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JEREMY A. COLBY
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

April 19, 2011

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

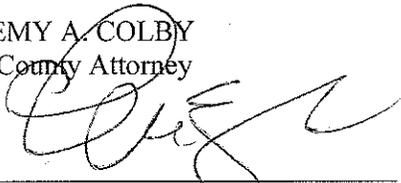
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Johnston, William B. vs Galen D. Kirkland, et al.</i>
Document Received:	Verified Petition
Name of Claimant:	William B. Johnston 11 Greenfield Street Buffalo, New York 14214
Claimant's attorney:	Toni Ann Hollifield, Esq. One Fordham Plaza Bronx, New York 10458

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 
THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney

TFK/mow

Enc.

cc: JEREMY A. COLBY, Erie County Attorney

this proceeding to the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, for disposition.

As set forth in this Cross-Petition, the Division respectfully requests that the Appellate Division, Fourth Department, issue a judgment in accordance with Executive Law § 298:

1) Enforcing the Notice and Final Order of the New York State Division of Human Rights, on the Complaints of Housing Opportunities Made Equal, Inc. and Stephanie M. Gilliam, dated February 3, 2011 ("Final Order"), attached as Exhibit A;

2) Directing Petitioner William B. Johnston to comply with Decretal Paragraph One of the Final Order by paying Complainant Stephanie M. Gilliam the sum of Two thousand five hundred dollars and zero cents (\$2,500.00) as damages for mental anguish and humiliation, with interest accruing on said sum at the rate of nine percent (9%) per annum from February 3, 2011, the date of the Final Order, until the date of payment;

3) Directing Petitioner William B. Johnston to comply with Decretal Paragraph Three of the Final Order by paying Complainant Housing Opportunities Made Equal, Inc. the sum of Four thousand two hundred and eighty-one dollars and zero cents (\$4,281.00) as economic damages, with interest accruing on said sum at the rate of nine percent (9%) per annum from March 2009, until the date of payment;

4) Directing Petitioner William B. Johnston to comply with Decretal Paragraph Four of the Final Order by paying Complainant Housing Opportunities Made Equal, Inc. the sum of Eight thousand dollars and zero cents (\$8,000.00) as punitive damages;

5) Directing Petitioner William B. Johnston to comply with Decretal Paragraph Six of the Final Order by paying the New York State Division of Human Rights the sum of Fifteen thousand dollars and zero cents (\$15,000.00) as a civil fine and penalty, as a result of Respondent's unlawful actions;

6) Directing Petitioner William B. Johnston to comply with Decretal Paragraph Eight of the Final Order by establishing policies regarding the prevention of unlawful discrimination; and

7) Granting such other and further relief as the Appellate Division, Fourth Department deems just and proper.

Dated: Bronx, New York
April 15, 2011

Yours, etc.

Caroline J. Downey
General Counsel
State Division of Human Rights
One Fordham Plaza
Bronx, New York 10458
Tel. No.: (718) 741-8398

by: 

Toni Ann Hollifield
of Counsel.

To:

William B. Johnston
11 Greenfield Street
Buffalo, New York 14214

Scott Gehl, Executive Director
Housing Opportunities Made Equal, Inc.
700 Main Street
Buffalo, New York 14202

Stephanie M. Gilliam
107 Delsan Court
Buffalo, New York 14216

Mayor Byron W. Brown
201 City Hall
Buffalo, New York 14202

Christopher C. Collins, Erie County Executive
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Eric T. Schneiderman, New York State Attorney General
120 Broadway
New York, New York 10271
Attn: Civil Rights Bureau

under the Human Rights Law for using rental housing advertisements expressing limitations on the basis of familial status, for denying housing opportunities based upon familial status and disability, and for making unlawful housing inquiries on the basis of familial status, age, and disability, in violation of Executive Law § 296. The Division awarded Ms. Gilliam monetary damages for mental anguish and humiliation; awarded HOME economic and punitive damages; and assessed civil fines and penalties against Petitioner Johnston, to be paid to the Division.

