukqp"Ugtxlegu."kpe0"Ekv'Xkukqp+. "c'hck"j qwulpi "cf xqece{ "
 qti cpl'cvkqp."go r m{ u'vugvtu'y j q'r qug"cu'r qv'pvcn'v'gpcpw"vq'kf gpv'kh' "rcpf mtf u"

y j q'o c{ "dg'xkqrcvki 'hck'j qwukpi 'rcy u"*T033: /345"]CNLZ/4⁵_=T05; "]Final Order. HH/3"cpf "HH/4"cv'r r "4."Gzj kdk'D_#T gur qpf gpv'Ngki j "T gppgt "*T gppgt +ku" chkkcvgf 'y kj 'Ekv{ Xkukqp "*Id00"

"Qp'F gego dgt "44."4238."Ekv{ Xkukqp' hkgf "c"eqo r rckpv'ci ckpuv'Rkpg'Tkf i g'KK' Cr ctvo gpv"*Rgkkqpgt'Erkkqp'Rctm'y kj 'y' g'F kxkukqp."cmgi kpi 'hco krcn'ucwu" f kuetko kpcvqp'uvgo o kpi 'htqo "c"vgukpi 'ecm'y cv'vqqr rceg"qp'P qxgo dgt"; ."42380" Vj cv'eqo r rckpv'cmgi gf 'y' cv'Rkpg'Tkf i g'uvgtgf 'y' g'vgvgt 'v'cpqy j gt'r tqr gtv{ "chgt" uj g'ucvgtf 'y' cv'uj g'j cf 'y' tgg'o kpat'ej kf tgp0"*T062"]Final Qrder. HH/6"cv'r r "5." Gzj kdk'D_#T033: /345"]CNLZ/4_#T0484"]Vtcpuetr v'qh'Vgrgr j qpg'Ecm'f cvgf " P qxgo dgt"; ."4238_0#"Chgt'kpxguki cvki 'y' g'eqo r rckpv."qp'Lwpg"52."4239."y' g" F kxkukqp'hqwpf 'y' cv'y' gtg'y cu'P q'Rtqdcdr'g'Ecwug'v'q'dgrkxg'Rkpg'Tkf i g'j cf " gpi ci gf 'kp'cp'wprcy hwnf kuetko kpcvqt { 'r tcevkg"*T062"]Final Order. HH/6"cv'r r "5." Gzj kdk'D_#T033: /345"]CNLZ/4_#T

Uj qt v{ "chgt'y' ku'hkf kpi 'qh'P q'Rtqdcdr'g'Ecwug."Rgkkqpgt'Rgpvny unk'Rkpg" Tkf i g'au'cwqtpg{ ."ugpv'c'ngwt'v'Ekv{ Xkukqp"cpf "T gppgt."f cvgf 'Lw{ "47."4239." cmgi kpi 'y' cv'y' g'cmgi cvkpu'eqpvckpgf 'kp'y' gk'eqo r rckpv'y' gtg'ohcnug.'htcwf wrgpv" cpf 'hkgm'wuo'cpf 'pqvki 'y' cv'ohRkpg'Tkf i g'ku'rqvki 'v'"]Ekv{ Xkukqp"cpf "T gppgt_" hqt'f co ci gu'y' g{ "j' cxg'uwvckpgf 'cu'c'tguwn'qh'y' ku'y' tqpi hwn'eqpf wvob'"

⁵P wo dgtu'hqmny kpi 'y' g'ngwtu'öCNLZ.ö."öEZ.ö."cpf "öTZ.ö'tghgt."t'gur gev'xgn{ ."v'j' getkpi "gzj kdku" f guki pcvgtf "öCfo kpkv'cv'xg'Ncy 'Lw' i g'au.ö"öEqo r rckpcv'w'ö"cpf "öTgur qpf gpv'w'ö"Vj ku'o cvgt" y cu'r tqgewgf "qp'y' g'qtki kpcn'tgeqt'f 0'

Rgpvny unku'hwgt'hw'j gt'kpf'kcv'gf'vj cv'Ek'Xkukpau'tgr t'gugp'v'k'g'uj qwf "

eqp'cev'j ko "vq'of'kuewu"t'guq'w'k'p'q'h'j ku'er'ko o'cpf'uc'v'gf'vj cv.'k'h'j g'f'k'f'pq'v'j gct "

htqo "cp{qpg'y kj k'p'v'gp'f'c'u.'R'g'v'k'k'p'p'g'tu'o]y qwf _'r t'q'egg'f'c'ee'q't'f'k'p'i n'f'0' "T062"

]Final Order.'HH/8"cpf'HH/9"cv'r r'5.'G'z'j'k'k'k'D_="T0374"jEZ/3_0'"o'k'k'f'k'h'k'w'w'v'q"

ugg'j qy "vj ku'ecp'dg'x'k'gy gf'cu'cp{vj k'p'i "q'j'gt'v'j cp'c'v'j t'g'cv'o'v'j g'E'q'o o'k'k'k'p'p'g't"

eqpen'w'f'gf'0'"T063"j]Final Order"cv'r r'6.'G'z'j'k'k'k'D_0"

Qp'C'w'i'w'w'3: .'4239.'E'k'X'k'k'p'c'p'f'T'g'p'p'g't'h'k'g'f'v'j'g'k'p'u'c'p'v'e'q'o'r'k'k'p'v'y'k'j "

v'j'g'F'k'k'k'p'p'g't'c'm'g'i'k'p'i'v'j'c'v'R'g'p'v'ny'un'k'u'hw'g't'eq'p'u'k'w'w'g'f'w'p'r'cy'hw'i't'g'v'k'c'v'k'p'p'k'p'"

x'k'q'r'v'k'p'q'h'j'g'J'w'o'c'p'T'k'i'j'w'N'c'y'"*T033:/345"jCNLZ/4_0"K'p'hw'j'g't'c'p'eg'q'h'j'g'"

k'p'u'c'p'v'e'q'o'r'k'k'p'v'.'E'k'X'k'k'p'g'z'r'g'p'f'g'f'&6.997022"k'p'f'k'x'g't'v'g'f't'g'u'q'w't'eg'u'"*T062"

]Final Order.'HH/32"cv'r r'5.'G'z'j'k'k'k'D_="T0363/369"jCNLZ/7_0"***** "

" "

Judicial Proceedings

D{'P'q'v'k'g'q'h'R'g'v'k'k'p'c'p'f'R'g'v'k'k'p'h'k'g'f'q'p'q't'c'd'q'w'L'w'p'g'4; .'4242."

R'g'v'k'k'p'p'g'tu'e'q'o'o'g'p'eg'f'c'r't'q'egg'f'k'p'i'k'p'U'w'r't'g'o'g'E'q'w't'v.'U'c't'c'v'q'i'c'E'q'w'p'v'f' "T0; /

87-0"Q'p'q't'c'd'q'w'L'w'w'49.'4242.'v'j'g'F'k'k'k'p'p'g't'h'k'g'f'k'u'X'g't'h'k'g'f'C'p'u'y'g't'"*T088/98+."

cu'y'g'm'cu'c'P'q'v'k'g'q'h'E't'q'u'w/R'g'v'k'k'p'c'p'f'E't'q'u'w/R'g'v'k'k'p'h'q't'l'w'f'l'ek'c'n't'g'x'k'gy'c'p'f'"

g'p'h'q't'eg'o'g'p'v'q'h'v'j'g'Final Order'"*T099/322_0"Q'p'q't'c'd'q'w'C'w'i'w'w'6.'4242."

R'g'v'k'k'p'p'g'tu'h'k'g'f'v'j'g'k'X'g't'h'k'g'f'C'p'u'y'g't'v'q'v'j'g'E't'q'u'w/R'g'v'k'k'p'"*T0323/327-0"D{' "

Q't'f'g't'g'p'v'g't'g'f'q'p'L'c'p'w'c't'f'34.'4243.'v'j'g'U'w'r't'g'o'g'E'q'w't'v.'U'c't'c'v'q'i'c'E'q'w'p'v'f' "

vcpuhggtgf 'vj g'Rgvkqap"cpf 'Etquu/Rgvkqap"vq 'vj ku'Eqwtv'hqt 'f kur qukkqap.'r wtuwcpv'vq"
Gzgewkxg'Ncy 'E'4; : "cpf '44'P [ETT'E'424079'*T06/7-0"Gzj kdk'E'ku'c"eqr { "qh'vj g"
vcpuhgt'qtf gt0'

" Qp'Cr tki'4: .'4244.'vj g'Vj kf 'F gr ctwo gpvr w'hqty ctf 'c'O go qtcpf wo "cpf "
Lwf i o gpvi tcpvpi 'vj g'Rgvkqap"cpf "cppwrkpi 'vj g'F kxkqap'P qv'eg"cpf 'Hkpcn'Qtf gt"
qp'vj g'eqo r mcpv'qh'Ekv{ Xkukqap"Ugtxlegu.'kpe0'cpf 'Ngki j 'T gppgt '*Clifton Park
Apts., LLC.'426'CF 5f 'cv'3582.'Gzj kdk'C+0'

"

The Third Department's Decision and Judgment

Vj g'Eqwtv'dgny 'hqwpf 'vj cv'vj g'F kxkqap"õgo r nq{ gf "cp'kpeqttgevdwtf gp/
uj kxkpi 'cpcn{ uku'õ'kp'vj cv'õ'Ekv{ Xkukqap'y cu'tgs wktgf 'vq'uj qy 'vj cv'k'j'gf "c'tgcuqpcdng"
dgrkgh'vj cv'Rkpg'Tkf i g'y cu'gpi ci gf "kp'f'kuetko kpcvqt { 'r tcevegu'õ'cpf 'vj g'F kxkqap"
õf kf 'pqv'wpf gtvcng'cp{ "cpcn{ uku'cu'vq'y j gjv gt'Ekv{ Xkukqap'tgcuqpcdn{ "dgrkgh'vj cv'
Rkpg'Tkf i g'y cu'gpi ci kpi 'kp'c'f'kuetko kpcvqt { 'r tceveg'f wtkpi 'vj g'vgrj j qpg'ecm'kp"
s wgvkqap'õ' '*Clifton Park Apts., LLC.'426'CF 5f 'cv'3582.'Gzj kdk'C0'"Vj g'Eqwtv'
dgny 'ucv'gf 'vj cv'vj g'F kxkqap'"

