

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32499
Y/prt

_____AD3d_____

Argued - September 20, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-07167

DECISION, ORDER & JUDGMENT

In the Matter of John Murphy, petitioner/cross-respondent, v Galen D. Kirkland, etc., et al., respondents/cross-petitioners, et al., respondent, et al., cross-respondent.

(Index No. 6680/10)

Caroline J. Downey, Bronx, N.Y. (Michael K. Swirsky of counsel), for respondents/cross-petitioners.

Proceeding pursuant to Executive Law § 298 to review a determination of the Commissioner of the New York State Division of Human Rights dated February 5, 2010, which adopted the recommendation and findings of an administrative law judge dated December 7, 2009, made after a hearing, finding that the petitioner, John Murphy, and the cross-respondent Alliance Mortgage Banking Corp. retaliated against the complainant for opposing discriminatory practices, and awarding the complainant the principal sums of \$79,827 in damages for back pay and \$50,000 in compensatory damages for mental anguish, payable by John Murphy, individually, and Alliance Mortgage Banking Corp., and Galen D. Kirkland and the New York State Division of Human Rights cross-petition pursuant to Executive Law § 298 to enforce the determination.

ADJUDGED that the petition is dismissed as abandoned (*see* 22 NYCRR 670.8[e][1]; 670.17[b]); and it is further,

ADJUDGED that the cross petition is granted, the determination is confirmed, and the petitioner, John Murphy, and the cross-respondent Alliance Mortgage Banking Corp. are directed to pay the complainant the sum of \$79,827, plus interest at the rate of 9% per year from October 20, 2006, and the sum of \$50,000, plus interest at the rate of 9% per year, from February 5, 2010; and

October 11, 2011

Page 1.

MATTER OF MURPHY v KIRKLAND

it is further,

ORDERED that one bill of costs is awarded to the respondents/cross-petitioners, payable by the petitioner/cross-respondent and the cross-respondent.

To establish a prima facie case of retaliation, the complainant Ronald Maher was required to show that “(1) [he] has engaged in activity protected by Executive Law § 296, (2) [the employer] was aware that [he] participated in the protected activity, (3) [he] suffered from a disadvantageous employment action based upon [his] activity, and (4) there is a causal connection between the protected activity and the adverse action taken by [the employer]” (*Pace v Ogden Servs. Corp.*, 257 AD2d 101, 104; *see Cesar v Highland Care Center, Inc.*, 37 AD3d 393, 394). “Once this initial showing is met, the burden then shifts to petitioner to present legitimate, independent and nondiscriminatory reasons to support [its] actions. Assuming petitioner meets this burden, [the complainant] would then have the obligation to show that the reasons put forth . . . were merely a pretext” (*Matter of Board of Edu. of New Paltz Cent. School Dist. v Donaldson*, 41 AD3d 1138, 1140 [citation and internal quotation marks omitted]).

Here, the determination adopted by the Commissioner of the New York State Division of Human Rights that Alliance Mortgage Banking Corp. (hereinafter Alliance) and John Murphy, Alliance’s president and sole shareholder, retaliated against Maher for opposing a supervisor’s sexual harassment of another employee is supported by substantial evidence in the record (*see Noho Star Inc. v New York State Div. of Human Rights*, 72 AD3d 448, 449; *Sorrentino v Bohbot Entertainment & Media*, 265 AD2d 245).

Moreover, the Commissioner properly determined that Murphy is individually liable to the complainant based on his ownership interest in Alliance (*see Patrowich v Chemical Bank*, 63 NY2d 541, 542; *Matter of Eastport Assoc., Inc. v New York State Div. of Human Rights*, 71 AD3d 890, 891; *Matter of State Div. of Human Rights v Koch*, 60 AD3d 777, 777-778).

The award of the principal sum of \$79,827 in back pay is supported by substantial evidence (*see Matter of State of New York v New York State Div. of Human Rights*, 284 AD2d 882, 884). Additionally, the award of the principal sum of \$50,000 for mental anguish “is reasonably related to the wrongdoing, supported by substantial evidence, and similar to comparable awards for similar injuries” (*Matter of Columbia Sussex Corp. v New York State Div. of Human Rights*, 63 AD3d 736, 736; *see Matter of AMR Servs. Corp. v New York State Div. of Human Rights*, 11 AD3d 609, 610; *Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d 44, 57).

MASTRO, J.P., FLORIO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court