2) The Division seeks, through this Cross-Petition, judicial review and enforcement of the same Final Order against Johnston, pursuant to Executive Law § 298.

THE PARTIES

3) The Division is a division of the Executive Department of the State of New York responsible under the Human Rights Law (Executive Law §§ 290-301) for, among other tasks, enforcement of the Human Rights Law. The Division investigates complaints of violations of the Human Rights Law, holds evidentiary hearings to determine whether the law has been violated, and orders relief to parties aggrieved by illegal discriminatory practices.

4) Petitioner William B. Johnston owns rental accommodations, including apartments and individual rooms with shared common areas in Buffalo, New York.

5) Respondent Housing Opportunities Made Equal, Inc. ("HOME") is a not-for-profit civil rights organization working to promote the value of diverse housing and to ensure equal housing opportunities in western New York. HOME filed a verified complaint with the Division on March 10, 2009, charging Petitioner with violations of the Human Rights Law.

6) Respondent Stephanie M. Gilliam is a resident of Erie County, New York who filed a verified complaint with the Division on March 10, 2009, charging Petitioner with violations of the Human Rights Law.

JURISDICTION AND VENUE

7) Executive Law § 298 governs, exclusively, judicial review of final orders of the Division. It furnishes a remedy for "[a]ny complainant, respondent or other person aggrieved by an order of the commissioner ... may obtain judicial review thereof..." It also allows the Division to obtain, through the judicial review process, a judgment for the enforcement of a Final Order.

8) Venue for this Cross-Petition properly lies in this Court. Under Executive Law § 298, a petition for judicial review "shall be brought in the

supreme court in the county wherein the unlawful discriminatory practice which is the subject of the order occurs 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.” In the instant case, the unlawful discriminatory practice took place in Erie County.

9) Executive Law § 298 provides that, “where the order sought to be reviewed was made as a result of a public hearing ... the [Supreme] court shall make an order directing that the proceeding be transferred for disposition to the appellate division of the judicial department embracing the county in which the proceeding was commenced.” Thus, this matter must be transferred to the Supreme Court, Appellate Division, Fourth Judicial Department for disposition.

10) Pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.57 (c) (2), where a petitioner seeks judicial review of a Final Order of the Division issued after a public hearing, “the Supreme Court, upon the filing of the petition, 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...”.

11) Executive Law § 298 states that petitions for judicial review under this statute “shall be heard on the record without requirement of printing.” The statute requires the Division to file “in a manner to be specified by rules of court ... a

written transcript of the record of all prior proceedings.” The Division will provide the administrative record to the Appellate Division, Fourth Department, in accordance with 22 NYCRR § 1000.8 (a).

PROCEDURAL HISTORY

12) Ms. Gilliam filed a verified complaint with the Division on March 10, 2009. In that complaint, she alleged that Johnston’s rental housing advertisements expressed a limitation on the basis of familial status.

13) HOME filed a verified complaint with the Division on March 10, 2009. In its complaint, HOME alleged that Johnston had denied housing opportunities to HOME’s members on the basis of familial status and age, and further alleged that Johnston made unlawful housing inquiries on the basis of familial status, age, and disability.

14) After investigating both complaints, the Division concluded that it had jurisdiction over them and that probable cause existed to believe that the Petitioner had engaged in unlawful discriminatory practices. The Division referred the complaints to a consolidated public hearing. An evidentiary hearing on the charges brought by HOME and Ms. Gilliam took place on December 15, 2009, before an Administrative Law Judge (“ALJ”).

15) On April 27, 2010, the ALJ issued the Recommended Findings of Fact, Opinion, Decision and Order (“Recommended Order”) sustaining both HOME and Ms. Gilliam’s complaints, and recommending that Ms. Gilliam be awarded compensatory damages for mental anguish and humiliation; that economic and punitive damages be awarded to HOME, and that Petitioner be assessed civil fines and penalties, payable to the Division. Petitioner filed objections to the Recommended Order.

16) Considering all the evidence adduced at the public hearing, the Recommended Order of the ALJ, and the objections filed to the Recommended Orders, the Division’s Commissioner issued the Final Order on February 3, 2011. The Commissioner, the agency’s final arbiter, adopted the ALJ’s Recommended Order in its entirety.