õuko r n{ 'ucv'gf 'kp'eqpenwqt { 'hcu'j kq'vj cv'Ekv{ Xkukqap'f'kuetko kpcvqt"
eqo r mcpv'y cu'o cf g'kp'i qf 'hckj . 'vj cv'-'r gvkkqapgtu'j cf 'pqv'uj qy p"
vj cv'Ekv{ Xkukqap'_'cmgi cvkqpu'y gtg'o cf g'kp'dcf 'hckj 'cpf . 'vj gtghqtg."
]Ekv{ Xkukqap_'uj qwf 'r tgxck'õ'"k'qwt'xkgy . 'vj ku'cr r tqcej 'ko r tqr gtn{ "
uj kxkpi 'vj g'dwtf gp'vq'r gvkkqapgtu'vq'r tqxg.'kp'vj g'htuv'kpuwpeg.'vj cv'
Ekv{ Xkukqap'f kf 'pqv'j qf 'c'tgcuqpcdng'dgrkgh'vj cv'Rkpg'Tkf i g'y cu'
gpi ci kpi 'kp'j qwukpi 'f'kuetko kpcvqt'õ'"

"

*Clifton Park Apts., LLC.'426'CF 5f 'cv'3582.'Gzj kdk'C +0"Uwej "cp"gttqt.'yj g'eqwtv"
dgmjy "y tqvg.'y qwf "övr lecm{ 'i "tguwn'kp'tgo kwcn'ht'hwjy gt'r tqeggf kpi uö"*Id0:"
dw'kp'yj ku'kpucpeg.'uwej 'tgo kwcn'y cu'pqv'qtf gtgf 0'
" Cffklkqpcml.'yj g'Vj kf "F gr ctwo gpv'hqwpf "yj cv'yj g'j' gctkpi "gxkf gpeg"öhc'kgf "
vq'uwr r qtv'yj g'kpf kpi 'yj cv'r gv'kkqpgtu'vqnn'cf xgtug'cev'kqp"ci ckpuv'Ekv{ Xkukqp.ö"
tgcucqpkpi 'yj cv'Rgpvnyj unku'hgwgt "öuko r n{ 'ucv'gf 'j' ku'xlgy 'yj cv'yj g'cmgi cv'kpu'qh"
f kuetko kpcv'kqp"ci ckpuv'j' ku'en'gpv'yj gtg'hc'ngö"cpf 'yj cv'j' ku'en'gpv'u'kp'vgpf gf "vq'uggm'
eqo r gpucv'kqp"*Clifton Park Apts., LLC.'426'CF 5f 'cv'3582/3583.'Gzj kdk'C +0"Vj g"
Eqwtv'dgmjy "yj wu'y gki j gf "yj g'gxkf gpeg."cpf 'ugv'cukf g'yj g'f'gvto kpcv'kqp"qh'yj g"
F kxkukqpø'Ego o ku'kqpgt.'kpf kpi 'yj cv'öyj g'o gtg'ugpf kpi "qh'yj g'rgwgtö"*Id. cv"
3583+'eqwf 'pqv't'kug'vq'yj g'ngxgn'qh't'gvcnk'v'kqp0"

" "

VKO GNK GUU'QH'O QVKQP "

"

Qp'O c{ "4."4244."Rgvkqpgtu'ugtxgf "cm'r ctvku'xlc"vj g'P [UEGH'U{ uvg "y kj "

vj g'O go qtcpf wo "cpf "Qtf gt"qh"vj g'Cr r gmcv'F kxkukqp."Vj kf 'F gr ctvo gpv."f cvgf "

Cr tkl'4: ."4244."y kj 'P qv'eg"qh"Gpv { "Gzj kdk'C-0"Qp'O c{ "53."4244."vj g'F kxkukqp"

ugtxgf "cm'r ctvku'xlc"vj g'P [UEGH'U{ uvg "y kj "c'P qv'eg"qh'O qv'kqp"cpf 'O qv'kqp"ht "

Tgcti wo gpv'qt'Ngcxg"vq'Cr r gcn'vq"vj ku'Eqwtv'htqo "vj g'O go qtcpf wo "cpf "Qtf gt"qh"

vj g'Vj kf 'F gr ctvo gpv."f cvgf "Cr tkl'4: ."4244."y j k'ej "y cu'cf f tguugf "vq"vj g'Vj kf "

F gr ctvo gpv'0"Vj g'Vj kf 'F gr ctvo gpv'f gpl'kf "vj cv'O qv'kqp"qp'Lwn{ "36."42440"Qp'Lwn{ "

3: ."4244."Rgvkqpgtu'ugtxgf "cm'r ctvku'd{ "tgi wrct'o ckn'y kj "vj g'F gekukqp"cpf "

Qtf gt"qp'O qv'kqp"qh"vj g'Vj kf 'F gr ctvo gpv."f cvgf "Lwn{ "36."4244."y kj 'P qv'eg"qh"

Gpv { ."f gp{ kpi "vj g'F kxkukqp'0'O qv'kqp'0"Gzj kdk'F "eqo r tkugu'c"eqr { "qh"vj g'F gekukqp"

cpf "Qtf gt"qp'O qv'kqp"qh"vj g'Vj kf 'F gr ctvo gpv."f cvgf "Lwn{ "36."4244."y kj 'P qv'eg"qh"

Gpv { 0'

LWT KUF KE VKQP "

"

" ERNT 'E'7824 '*c+*3+*k+i kxgu'yj ku'Eqwtv'lwtkuf le vkqp "qxgt'yj g'y kj kp'O qvkqp"
hqt 'Ngcxg'vq'Cr r gcn'cpf 'yj g'r tqr qugf "Cr r gcn0"Vj cv'ucwwg"cmqy u'yj ku'Eqwtv'vq"
wng"cp'Cr r gcn'd{ 'r gto kulkqp'kp"cp"cevkqp"qt'r tqeggf kpi "qtki kpcvkpi "kp'yj g"
Uwr tgo g'Eqwtv'qt"cp"cf o kpkwtcvkxg"ci gpe{ "ðhtqo "cp"qtf gt"qh'yj g'cr r gncvg"
f kxkukqp'yj kej 'hpcm{ 'f gvgto kpgu'yj g'cevkqp"cpf 'ku'pqv'cr r gcn'dng"cu'qh'tki j vı Ø"
Vj g'wpcpkø qwu'Qtf gt"qh'yj g'Cr r gncvg'F kxkukqp. "Vj ktf 'F gr ctvo gpv'ku'pqv"
cr r gcn'dng"cu'qh'tki j v0

"

S W G U V K Q P U ' H Q T ' T G X I G Y "

"

K0 Kp'cppwarkpi 'yj g'F kxkukqpau'f gvgto kpcvkap'yj cv'yj g'ngwt'Rgkxkqpgtu"
ugpv'vq'Ego r rckpcpw'yj tgcvgpkpi "c'rcy ukv'hqt'yj gkt'j cxkpi 'r tgxkqwan{ "
hkgf "c'F kxkukqp'eqo r rckpv'y cu'cp'wprcy hwi'cev'qh'tgvcnkcvkap.'f kf 'yj g"
Vj kf 'F gr ctwo gpv'gtt'd { 'uwdukwkwpi 'ku'lwf i o gpv'hqt 'yj cv'qh'yj g"
F kxkukqpau'Ego o kuukqpgt'tgi ctf kpi "c's wguvkap"qh'hcev.'yj wu'gzeggf kpi "
ku'gzvgo gn{ 'pcttqy 'lwf leknt'gxky 'cwj qtkv{ A'

Vj g'eqwtv'dgnqy "cpuy gtgf 'kp'yj g'pgi cvkxg0'

"

K0 F kf 'yj g'Vj kf 'F gr ctwo gpv'gtt'y j gp.'j cxkpi 'hqwpf 'yj cv'yj g'F kxkukqpau'"
CNL'of kf "pqv'wvf gtwng"cp { "cpcn{ uku'cu'vq'y j gj gt 'Ekv{ Xkukqp"
tgcuppcdn{ 'dgnkxgf 'yj cv'Rkpg'Tkf i g'y cu'gpi ci kpi 'kp'c'f kuetko kpcvqt { "
r tcevek'f wtkpi 'yj g'vgnr j qpg'ecm'kp's wguvkap.o'kv'hckngf 'vq'tgo kv'yj ku"
o cwtg'vq'yj g'F kxkukqp'hqt 'hwt'yj gt'r tqeggf kpi u'tgi ctf kpi 'yj ku's wguvkap"qh"
hcevA"

Vj g'eqwtv'dgnqy "cpuy gtgf 'kp'yj g'pgi cvkxg0'

"

" "

" "

UVC VGO GP V'RP "UWRRQT V'QH'O QVKQP "

VJ G'VJ KTF 'F GRCTVO GP V'GZEGGF GF 'KV'GZ VTGO GN['P CTTQY "
LWF KEKN'TGXKGY 'C WJ QTKV['CP F 'RP UVGCF 'UWDUVK/WVGF 'KV'
LWF I O GP V'HQT'VJ CV'QH'VJ G'F KXKUKQP 'TGI CTF RP I 'VJ G'S WGUVKQP "
QH'HCEV'QH'Y J GVJ GT'RGVKV'KQP GTU'VJ TGC VGP RP I 'NGVVGT "
EQP UVK/WVGF 'C'TGVCNKC VQT['CF XGTUG'CE V'KQP O'VJ G'VJ KTF "
F GRCTVO GP V'GTTGF 'Y J GP .J CXRP I 'HQWPF 'VJ CV'VJ G'F KXKUKQP ØU'
CNLF RP 'P QV'WPF GT'VCMG'CP ['CP CN[UK'CU'VQ'Y J GVJ GT "
EKV[XKUKQP 'TGC UQP CDN['DGNKGXGF 'VJ CV'RP G'TRP I G'Y CU "
GPI CI RP I 'RP 'C'F KJETKO RP CVQT['RTCEVKEG.'VJ G'EQWT'V'HC'KNGF 'VQ "
TGO K'VJ KU'O CVVGT'VQ'VJ G'F KXKUKQP 'HQT'HWT'VJ GT'RTQEGGF RP I U'
TGI CTF RP I 'VJ KU'S WGUVKQP 'QH'HCEVØ'
"

A. The Third Department Exceeded Its Extremely Narrow Judicial Review Authority and Improperly Substituted Its Judgment for that of the Division Regarding a Question of Fact.

" 'Kp'ku'O go qtcpr wo 'cpr 'Lwf i o gpv.'y g'Vj kf 'F gr ctvo gp'gzeggf gf 'ku'
øgzvtgo gn['pcttqy ø'Granelle.'92'P [4f 'cv'328+'lwf kekn'tgxkgy 'cwj qtkv['vq "
eqpukf gt'y j gvj gt'y g'F kxkukqpø'f gvgto kpcvkqp'y cu'uw r qtvgf 'd{ 'uwducpvkn'
gxkf gpeg"qp'y g'tgeqtf .'cpr 'kpuvgcf 'ug'vcukf g'y cv'f gvgto kpcvkqp'dgecwug'y g'eqwtv'
hqwpf 'y g'qr r qukg'f gekukqp'vq'dg'tgcuqpcdn'cpr 'uwuclpcdn'see 300 Gramatan
Ave. Assoc..'67'P [4f '398=Matter of Mize.'55'P [4f '75=Rainer N. Mittl,
Ophthalmologist, P.C..'322'P [4f '548+Ø

" 'Kp'y g'kpuvcp'vo cwgt.'y g'F kxkukqp'f gvgto kpgf .'dcugf 'wr qp'y g'j gctkpi "
tgeqtf .'y cv'y g'y g'tgcv'qh'c'rcy uwk'eqpvckpgf 'kp'c'ngwgt'vq'Ekv[Xkukqp'y tkwgp'd{ "
Rgkukqpgtuø'eqwpugn'eqpukwwgf 'kngi cn'tgwrckvkqp'wpr gt 'Gzgewkxg'Ncy 'E'4; 8'8+Ø"
Vj g'cppwmo gpv'qh'y g'Final Order'dcugf 'wr qp'c'tgkpvgr tgcvkqp'qh'y g'gxkf gpeg"

yj cvf kueqwpvgf "yj g'vj tgcvy knj cxg'c"ej knkpi "ghgev'qp"yj g'y knkpi pguu'qh'r gtuqpu"
y j q'dgngxg'vj g{ "ctg'xkewo u'qh'f kuetko kpcvqp"v"eqo g'hqty ctf 'y kj 'yj gkt'ej cti gu0""

Y j gp"gz gtekupi 'yj gkt'pcttqy 'lwf lekcn'tgxkgy 'hwpevqp."eqwtu'tgxkgy kpi 'yj g"
f gvgto kpcvqpu'qh'vj g'F kxkukpau'Eqo o kuukpigt'j cxg'dggp'ej cti gf 'd{ "yj g'Eqwtv'qh"
Cr r gcu'v"dgct 'yj tgg'wvf gtn{ kpi 'r tkpek ngu'kp"o kpf <"

õvj g'ucwwg'ku'v"dg"-eqputwgf 'hkdgtcm{ 'hqt'vj g'cee qo r rkuj o gpv'qh'vj g"
r wtr qugu'vj gtgqhø=y kf g'r qy gtu'j cxg'dggp'xguvgf 'kp'vj g'eqo o kuukpigt"
kp'qtf gt 'yj cv'j g'ghgevkxgn{ 'grko kpcv'ur gekkkgf 'wprcy hwi"
f kuetko kpcvqt{ 'r tcevegu="cpf 'f kuetko kpcvqp'ku'tctgn{ 'uq'qdxkqu'qt'ku"
r tcevegu'uq'qxgtv'vj cv'tgeqi plkqp'qh'k'ku'kpuvcpv'cpf "eqpenwukxg.'k'
dgkpi "cee qo r rkuj gf "wuwcm{ 'd{ "f gxkqu'cpf "uwdvrg"o gcpuö"
"

*300 Gramatan Ave. Assoc..'67'P [4f "cv'3: 5"]kpvgtpcn'ekcvkqpu"qo kwgf _#0"

Kp'tgxkgy kpi 'yj g'Eqo o kuukpigt'au'f gvgto kpcvqpu.'yj ku'Eqwtv'j cu'tgeqi plk gf "

yj cv"

õkf gpvkh{ kpi 'f kuetko kpcvqt{ 'cew'lpf ggf 'tgs wktgu'gZR gt vguu'í "Vj wu'k'
j cu'dgeqo g'czkqo cve"yj cv'vj ku'eqwtv.'kp'tgxkgy kpi 'yj g"
Eqo o kuukpigt'au'hkpf kpi u'qp'vj g'r tgupeg'qh'wprcy hwi'f kuetko kpcvqp."
÷o c{ "pqv'y gli j 'yj g'gxkf gpeg"qt'tglgev"]yj g'Eqo o kuukpigt'au'ej qlæg"
y j gtg'vj g'gxkf gpeg'ku'eqphiev kpi "cpf 'tqqo 'hqt'c"ej qlæg'gzkuuø"cpf "
yj cv'vj g'lwf lekcn'hwpevqp'ku'eqpenw gf 'y j gp'k'ku'f gvgto kpgf 'yj cv'vj g"
Eqo o kuukpigt'au'f gvgto kpcvqp'ku'uw r qtvgf 'd{ 'uwdvcpvkn'gxkf gpeg"
qp'vj g'tgeqtf 'í "Gxgp'y j gtg'eqphiev kpi "kphgtgpegu"o c{ 'dg'tcvkqpcm{ "
f tcy p'htqo 'yj g'tgeqtf.'yj qug'kphgtgpegu'ctg'hqt'vj g'Eqo o kuukpigt."
cpf 'pqv'hqt'vj ku'eqwtv.'v"f tcy ö"
"

*Matter of State Div. of Human Rights v County of Onondaga Sheriff's Dept..'93"

P [4f '845.'852/53"]3; : : _]kpvgtpcn'ekcvkqpu"qo kwgf _#Matter of State Div. of

Human Rights (Granelle).'92'P [4f '322="see also Matter of Pace Coll. v

Commission on Human Rights of City of N.Y.: "P [4f "4: ."5; /62"]3; 97_]õVj g"

gxf gpeg"eqwf "j cxg"dgpp"kvgr tgvf "qv gty kug="dw'dg'vj cv'cu'k'o c{ ."vj g"

Ego o kukppai'kvgr tgvkqp'ku'tgcuqpcdr'cpf "uwhkkgpva' uwr r qtvgf "d{ "vj g"

gxf gpeg'í "k'y cu'vj g'r tqxkpeg"qh'vj g"ego o kukqp"v'y gli j "vj g"gxf gpeg."o cng'vj g"

r gto kukdr'kvgrt gpegu."cpf "v"ego g"v"eqpenwukppu'uwr r qtvgf "d{ "vj g"gxf gpegö_0"

Vj g'hkpi "qh'c'rcy uwk'uggnpi "f co ci gu'ht'hdgn'cpf "o cnekqwu'r tqugewkqp."

dcugf "uqrgn' "wr qp"vj g"eqvpgp'qh'c"ego r rkp'vf kuo kuugf "d{ "vj g"FKkukqp"qh'J wo cp"

Tki j u."o c{ "eqpukwg'tgvrcvqp"wpf gt"vj g"J wo cp"Tki j u'Ncy "*Moran v Simpson.*"

: 2'O kae4f "659"]Uwr 'Ev'Nkxpi uqp'Eqwpv' .Lcpwct { "46."3; 96_+0""

õK']vj g"J wo cp"Tki j u'Ncy _'ku'v"dg"o gcpki hwn'c'r gtuqp'erclo kpi "v" dg'ci i tkxgf "d{ "cp"wpny hwn'f kuetko kpcvt { "r tceveg"o wuv'dg'kp"c" r qukqp"v"kp'kcv'c'r tqeggf kpi "y kj qw'hgt'vj cv'j g"ku'go dctnpi " wr qp"c'r gkqwu'eqwtug'uj qwf "j ku'ego r rkp'vpq'v'dg'uwxkpgf ö""

*Id0cv'65: +0""

Kp"Thomas v Petrus"347"kuCr r 5f "637."687"P G4f "327; "]4f "F kuv'3; : 6_+."

vj g"eqw'vf kuo kuugf "c'hdgn'cevqp"dcugf "wr qp"cmgi gf n' "hcnug"cpf "o cnekqwu"

uvcgo gpw'vj g'f ghgp'cp'vj cf "o cf g'lp"c'f kuetko kpcvqp"ego r rkp'vhkgf "cv'vj g"

hgf gtcn'Gs wcn'Go r m{ o gp'v'Qr r qtwpk' "Ego o kukqp"GGQE +0"Ekkpi "Moran, vj g"

eqwt'v'tgcuqpgf <"

õY gtg'c"ego r rkp'cp'cy ctg'vj cv'j g'y qwf "dg'uwdlgev'v"c'hdgn' uwk'cu'c'tguwn'qh'hkpi "cp"GGQE"ej cti g."vj ku'hcev'eqwf "j cxg"c" ej kpi "ghgev'qp"vj g"gzgtekg'qh'j ku'tki j u'wpf gt"vj g"Cev0" Hwtj gto qtg."cdugpv'ko o wpk' "htqo "hcdk'k'."go r m{ ggu'hcekpi " go r m{ gtu'y kj "uwxcp'kcn'tguqwtegu'cpf "ceegu'v"gi cn'

ugtxkøgu'o ki j v'htgi q'vj g'ekxk'it'ki j u'ej cti g'tcvj gt'vj cp'tkum'
j cxkpi 'vq'f ghgpf 'vj go ugrøgu'kp'c'tgvrcvqt { 'hkdgn'cevøqp'y kj "
vj g'cwgpfpv'g'zr gpugu'cpf 'r qvøpvcn'g'zr quwtg'vq'hkcdkxv{ Ø "

"
*Id.. '687'P G4f 'cv'3286+Ø

K'vqi kecm{ 'hqmjy u'vj cv'y j gtg. 'cu'kp'vj g'kpucpv'o cvgt. 't'gur qpf gpw'vq'c"
F kxkøqp'eqo r røkp'vj tgcvgp'vq'hkø'uwej 'c'rcy uwx. 'vj cv'uckf 't'gur qpf gpw'o c { "cnuq"
dg'gpi ci kpi 'kp'wprcy hwn'tgvrcvøqp. 'kp'xkqrcvøqp'qh'vj g'J wo cp'Tki j w'Ncy 0"

Kp'qtf gt'ht'vj g'Ucvø'F kxkøqp'qh'J wo cp'Tki j w'vq'hwhk'm'ku'o kuøqp'qh"
øgrko kpcv'kpi _'cpf 'r t'g'x'gpv'kpi _'f'k'uetko kpcv'øpö *Gz gewkx'g'Ncy 'E'4; 2']5_+ 'c"
eqo r røkp'cv'o wuv'dg'cdrg'vq'hkø'c'f q'qf 'hckj 'f'k'uetko kpcv'øqp'eqo r røkp'v'y kj qw'hgct "
vj cv'vj g'eqpvøp'v'qh'vj cv'eqo r røkp'v'eqw'f 'h'gcf 'vj g't'gur qpf gpv'vq'vj tgcvgp'vq'uwg'vj go "
hqt'f'ghco cvøqp'qt'hkdg'Ø'Hkpf kpi 'qvj gty kug'eqpvcx'gp'g'vj g'r wdrke'kpvøt'guv'd { "
f'k'ueqwtci kpi 'vj qug'uggnkpi 'vq'cuugt'v'vj gk'tki j w'w'p'f'gt'vj g'Ncy 'ht'qo 'hk'kpi "
f'k'uetko kpcv'øqp'eqo r røkp'w'Ø