17) The Division’s Final Order and the findings of fact therein are based upon substantial evidence in the record, and; therefore, should be confirmed in their entirety.

18) The record fully supports the damages awarded to Ms. Gilliam as compensation for the mental anguish and humiliation she suffered as a result of the discrimination for which Johnston is liable.

19) The record fully supports the economic damages awarded to HOME as compensation for the losses it suffered as a result of the discrimination for which Johnston is liable.

20) The record fully supports the punitive damages awarded to HOME as a result of Johnston's unlawful discriminatory actions.

21) The record fully supports the civil fines and penalties assessed against Johnston as a result of his unlawful discriminatory actions.

22) The record fully supports the Commissioner's order that Petitioner Johnston establish policies regarding the prevention of unlawful discrimination.

RELIEF REQUESTED

23) Upon information and belief, Johnston has not complied with the Final Order. Petitioner has not furnished Ms. Gilliam, HOME, or the Division any or all of the monetary award that the Division ordered him to pay them, nor has he established policies for the prevention of unlawful discrimination, as ordered.

24) The Division requests that the Appellate Division, Fourth Department, upon judicial review of the Final Order, confirm the Final Order and enter a judgment against William B. Johnston and in favor of Housing Opportunities

Made Equal, Inc., Stephanie M. Gilliam, and the New York State Division of Human Rights for the monetary awards due and owing them.

24) No previous application has been made for the relief requested.

WHEREFORE, the Division respectfully requests that this Court transfer the Petition and Cross-Petition to the Appellate Division, Fourth Department, and that, upon judicial review, the Appellate Division, Fourth Department deny the Petition in its entirety; confirm the Notice and Final Order dated February 3, 2011 on the Complaints of Housing Opportunities Made Equal, Inc. and Stephanie M. Gilliam against William B. Johnston; direct that the Petitioner William B. Johnston: (1) pay Ms. Gilliam the sum of Two thousand five hundred dollars and zero cents (\$2,500.00) as damages for mental anguish and humiliation, with interest accruing on said sum at the rate of nine percent (9%) per annum from February 3, 2011, the date of the Final Order, until the date of payment; (2) pay Housing Opportunities Made Equal, Inc. the sum of Four thousand two hundred and eighty-one dollars and zero cents (\$4,281.00) as economic damages, with interest accruing on said sum at the rate of nine percent (9%) per annum from March 2009, a reasonable intermediate date, until the date of payment; (3) pay Housing Opportunities Made Equal, Inc. the sum of Eight thousand dollars and zero cents (\$8,000.00) as punitive damages for his unlawful actions, with interest accruing on said sum at the

rate of nine percent (9%) per annum from February 3, 2011, the date of the Final Order, until the date of payment; (4) pay a civil fine and penalty in the amount of Fifteen thousand dollars and zero cents (\$15,000.00) to the New York State Division of Human Rights as a result of his unlawful actions, with interest accruing on said sum at the rate of nine percent (9%) per annum from February 3, 2011, the date of the Final Order, until the date of payment; (5) establish policies regarding the prevention of unlawful discrimination; and grant any other further relief that the Appellate Division, Fourth Department deems just and proper.

Dated: Bronx, New York
 April 15, 2011

Respectfully submitted

Caroline J. Downey
General Counsel
State Division of Human Rights
One Fordham Plaza
Bronx, New York 10458
Tel. No.: (718) 741-8398

Toni Ann Hollifield,
of Counsel.

TONI ANN HOLLIFIELD, above-named, being an attorney admitted to practice in the State of New York and associated with Caroline J. Downey, General Counsel for the New York State Division of Human Rights, the Respondent in the within proceeding, affirms subject to the penalty of perjury that she has read and knows the contents of the Verified Cross-Petition, that the same is true to her own knowledge, except as to matters therein she states to be alleged on information and belief, and that, as to those matters, she believes them to be true.

Dated: Bronx, New York
 April 15, 2011



TONI ANN HOLLIFIELD