Kp'vj g'kpucpv'o cvgt. 'vj g'E'qo o kuøqp'gt'kpvøtr'g'vøf 'R'g'v'k'ø'p'gt'w'ø'v'g'nkpi 'vj g"
Eqo r røkp'cv'u'vj tqwi j 'vj gk'c'w'q't'p'g { ø'eqo o w'p'k'cv'øqp'vj cv'vj gk'eqo r røkp'v'y cu"
ø'hcnug. 'ht'cw'f'w'gp'v'cpf 'h'k'g'm'w'ø'cpf 'k'p'f'k'cv'kpi 'u't'q'pi n { 'vj cv'vj g { 'y'k'm'k'p'k'cv'g'c"
rcy uwx'kh'E'qo r røkp'cv'u'h'k'i'vq'f'g'v'kp'v'q'w'ej 'y'kj 'vj go 'kp'q't'f'gt'ø'f'k'ue'w'u'c't'g'u'q'n'w'k'ø'p"
vq'vj ku'erc'ko ø *Final Order. 'HH/8'cpf 'HH/9'cv'r r '5. 'G'z'j'k'd'k'D'+cu'c'vj t'g'cv'q'h"
ø't'g'v'rc'v'ø'p { 'h'k'i'cv'ø'p'ø'r't'q'ue't'k'd'g'f'd { 'vj g'J wo cp'Tki j w'Ncy ø'r't'q'v'g'v'ø'p'u'ci'c'k'p'u'
t'g'v'rc'v'ø'p'Ø'Vj g'E'qo o kuøqp'gt'ø'h'k'p'f'k'pi u'qh'h'cev'cpf 'eq'p'ev'w'k'ø'p'u'qh'rcy 'ø'g'x'gp'kh'

qyj gt "hcevhkpf gtu"o ki j vj cxg'kpvgr tgvf "vj g'gxf gpeg'f khtgpnf "ó'y gtg'tgcuqpcdrf"
cpf "dcugf "qp'uwducpvcn'gxf gpeg'kp"vj g'tgeqtf 0""

Vj g'f gvgto kpcvkqp"qh'y j gj gt "Rgvkqpgtuø'vj tgcv'qh'c'ncy uwk'eqpukwwgf "
kngi cnt'gvrkcvkqp'y cu's wgvkqp"qh'hcev'engctn' "y kj kp"vj g'r tqxkpeg"qh'y g'F kxkukqpøu"
Eqo o kxkqpgt "v'f gvgto kpg0"D{ "uwdukwwkpi "vj g'Eqo o kxkqpgtøu'hkpf kpi u'qh"
tgvkrkvt { "cevkpu'y kj "ku'qy p'hkpf kpi "vj cv'Rgvkqpgtuø'vj tgcv'f kf "pqv'eqpukwwg'cp"
ōcf xgtug'cevkpö"ci ckpuv'Eqo r rkpcpvu."vj g'eqwtv'dgmy "gttqpgqwan' "cuwo gf "vj g"
hcevhkpf kpi "r qy gtu'kp"vj g'ugt'xleg"qh'grko kpcvkpi "f kuetko kpcvkqp"vj cv'vj g'Ngi kurwtg"
dguqy gf "wr qp"vj g'F kxkukqpøu'Eqo o kxkqpgt0"

B. The Third Department Erred When it Failed to Remit the Matter to the Division for Further Proceedings Regarding a Question of Fact, When it Determined that the Division's ALJ Had Failed to Undertake Any Analysis Regarding that Question.

" Vj g'Eqwtv'dgmy "f gerkp'gf "v'q'tgo k'vj ku'o cwtg "v'vj g'F kxkukqp'hqt"c"
f gvgto kpcvkqp"qh'y g'ōhcewcn'kuuwgu'cu'v'q'y j gj gt "l'eqo r rkpcpvu_'uwdlge'v'k'gn' "j grf "
dgrkgh'vj cv'vj g{ "_y gtg'gp'v'k'ngf "v'vj g'r tqv'ge'vkqp"qh'y g'J wo cp'Tki j u'Ncy "y cu"
tgcupcdrgö"**Modiano v Elliman*."484'CF 4f '445.'445"]3uv'F gr v'3; ; ; _±."ch'gt'k'
u'ev'gf "vj cv'vj g'F kxkukqp"j cf "h'ck'ngf "v'q'o cng'u'we'j "c'f gvgto kpcvkqp'cpf "vj cv'u'we'j "
h'ck'wt'g'y qwf "ōv' r kec'm' "i "t'gu'w'v'kp'tgo k'v'c'v'ö"**Clifton Park Apts., LLC*."426'CF 5f "
cv'3582.'Gzj kdk'v'c'+0"Vj g'F kxkukqp"j cf "eqpen'w'gf "vj cv'vj g'eqo r rkpcpvu'kp"vj g"

kpuxcpv'o cwtg 'j cf "o cf g'õc'i qqf 'hckj 'F kxkukqp"encko ö"*Final Order"cv'7.'Gzj kdk'
D-0'

" J cxkpi 'hqwpf 'yj cv'j g'F kxkukqpøu'eqpenwukqp'j cv'j g'Eqo r nckpcpw'j cf "
dtqwi j v'j gk'kpkcn'ej cti gu'k'p'i qqf 'hckj 'ncngf "cp"cf gs wcv'g'hcewcn'gzr nckpcwqp."
yj g'Eqwtv.'tcyj gt'j cp'cppwi'j g'Final Order'cpf 'xqkf 'j g'tgkgh'j g'F kxkukqp'hqwpf "
yj g'eqo r nckpcpw'y gtg'gpvkngf "vq."j g'Vj kf 'F gr ctwo gpv'uj qwf 'j cxg'tgwtpgf 'j g"
o cwtg'vq'j g'F kxkukqp'hqt'hwtj gt'hcewcn'f gxgnr o gpv'qp'j cv'r qkpv'
"


RTC | GT 'HQT 'TGNGH'

"

Vj g'F kxkukqp'r tc{ u'hqt "cp'Qtf gt'i tcpvki "Ngcxg'vq'Cr r gen'vq'vj ku'Eqwtv'htqo "
vj g'O go qtcpf wo "cpf "Lwf i o gpv'qh'vj g'Uwr tgo g'Eqwtv.'Cr r gmcvg'F kxkukqp."Vj kf "
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by: 
Toni Ann Hollifield
of Counsel.

"

**NEW YORK STATE SUPREME COURT
APPELLATE DIVISION - THIRD DEPARTMENT**

**CLIFTON PARK APARTMENTS, LLC as
owner of PINE RIDGE II APARTMENTS and
DAVID PENTKOWSKI, ESQ.,**

NOTICE OF ENTRY

Petitioners-Appellants,

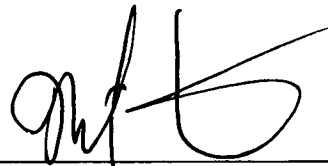
#533592

-against-

**NEW YORK STATE DIVISION OF HUMAN
RIGHTS, CITYVISIONSERVICES, INC. and
LEIGH RENNER,**

PLEASE TAKE NOTICE that the within is a true and correct copy of a Memorandum and Order of the Appellate Division - Third Department, decided and entered on April 28, 2022,

Dated: May 2, 2022



Michael J. Hutter
Attorney for Petitioners-Appellants
POWERS & SANTOLA, LLP
100 Great Oaks Blvd
Suite 123
Albany, New York 12203
(518) 465-5995
mhutter@powers-santola.com

To: Toni Ann Hollifield, Esq.
NYS Division of Human Rights
Attorney for Respondent-Respondent
New York State Division of Human Rights
One Fordham Plaza, Fourth Floor
Bronx, NY 10458
Phone: (718) 613-3478
toniann.hollifield@dhr.ny.gov

Matter of Clifton Park Apts., LLC v New York State Div. of Human Rights
2022 NY Slip Op 02852
Decided on April 28, 2022
Appellate Division, Third Department
Ceresia, J.
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: April 28, 2022

533592

[*1]In the Matter of Clifton Park Apartments, LLC, as Owner of Pine Ridge II Apartments, et al., Petitioners,

v

New York State Division of Human Rights, Respondent, et al., Respondents. (And Another Related Proceeding.)

Calendar Date: March 21, 2022

Before: Garry, P.J., Pritzker, Reynolds Fitzgerald and Ceresia, JJ.

Powers & Santola, LLP, Albany (Michael J. Hutter of counsel), for petitioners.

Caroline J. Downey, General Counsel, New York City (Toni Ann Hollifield of counsel), for New York State Division of Human Rights, respondent.

Ceresia, J.

Matter of Clifton Park Apts., LLC v New York State Div. of Human Rights
2022 NY Slip Op 02852
Decided on April 28, 2022
Appellate Division, Third Department
Ceresia, J.
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
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533592

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Before: Garry, P.J., Pritzker, Reynolds Fitzgerald and Ceresia, JJ.

Powers & Santola, LLP, Albany (Michael J. Hutter of counsel), for petitioners.

Caroline J. Downey, General Counsel, New York City (Toni Ann Hollifield of counsel), for New York State Division of Human Rights, respondent.

Ceresia, J.

Proceedings pursuant to Executive Law § 298 (transferred to this Court by order of the Supreme Court, entered in Saratoga County) to, among other things, review a determination of the Commissioner of the State Division of Human Rights finding petitioners guilty of an unlawful discriminatory practice based on retaliation.

Respondent CityVision Services, Inc., is a not-for-profit corporation engaged in the prevention of housing discrimination. A CityVision employee, respondent Leigh Renner, placed a telephone call to petitioner Clifton Park Apartments, LLC, as owner of Pine Ridge II Apartments (hereinafter Pine Ridge), posing as a prospective tenant with three young children. The purpose of the call was to test whether Pine Ridge was engaging in housing discrimination. Following the call, CityVision filed a complaint with respondent State Division of Human Rights (hereinafter SDHR), alleging that the leasing agent who answered the phone at Pine Ridge had unlawfully steered Renner toward a different apartment complex upon learning that she had children. SDHR investigated the complaint and ultimately dismissed it, finding that there was no probable cause to believe that Pine Ridge engaged in an unlawful discriminatory practice.

Petitioner David H. Pentkowski, as counsel for Pine Ridge, then sent a letter to CityVision and Renner, stating that Pine Ridge considered the allegations in the complaint to be "false, fraudulent and libelous"; that Pine Ridge had been forced to expend employee resources and counsel fees defending the allegations; that Pine Ridge would be expecting compensation from CityVision and Renner; and that, if no communication was forthcoming, Pine Ridge would "proceed accordingly." Upon receipt of this letter, CityVision filed a second complaint with SDHR, claiming retaliation for lodging its first complaint. Following a public hearing held pursuant to Executive Law § 297 (4) (a), an Administrative Law Judge (hereinafter ALJ) recommended a finding that Pentkowski's sending of the letter constituted unlawful retaliation, and that petitioners should pay a civil fine and damages, but not counsel fees. The Commissioner of SDHR adopted most of the recommendation but awarded counsel fees. Petitioners then commenced this proceeding challenging that determination, and SDHR filed a cross petition to enforce it. The petition and cross petition were transferred to this Court for disposition.

It is an unlawful discriminatory practice to retaliate against a person for filing a human rights complaint (*see* Executive Law § 296 [7]). "To establish retaliation under [this] statute, a complainant must show [1] that [it] engaged in protected activity, [2] that

the [opposing party] was aware of this activity, [3] that the [opposing party] took adverse action against the complainant and [4] that a causal connection exists between the protected activity and the adverse action" (*Hollandale Apts. & Health Club, LLC v Bonesteel*, 173 AD3d 55, 68[*2][2019] [citation omitted]; *see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312-313 [2004]). The complainant bears the initial burden of establishing retaliation as set forth above before the burden shifts to the opposing party to articulate a legitimate nondiscriminatory reason for the adverse action (*see Hollandale Apts. & Health Club, LLC v Bonesteel*, 173 AD3d at 69).

As an initial matter, the ALJ employed an incorrect burden-shifting analysis under the first prong of the above test. In order for CityVision to demonstrate that it engaged in protected activity by filing a discrimination complaint where, as here, the complaint was ultimately dismissed, CityVision was required to show that it held a reasonable belief that Pine Ridge was engaged in discriminatory practices (*see Matter of New York State Off. of Mental Retardation & Dev. Disabilities [Staten Is. Dev. Ctr.] v New York State Div. of Human Rights*, 164 AD2d 208, 210 [1990]). The ALJ did not undertake any analysis as to whether CityVision reasonably believed that Pine Ridge was engaging in a discriminatory practice during the telephone call in question. Rather, the ALJ simply stated in conclusory fashion that CityVision's discrimination complaint was made in good faith, that "[petitioners had] not shown that [CityVision's] allegations were made in bad faith and, therefore, [CityVision] should prevail." In our view, this approach improperly shifted the burden to petitioners to prove, in the first instance, that CityVision did not hold a reasonable belief that Pine Ridge was engaging in housing discrimination (*see Matter of Rambert v Fischer*, 128 AD3d 1111, 1112 [2015]; *Matter of Delaware County Dept. of Social Servs. v Brooker*, 272 AD2d 835, 836 [2000]). While typically such an error would result in remittal for further proceedings, for the following reason remittal is not warranted but, rather, the retaliation complaint must be dismissed.

The hearing evidence failed to support the finding that petitioners took adverse action against CityVision, under the third prong of the test for retaliation. "[A]n adverse action must have some materially adverse effect on the complainant and must be of sufficient magnitude to permit a finding of intimidation, coercion, threats or interference" (*Hollandale Apts. & Health Club, LLC v Bonesteel*, 173 AD3d at 69 [internal quotation marks, brackets and citations omitted]). Pentkowski's letter simply

stated his view that the allegations of discrimination against his client were false, and that Pine Ridge intended to seek compensation for the costs incurred in defending those false allegations. There was no evidence that petitioners took any additional actions against CityVision. We cannot conclude that, under these circumstances, the mere sending of the letter rose to the level of retaliation. That is, there was no showing that the letter had any "materially adverse effect" upon CityVision, nor was it "of sufficient magnitude to permit a finding [*3] of intimidation, coercion, threats or interference" (*id.*).

In light of the foregoing, we need not address petitioners' remaining contentions concerning the propriety of the damages and counsel fee awards.

Garry, P.J., Pritzker and Reynolds Fitzgerald, JJ., concur.

ADJUDGED that the determination is annulled, without costs, and petition granted.

[Return to Decision List](#)



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

CITYVISION SERVICES, INC., LEIGH RENNER,
Complainants,

v.

**PINE RIDGE II APARTMENTS, DAVID H.
PENTKOWSKI, ESQ.,**
Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10190029

Federal Charge No. 02-18-8507-8

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on May 14, 2019, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:

- The sentence in the Recommended Order which states “Complainants are not entitled

to an award of attorney's fees since the Human Rights Law does not provide for awards of attorney's fees in retaliation cases," is not hereby adopted. Though attorney's fees were not available for retaliation cases at the time the instant Complaint was filed, attorney's fees were available for cases involving housing discrimination. *See* Human Right Law § 297.10. In order to prove retaliation in the instant matter, Complainant must demonstrate that the underlying housing discrimination complaint was based on a reasonable belief that discrimination occurred. *See Office of Mental Retardation & Developmental Disabilities (Staten Island Dev. Ctr.) v. State Div. of Human Rights*, 164 A.D.2d 208, 210 (3d Dept. 1990) ("we are of the view that the reasonable belief standard is appropriate. Considering the remedial nature of the Human Rights Law and an explicit statutory admonition to construe the law liberally (see, Executive Law § 300), it strikes us that a person who suffers retaliation after reasonably acting to protect others from forbidden discrimination should be protected." Thus, the retaliation complaint and the underlying housing discrimination complaint are inextricably intertwined such that both complaints are matters involving housing discrimination. *See, e.g., Dominic v. Consol. Edison Co. of N.Y., Inc.*, 822 F.2d 1249 (2d Cir. 1987) ("when a plaintiff's claims for relief 'involve a common core of facts or [are] based on related legal theories,' the 'lawsuit cannot be viewed as a series of discrete claims'" and thus the underlying discrimination claim and retaliation claim are "inextricably intertwined"); *see also, James v. Nat'l R.R. Passenger Corp.*, 2005 WL 6182322, at *18 (S.D.N.Y. 2005) (claims were inextricably intertwined because in order "to succeed in her retaliation claim, plaintiff had to establish a 'good-faith, reasonable belief that the underlying challenged actions of the employer violated the law'").

Because Respondents' retaliation in this matter was for Complainant's filing of a

housing discrimination complaint, the instant case is grounded in the housing context and thus attorney's fees are available.

A complainant's award of attorney's fees is calculated utilizing the "lodestar" method. *See McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 430, 788 N.Y.S.2d 281, 285 (2004). This method calculates the amount of the fee award "by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Id.* at 427.

Number of Hours

In determining the number of hours reasonably expended,

(1) hours which reflect inefficiency or duplication of services should be discounted; (2) hours that are excessive, unnecessary or which reflect 'padding' should be disallowed; (3) legal work should be differentiated from nonlegal work such as investigation, clerical work, the compilation of facts and other types of work which can be accomplished by nonlawyers who command lesser rates; (4) time spent in court should be differentiated from time expended for out-of-court services; and (5) the hours claimed should be weighed against the court's own knowledge, experience and expertise as to the time required to complete similar activities.

McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc., 176 Misc.2d 325, 328 (N.Y. Sup. Ct. 1997) (citing *Rahmey v. Blum*, 95 A.D.2d 294 (2d Dept. 1983)).

Complainant's counsel submitted contemporaneous time records recording 40.7 hours of work on the case. Of those hours, 1.4 are billed for paralegal work. *See* Complainant's counsel's January 29, 2020, fee request.

A review of Complainant's fee request reveals a description of the legal services rendered in each entry. There do not appear to be entries for duplicative or excessive work and substantive legal work was properly differentiated from paralegal work. Forty hours and forty-two minutes is a reasonable amount of time to prepare and litigate a case of this nature.

Hourly Rate

A reasonable attorney's fee "should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented. Thus, the hourly rate charged by an attorney will normally reflect the training, background, experience and skill of the individual attorney." *McIntyre*, 176 Misc.2d at 328 (citations omitted).

In the instant matter, Complainant's counsel is claiming a rate of \$425 per hour for his work and \$150 per hour for the work of his paralegal. Counsel is the named principal of his firm. He does not indicate whether his firm consists of other lawyers. He has been practicing since 1996 with admissions to practice in California, New Jersey and New York. He has been admitted to practice in New York since 2007. He has experience in consumer bankruptcy and since 2011, has handled fair housing and fair lending matters in addition to consumer bankruptcy. *See* Complainant's counsel's January 29, 2020, fee request.

To support his hourly fee request, counsel submits a December 4, 2018, Division Final Order in which he was awarded a rate of \$425 per hour. It is noted that the ALJ in that matter based the awarded rate on a case for which no accurate citation was provided, however, it appears to be an Eastern District of New York Case. *See Huges v. Kimso Apartments, LLC*, 852 F. Supp. 2d 281, 298-99 (E.D.N.Y. 2012) ("[r]ecent opinions from the Eastern District of New York have determined that reasonable hourly rates in this district 'are approximately \$300-\$450 per hour for partners, \$200-\$300 per hour for senior associates, and \$100-\$200 per hour for junior associates'").

This matter arose in Saratoga County which falls within the Northern District of New York. Counsel has submitted no other cases demonstrating the customary rate charged for

similar services by lawyers with like experience and of comparable reputation in the County of Saratoga, the Third Department or the Northern District of New York.

In a recent Northern District of New York case brought under 42 U.S.C. § 1983, the court found that “[a] review of cases in this District indicates that the following hourly rates (or rate ranges) are reasonable: \$275-\$350 for experienced partners; \$165-\$200 for junior associates; and \$90 for paralegals.” *Johnson v. Mauro*, 2019 WL 5842765 at *5 (N.D.N.Y. 2019) (collecting cases). In a decision issued just last month, the same court in a Title VII matter noted that “[c]ourts in this district have recently determined hourly rates of: between \$250 and \$350 for partners; between \$165 and \$200 for associates; and between \$80 and \$90 for paralegals, to be reasonable.” *Perez v. Cty. of Rensselaer, New York*, 2020 WL 1975069 at *2 (N.D.N.Y. 2020) (citing *Deferio v. City of Syracuse*, 2018 WL 3069200 at *3 (N.D.N.Y. 2018) (collecting cases)).

In *Doe v. Cornell Univ.*, 2019 WL 1567535 (N.D.N.Y. 2019), in a Title IX matter, the court set the hourly rate at \$330 based on an attorney’s “forty-two years . . . practicing in the areas of employment, discrimination, criminal defense, campus judicial defense, business, corporate, environmental, municipal, estate, family, and real estate law [and a]s a senior attorney with extensive practice experience, and experience in anti-discrimination and campus sexual assault defense specifically.” *Id.* at *8

The same court set the hourly rate of another attorney at \$250 per hour based on “a balance between his long tenure as a practicing attorney and his relative lack of experience in Title IX and civil rights matters specifically.” *Id.* at *7. That attorney had twenty-nine years of experience practicing law with twelve years in civil rights practice, “including conducting civil jury trials to verdict and acting as lead counsel in private mediations.” *Id.*

In the instant matter, considering counsel's twenty-four years of experience practicing law, thirteen of which have been in New York, and that he's been litigating fair housing matters for the past nine years, but also noting that he neglected to produce records of his successes in these matters or any specificity of the extent of his experience, an hourly fee of \$275 per hour is deemed appropriate.

Furthermore, the prevailing hourly rates for paralegals in the Northern District is \$90 per hour. *See Id.* at 8 ("the current prevailing rate for paralegal time in this district is \$90.00").

The Lodestar

Accordingly, 39.3 hours of legal work at \$275 per hour results in a fee of \$10,807.50. The remaining 1.4 hours of nonlegal work at a rate of \$90 per hour results in a fee of \$126. There being no reason to reduce or increase the lodestar amount, the total amount is \$10,933.50.

Expenses and Costs

Counsel's fee application contains a request of \$54.50 for out-of-pocket expenses. "Prevailing parties are also entitled to recover reasonable, identifiable out-of-pocket disbursements which are ordinarily charged to clients." *Francis v. Atl. Infiniti, Ltd.*, 2012 WL 398769 at *9 (citations omitted). These expenses are properly identified and reasonable. Thus, Complainant's counsel is entitled to a total attorney's fee award in the amount of \$10,988.

Therefore, in addition to the other payments required herein, within sixty days of the date of this Order, Respondent shall pay to Complainant's attorney \$10,988 in fees in the form of a certified check made payable to the Law Offices of Andy Winchell, P.C. and

delivered by certified mail, return receipt requested, to Andy Winchell, Esq., Law Offices of Andy Winchell, P.C., 100 Connell Drive, Suite 2300, Berkeley Heights, NJ 07922. Interest shall accrue on the award at a rate of nine percent per year, from the date of this Order until payment is actually made by Respondent.

A copy of the certified check shall simultaneously be provided to Caroline Downey, Esq., General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, NY 10458. . In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.


PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

PLEASE TAKE FURTHER NOTICE that the above stated sixty (60) days to appeal may be affected by Executive Orders 202.8, 202.14 and 202.28 issued by Governor Cuomo. Please see the attached copies of the Executive Orders. If any further Executive Order affecting

time to appeal is issued, the Division will post information about the Executive Order on its website, www.dhr.ny.gov.

ADOPTED, ISSUED, AND ORDERED.

DATED: **JUN 01 2020**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER

TO:

Complainant

CityVision Services, Inc.
c/o Lacefield Compliance Consulting LLC 121 Silver Ridge Court
Burleson, TX 76028

Complainant

Leigh Renner
CityVision Services, Inc.
c/o Lacefield Compliance Consulting LLC 121 Silver Ridge Court
Burleson, TX 76028

Complainant Attorney

Andy Winchell
100 Connell Drive, Suite 2300
Berkeley Heights, NJ 07922

Respondent

Pine Ridge II Apartments
Attn: Legal Department
71 Pine Ridge II
Clifton Park, NY 12065

Respondent

David H. Pentkowski, Esq.
Pentkowski, Pastore & Freestone
P.O. Box 445
Clifton Park, NY 12065

Respondent Attorney

David H. Pentkowski, Esq.
Pentkowski, Pastore & Freestone
P.O. Box 445
Clifton Park, NY 12065

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

State Division of Human Rights

Robert Goldstein, Director of Prosecutions

Lilliana Estrella-Castillo, Chief Administrative Law Judge

Thomas S. Protano, Administrative Law Judge

Michael Swirsky, Litigation and Appeals

Caroline J. Downey, General Counsel

Melissa Franco, Deputy Commissioner for Enforcement

Peter G. Buchenholz, Adjudication Counsel

Matthew Menes, Adjudication Counsel



State of New York

Executive Chamber

No. 202.8

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, in order to facilitate the most timely and effective response to the COVID-19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 19, 2020 the following:

- In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020;
- Subdivision 1 of Section 503 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a driver's license, in order to extend for the duration of this executive order the validity of driver's licenses that expire on or after March 1, 2020;
- Subdivision 1 of Section 491 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, in order to extend for the duration of this executive order the validity of non-driver identification cards that expire on or after March 1, 2020;
- Sections 401, 410, 2222, 2251, 2261, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, respectively, in order to extend for the duration of this executive order the validity of such registration certificate or number plate that expires on or after March 1, 2020;
- Section 420-a of the vehicle and traffic law to the extent that it provides an expiration for temporary registration documents issued by auto dealers to extend the validity of such during the duration of this executive order.
- Subsection (a) of Section 602 and subsections (a) and (b) of Section 605 of the Business Corporation Law, to the extent they require meetings of shareholders to be noticed and held at a physical location.

NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 19, 2020:

- The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function. Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.
- There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.
- Effective at 8 p.m. March 20, any appointment that is in-person at any state or county department of motor vehicles is cancelled, and until further notice, only on-line transactions will be permitted.
- The authority of the Commissioner of Taxation and Finance to abate late filing and payment penalties pursuant to section 1145 of the Tax Law is hereby expanded to also authorize abatement of interest, for a period of 60 days for a taxpayers who are required to file returns and remit sales and use taxes by March 20, 2020, for the sales tax quarterly period that ended February 29, 2020.



GIVEN under my hand and the Privy Seal of the
State in the City of Albany this
twentieth day of March in the year
two thousand twenty.

BY THE GOVERNOR


Secretary to the Governor





State of New York

Executive Chamber

No. 202.14

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order to 202, for thirty days until May 7, 2020, except as limited below.

IN ADDITION, I hereby temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through May 7, 2020, the following:

- Section 6524 of the Education Law, section 60.7 of title 8 of NYRR and section paragraph (1) of subdivision (g) 405.4 of title 10 of the NYCRR to the extent necessary to allow any physician who will graduate in 2020 from an academic medical program accredited by a medical education accrediting agency for medical education by the Liaison Committee on Medical Education or the American Osteopathic Association, and has been accepted by an Accreditation Council for Graduate Medical Education accredited residency program within or outside of New York State to practice at any institution under the supervision of a licensed physician;
- Subdivisions one, two, four, five, eight and nine of Section 1726 of the Surrogate's Court Procedure Act are hereby modified to provide that any parent, a legal guardian, a legal custodian, or primary caretaker who works or volunteers in a health care facility or who reasonably believes that they may otherwise be exposed to COVID-19, may designate a standby guardian by means of a written designation, in accordance with the process set forth in such subdivisions; and such designation shall become effective also in accordance with the process set forth in such subdivisions; and
- Sections 3216(d)(1)(C) and 4306(g) of the Insurance Law, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law, to:

- Extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020, for any comprehensive health insurance policyholder or contract holder under an individual policy or contract, as those terms are used in such sections, who is facing a financial hardship as a result of the COVID-19 pandemic; and
- Require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.

FURTHER, I hereby issue the following directives for the period from the date of this Executive Order through May 7, 2020:

- Any medical equipment (personal protective equipment (PPE), ventilators, respirators, bi-pap, anesthesia, or other necessary equipment or supplies as determined by the Commissioner of Health) that is held in inventory by any entity in the state, or otherwise located in the state shall be reported to DOH. DOH may shift any such items not currently needed, or needed in the short term future by a health care facility, to be transferred to a facility in urgent need of such inventory, for purposes of ensuring New York hospitals, facilities and health care workers have the resources necessary to respond to the COVID-19 pandemic, and distribute them where there is an immediate need. The DOH shall either return the inventory as soon as no longer urgently needed and/or, in consultation with the Division of the Budget, ensure compensation is paid for any goods or materials acquired at the rates prevailing in the market at the time of acquisition, and shall promulgate guidance for businesses and individuals seeking payment.
- By virtue of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, and 202.13 which closed or otherwise restricted public or private businesses or places of public accommodation, and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations, games, meetings or other social events), all such Executive Orders shall be continued, provided that the expiration dates of such Executive Orders shall be aligned, such that all in-person business restrictions and workplace restrictions will be effective until 11:59 p.m. on April 29, 2020, unless later extended by a future Executive Order.
- The enforcement of any violation of the foregoing directives on and after April 7, 2020, in addition to any other enforcement mechanism stated in any prior executive orders, shall be a violation punishable as a violation of public health law section 12-b(2) and the Commissioner of Health is directed and authorized to issue emergency regulations. The fine for such violation by an individual who is participating in any gathering which violates the terms of the orders or is failing to abide by social distancing restrictions in effect in any place which is not their home shall not exceed \$1,000.
- The directive contained in Executive Order 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide shall hereafter be modified to provide that all schools shall remain closed through April 29, 2020, at which time the continued closure shall be re-evaluated. No school shall be subject to a diminution in school aid due to failure to meet the 180 day in session requirement as a result of the COVID-19 outbreak, provided their closure does not extend beyond the term set forth herein. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers, and continue to first use any vacation or snow days remaining.
- Superintendent of Financial Services shall have the authority to promulgate an emergency regulation, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, to:
 - extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020 for any small group or student blanket comprehensive health insurance policy or contract, or any child health insurance plan policy or contract where the policyholder or contract holder pays the entire premium, as those terms are used in the Insurance Law, for any policyholder or contract holder who is facing financial hardship as a result of the COVID-19 pandemic; and

- require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.
- Superintendent of Financial Services shall have the authority to promulgate emergency regulations necessary to implement this Executive Order, including regulations regarding: (1) the waiver of late fees; and (2) the prohibition on reporting negative data to credit bureaus.
- For the purposes of Estates Powers and Trusts Law (EPTL) 3-2.1(a)(2), EPTL 3-2.1(a)(4), Public Health Law 2981(2)(a), Public Health Law 4201(3), Article 9 of the Real Property Law, General Obligations Law 5-1514(9)(b), and EPTL 7-1.17, the act of witnessing that is required under the aforementioned New York State laws is authorized to be performed utilizing audio-video technology provided that the following conditions are met:
 - The person requesting that their signature be witnessed, if not personally known to the witness(es), must present valid photo ID to the witness(es) during the video conference, not merely transmit it prior to or after;
 - The video conference must allow for direct interaction between the person and the witness(es), and the supervising attorney, if applicable (e.g. no pre-recorded videos of the person signing);
 - The witnesses must receive a legible copy of the signature page(s), which may be transmitted via fax or electronic means, on the same date that the pages are signed by the person;
 - The witness(es) may sign the transmitted copy of the signature page(s) and transmit the same back to the person; and
 - The witness(es) may repeat the witnessing of the original signature page(s) as of the date of execution provided the witness(es) receive such original signature pages together with the electronically witnessed copies within thirty days after the date of execution.



GIVEN under my hand and the Privy Seal of the
 State in the City of Albany this seventh
 day of April in the year two thousand
 twenty.

BY THE GOVERNOR

Secretary to the Governor



State of New York

Executive Chamber

No. 202.28

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor-Executive Order up to and including Executive Order 202.14, for thirty days until June 6, 2020, except as modified below:

- The suspension or modification of the following statutes and regulations are not continued, and such statutes, codes and regulations are in full force and effect as of May 8, 2020:
 - 10 NYCRR 405.9, except to the limited extent that it would allow a practitioner to practice in a facility where they are not credentialed or have privileges, which shall continue to be suspended; 10 NYCRR 400.9; 10 NYCRR 400.11, 10 NYCRR 405; 10 NYCRR 403.3; 10 NYCRR 403.5; 10 NYCRR 800.3, except to the extent that subparagraphs (d) and (u) could otherwise limit the scope of care by paramedics to prohibit the provision of medical service or extended service to COVID-19 or suspected COVID-19 patients; 10 NYCRR 400.12; 10 NYCRR 415.11; 10 NYCRR 415.15; 10 NYCRR 415.26; 14 NYCRR 620; 14 NYCRR 633.12; 14 NYCRR 636-1; 14 NYCRR 686.3; and 14 NYCRR 517;
 - Mental Hygiene Law Sections 41.34; 29.11; and 29.15;
 - Public Health Law Sections 3002, 3002-a, 3003, and 3004-a to the extent it would have allowed the Commissioner to make determination without approval by a regional or state EMS board;
 - Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law; as well as subdivision 32 of Section 6530 of the Education Law, paragraph (3) of Subdivision (a) of Section 29.2 of Title 8 of the NYCRR, and sections 58-1.11, 405.10, and 415.22 of Title 10 of the NYCRR;
 - All codes related to construction, energy conservation, or other building code, and all state and local laws, ordinances, and regulations which would have otherwise been superseded, upon approval by the Commissioner of OPWDD, as applicable only for temporary changes to physical plant, bed capacities, and services provided; for facilities under the Commissioners jurisdiction.

IN ADDITION, I hereby temporarily suspend or modify the following if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through June 6, 2020:

- Sections 7-103, 7-107 and 7-108 of the General Obligations Law to the extent necessary to provide that:
 - Landlords and tenants or licensees of residential properties may, upon the consent of the tenant or licensee, enter into a written agreement by which the security deposit and any interest accrued thereof, shall be used to pay rent that is in arrears or will become due. If the amount of the deposit represents less than a full month rent payment, this consent does not constitute a waiver of the remaining rent due and owing for that month. Execution in counterpart by email will constitute sufficient execution for consent;
 - Landlords shall provide such relief to tenants or licensees who so request it that are eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic;
 - It shall be at the tenant or licensee's option to enter into such an agreement and landlords shall not harass, threaten or engage in any harmful act to compel such agreement;
 - Any security deposit used as a payment of rent shall be replenished by the tenant or licensee, to be paid at the rate of 1/12 the amount used as rent per month. The payments to replenish the security deposit shall become due and owing no less than 90 days from the date of the usage of the security deposit as rent. The tenant or licensee may, at their sole option, retain insurance that provides relief for the landlord in lieu of the monthly security deposit replenishment, which the landlord, must accept such insurance as replenishment.
- Subdivision 2 of section 238-a of the Real Property Law to provide that no landlord, lessor, sublessor or grantor shall demand or be entitled to any payment, fee or charge for late payment of rent occurring during the time period from March 20, 2020, through August 20, 2020; and
- Section 8-400 of the Election Law is modified to the extent necessary to require that to the any absentee application mailed by a board of elections due to a temporary illness based on the COVID-19 public health emergency may be drafted and printed in such a way to limit the selection of elections to which the absentee ballot application is only applicable to any primary or special election occurring on June 23, 2020, provided further that for all absentee ballot applications already mailed or completed that purported to select a ballot for the general election or to request a permanent absentee ballot shall in all cases only be valid to provide an absentee ballot for any primary or special election occurring on June 23, 2020. All Boards of Elections must provide instructions to voters and post prominently on the website, instructions for completing the application in conformity with this directive.
- The suspension of the provisions of any time limitations contained in the Criminal Procedure Law contained in Executive Order 202.8 is modified as follows:
 - Section 182.30 of the Criminal Procedure Law, to the extent that it would prohibit the use of electronic appearances for certain pleas;
 - Section 180.60 of the Criminal Procedure Law to provide that (i) all parties' appearances at the hearing, including that of the defendant, may be by means of an electronic appearance; (ii) the Court may, for good cause shown, withhold the identity, obscure or withhold the image of, and/or disguise the voice of any witness testifying at the hearing pursuant to a motion under Section 245.70 of the Criminal Procedure law—provided that the Court is afforded a means to judge the demeanor of a witness;
 - Section 180.80 of the Criminal Procedure Law, to the extent that a court must satisfy itself that good cause has been shown within one hundred and forty-four hours from May 8, 2020 that a defendant should continue to be held on a felony complaint due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision three of such section; and
 - Section 190.80 of the Criminal Procedure Law, to the extent that to the extent that a court must satisfy itself that good cause has been shown that a defendant should continue to be held on a felony complaint beyond forty-five days due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision b of such section provided that such defendant has been provided a preliminary hearing as provided in section 180.80.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through June 6, 2020:

- There shall be no initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020.

- Executive Order 202.18, which extended the directive contained in Executive Orders 202.14 and 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide, is hereby continued to provide that all schools shall remain closed through the remainder of the school year. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this
seventh of May in the year two
thousand twenty.

BY THE GOVERNOR

A handwritten signature in black ink, appearing to be "Mr. C" followed by a long horizontal stroke.

Secretary to the Governor

A handwritten signature in black ink, appearing to be "Andrew Cuomo".



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

**CITYVISION SERVICES, INC., LEIGH
RENNER,**

Complainants,

v.

**PINE RIDGE II APARTMENTS, DAVID H.
PENTKOWSKI, ESQ.,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10190029**

Federal Charge No. 02-18-8507-8

SUMMARY

Complainants filed a previous complaint with the New York State Division of Human Rights against Respondent Pine Ridge II Apartments. After the complaint was dismissed, Respondents sent a letter to Complainants seeking damages for “false, fraudulent and libelous” allegations in retaliation for Complainants’ actions. Complainants are awarded damages. Civil fines and penalties are assessed against Respondents as well.

PROCEEDINGS IN THE CASE

On August 18, 2017, Complainants filed a verified complaint with the New York State Division of Human Rights (“Division”) charging Respondents with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on June 25, 2018.

Complainants and Respondents appeared at the hearing. Complainants were represented by Andy Winchell, Esq. Respondents were represented by David H. Pentkowski, Esq. At hearing, ALJ Protano requested information regarding Complainants’ diverted resources during the course of this matter. Pursuant to 9 N.Y.C.R.R. §465.12(f)(4), those documents were placed in evidence as ALJ Exhibit 5 and Complainant’s Exhibit 3, marked for identification at hearing, is also hereby entered into evidence.

FINDINGS OF FACT

1. Complainant CityVision Services, Inc. (“CityVision”) is a fair housing advocacy organization. (Tr. 35)
2. CityVision employs testers who pose as potential tenants to identify landlords who may be violating fair housing laws. CityVision then files appropriate discrimination actions if it feels the law has been violated. (Tr. 60)
3. Complainant Leigh Renner is affiliated with CityVision. (ALJ Exhibit 2)

4. On December 22, 2016, Complainants filed a complaint against Respondent Pine Ridge II Apartments (“Pine Ridge”) with the United States Department of Housing and Urban Development (Case no. No. 02-17-5629-8) and the Division (Case No. 10185528). (ALJ Exhibit 2)

5. On June 30, 2017, the Division found No Probable Cause to believe Pine Ridge engaged in an unlawful discriminatory practice. Accordingly, the case was dismissed. (ALJ Exhibit 2)

6. Thereafter, on July 25, 2017, Respondent David Pentkowski, an attorney acting on behalf of Pine Ridge, wrote to Complainants alleging that the allegations in their complaint were “false, fraudulent and libelous.” Pentkowski further noted that “Pine Ridge is looking to [Complainants] for the damages they have sustained as a result of this wrongful conduct.” (Complainant’s Exhibit 3)

7. Pentkowski’s letter indicated that Complainants’ representative should contact him to “discuss a resolution to this claim.” Pentkowski wrote that if he did not hear from anyone within ten days Respondents “will proceed accordingly.” (Complainant’s Exhibit 3)

8. Pentkowski asserts that the admonition that Respondents “will proceed accordingly” meant that “if we don’t hear from you, we’re gonna assume we’re not gonna hear from you...” (Tr. 27)

9. Respondents deny Pentkowski’s letter was “threatening.” (ALJ Exhibit 4)

10. As a result of Respondents’ letter, CityVision expended \$4,775.00 in diverted resources on this case. That figure is based upon the time and resources Complainant’s members expended with respect to this matter. (ALJ Exhibit 5)

11. Renner did not testify at hearing. There is nothing in the record to demonstrate whether she personally suffered any damages as a result of Respondents' letter.

OPINION AND DECISION

It is an unlawful discriminatory practice for any person to "retaliate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article." N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.7. It is undisputed that Complainants filed a complaint against Pine Ridge in December 2016. It is also undisputed that Pentkowski wrote a letter to Complainants describing their complaint as "false, fraudulent and libelous," while seeking damages from Complainants.

Pentkowski argues that the letter was neither retaliatory nor threatening. His argument is without merit. Pentkowski's letter clearly sought damages for the money Respondents spent "as a result of" Complainants' complaint. He indicated that Respondents would "proceed accordingly" if Complainants' representative did not contact him to address "this claim." It is difficult to see how this can be viewed as anything other than a threat.

In a similar case, *Moran v. Simpson*, 80 Misc. 2d 437, 438, 362, N.Y.S. 2d 666, 668 (Supt. Ct. Livingston Cty. 1974), a tavern owner who was accused of discrimination filed a libel claim in New York State Supreme Court against the complainant in the discrimination case after the Division dismissed the initial claim. The defendant/complainant in the Supreme Court case filed a retaliation counter claim against the plaintiff/tavern owner. In his decision, Justice Jacob Ark wrote the following:

"The provisions of the Human Rights Law are not self-executing. If this legislation is to be meaningful, a person claiming to be aggrieved by an unlawful discriminatory practice

must be in a position to initiate a proceeding without fear that he is embarking upon a perilous course should his complaint not be sustained.”

Justice Ark awarded judgment to the defendant/complainant on his counterclaim and dismissed the libel claim of the plaintiff/tavern owner. In this case, Complainants were in the same position as the defendant/complainant in *Moran v. Simpson*. Accordingly, as Complainants making a good faith Division claim, they should be protected from retaliatory litigation (or even the threat thereof). Respondents have not shown that Complainants’ allegations were made in bad faith and, therefore, Complainants should prevail. See, *Herlihy v. Metropolitan Museum of Art*, 214 A.D. 2d 250, 257, 633 N.Y.S. 2d 106, 110-11 (1st Dept. 1995). Complainants are entitled to damages as a result of Respondents’ retaliatory actions.

CityVision is an advocacy group that supports fair housing. Advocacy groups can obtain monetary relief based upon injury to the organization. To obtain damages, an organization must show “injury in fact.” *MFY Legal Services, Inc. v. Dudley*, 67 N.Y.2d 706, 708, 499 N.Y.S.2d 930, 931 (1986). An organization is injured when it is forced to divert resources from its mission to address discriminatory actions. When unlawful discriminatory practices “perceptibly impair [the housing group’s] ability to provide...services...there can be no question that the organization has suffered an injury in fact.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). CityVision expended \$4,775.00 in the pursuit of this matter. It should be compensated for that amount.

Section 297(4)(c)(vi) of the Human Rights Law permits the Division to assess civil fines and penalties in cases of housing discrimination in an “amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful,

wanton or malicious.”

There are several factors that determine if civil fines and penalties are appropriate: the nature and circumstances of the violation; whether respondent had previously been adjudged to have committed unlawful housing discrimination; respondent’s financial resources; the degree of respondent’s culpability and the goal of deterrence. A penalty of \$2,500.00 in this matter is appropriate given the nature of the violation and the goal of deterrence. It is undisputed that Respondents sent Complainants a letter that alleged “wrongful acts” and contained threats that Respondents would “proceed accordingly.” The State of New York’s goal of deterrence dictates that a civil fine and penalty in this matter is appropriate.

Complainants have offered no evidence that Renner has directly suffered any damages separate and apart from those of CityVision. She is, therefore, not entitled to an award other than the award noted above. Complainants are not entitled to an award of attorney’s fees since the Human Rights Law does not provide for awards of attorney’s fees in retaliation cases.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that that Respondents, their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminating against any tenants or rental applicants, in the terms and conditions of housing; and it is further

ORDERED, that Respondents, their agents, representatives, employees, successors, and assigns, shall cease and desist from employing policies that result in a discriminatory impact against members of any class of persons protected by New York Executive Law, Article 15 §§290-301; and it is further

ORDERED, that Respondents, their agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within 60 days of the date of the Commissioner's Final Order, Respondents shall pay Complainant CityVision Services, Inc. \$4,775.00 as damages for the diversion of resources Complainant suffered as a result of Respondents' unlawful discrimination. The payment shall be made by Respondents in the form of a certified check, made payable to the order of CityVision Services, Inc., and delivered by certified mail, return receipt requested, to its attorney, Andy Winchell, Esq., at Law Offices of Andy Winchell, P.C., 100 Connell Drive, Suite 300, Berkeley Heights, NJ, 07922. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Final Order until payment is made by Respondents.

2. A copy of the certified check shall be provided to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.
4. Within 60 days of the date of the Commissioner's Final Order, Respondents shall pay to the State of New York \$2,500.00 as a civil fine and penalty for Respondents' unlawful discrimination. Interest shall accrue on this award at the rate of nine percent per year, from the date of the Commissioner's Final Order until payment is made by Respondents. Payment shall be made in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.
5. Respondents shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: May 14, 2019
Bronx, New York



Thomas S. Protano
Administrative Law Judge



**Division of
Human Rights**

ANDREW M. CUOMO
Governor

JOHNATHAN J. SMITH
Interim Commissioner

January 14, 2021

Re: *Clifton Park Apartments, LLC, et al v New York State Div. of Human Rights, et al*

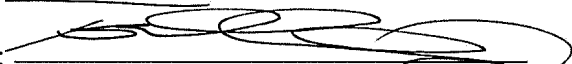
Saratoga Co. Index No. EF2020-1383

To the Parties Listed Below:

PLEASE TAKE NOTICE that the attached Order of the Supreme Court, Saratoga County was issued on January 7, 2021 by the Hon. James E. Walsh, and entered on January 12, 2021 by the Saratoga County Clerk.

Caroline J. Downey
General Counsel

By: _____


Toni Ann Hollifield, of Counsel
(718) 741-8411

TO:

Pentkowski & Pastore
Attorneys for Petitioners
P.O. Box 445
Clifton Park, New York 12065
Attn: David H. Pentkowski, Esq.
VIA NYSCEF

Law Offices of Andy Winchell, P.C.
Attorneys for Respondents CityVision Services, Inc. and Renner
100 Connell Drive, Suite 2300
Berkeley Heights, New Jersey 07922
Attn: Andy Winchell, Esq.

SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

**CLIFTON PARK APARTMENTS, LLC as owner of
PINE RIDGE II APARTMENTS and
DAVID PENTKOWSKI, ESQ.,**

Petitioners,

ORDER

RJI # 45-1-2020-0510

Index #EF20201383

-against-

**NEW YORK STATE DIVISION OF HUMAN RIGHTS,
CITIVISION SERVICES, INC. and
LEIGH RENNER,**

Respondents.

Petitioners, having duly moved this Court for a review and setting aside of the Determination and Order of the Division of Human Rights, dated June 1, 2020 pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) and the Respondents having cross-moved for an Order transferring this proceeding to the Supreme Court of the State of New York Appellate Division, Third Judicial Department, for disposition, pursuant to 22 NYCRR § 202.57(c), and the application having duly come on to be heard on the 11th day of January 2021 and after reading and filing of the Notice of Petition and Petition verified on June 29, 2020 with exhibits thereto, for an Order setting aside the Judgment, pursuant to CPLR Article 78, against Respondents, and after reading the Answer verified on July 27, 2020 in opposition thereto, and the Cross-Motion, verified on July 27, 2020; and the Petition having regularly come on to be heard and due deliberation having been had, and it appearing that the Petitioner herein has sought review of an order issued after public

hearing held pursuant to section 297(4)(a) of the Executive Law, that this Court shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the Judicial Department embracing the county in which the proceeding was commenced. Therefore, pursuant to 22 NYCRR 202.57(c), it is hereby

ORDERED that the proceeding be and the same hereby is transferred for disposition to a term of the Appellate Division of the Supreme Court in the Third Judicial Department in accordance with the provisions of 22 NYCRR 202.57 (c)(2).

Dated: January 7th, 2021
Ballston Spa, New York



HON. JAMES E. WALSH, J.S.C.


Entered Saratoga County Clerk

01/12/2021

EXHIBIT “D”

Powers & Santola, LLP

COUNSELLORS AT LAW

www.Powers-Santola.com

www.DelayedCancerDiagnosis.com

John K. Powers
Daniel R. Santola
Margie A. Soehl†
Kelly C. Wolford
Amber L. Wright
†Also admitted in
Ecuador

Albany Office
100 Great Oaks Blvd
Suite 123
Albany, NY 12203
Phone (518) 465-5995
Fax: (518) 426-4012

Syracuse Office
100 Madison St
15th Floor
Syracuse, NY 13202
Phone: (315) 308-1020
Fax: (518) 426-4012

Rochester Office
The Carriage House
693 East Ave
Rochester, NY 14607
Phone: (585) 563-3330
Fax: (518) 426-4012

Michael J. Hutter
Special Counsel

Please Reply to: Albany Office

July 18, 2022

Toni Ann Hollifield, Esq.
NYS Division of Human Rights
One Fordham Plaza, Fourth Floor
Bronx, NY 10458

Re: #533592 - Clifton Park apartments V. NYS Div. of Human Rights

Dear Ms. Hollifield:

Enclosed please find Notice of Entry of Decision and Order on Motion in connection with the above referenced appeal..

Very truly yours,

POWERS & SANTOLA, LLP



By: Michael J. Hutter
mhutter@powers-santola.com

RECEIVED

JUL 20 2022

General Counsel's Office

NEW YORK SUPREME COURT
APPELLATE DIVISION – THIRD DEPARTMENT

-----◆-----

In Matter of CLIFTON PARK APARTMENTS, LLC as owner of
PINE RIDGE II APARTMENTS and DAVID PENTKOWSKI, ESQ.,

Petitioners-Appellants,

#533592

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
CITYVISIONSERVICES, INC. and LEIGH RENNER,

Respondents-Respondents.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of a Decision and Order
on Motion of the Appellate Division - Third Department, decided and entered on July 14, 2022.

Dated: July 18 2022



Michael J. Hutter, Esq., *Of Counsel*
Appellate Counsel for Petitioners-Appellants
100 Great Oaks Blvd., Suite 123
Albany, NY 12203
518-465-5995
mhutter@powers-santola.com

To: Toni Ann Hollifield, Esq.
NYS Division of Human Rights
One Fordham Plaza, Fourth Floor
Bronx, NY 10458
(718) 741-8411

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 14, 2022

533592

In the Matter of CLIFTON PARK
APARTMENTS, LLC, as owner of PINE
RIDGE II APARTMENTS, et al.,
Petitioners,

v.

DECISION AND ORDER
ON MOTION

NEW YORK STATE DIVISION OF
HUMAN RIGHTS,
Respondent,
et al.,
Respondents.

Motion for reargument or, in the alternative, for permission to appeal to the
Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition
thereto, it is

ORDERED that the motion is denied, without costs.

Garry, P.J., Pritzker, Reynolds Fitzgerald and Ceresia, JJ., concur.

ENTER:



Robert D. Mayberger
Clerk of the Court