

CHINH Q. LE, DIRECTOR
NEW JERSEY DIVISION ON CIVIL RIGHTS
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DCR DOCKET NO. EJ09WB52897
EEOC REFERRAL NO. 17E-200700220

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| PAUL NATHAN and CHINH Q. LE, DIRECTOR, | : | |
| | : | |
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| Complainants, | : | |
| | : | CONSENT ORDER AND DECREE |
| v. | : | |
| | : | |
| BANK OF NEW YORK, CHARLES FERRARI and, WALTER GORSKI, INDIVIDUALLY, | : | |
| | : | |
| Respondents. | : | |

I. DEFINITIONS

- A. "Complainants" mean the above named complainants in this matter.
- B. "Law Against Discrimination" means the New Jersey Law Against Discrimination as codified by N.J.S.A. 10:5-1 to -42.
- C. "Respondents" mean the above named respondents in this matter.
When used in the singular, "Respondent" means The Bank of New York.

II. STATEMENT OF PRINCIPLES

- A. Whereas Chinh Q. Le, Esq., Director of the New Jersey Division on Civil Rights, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e) and,
- B. Whereas the Law Against Discrimination requires Respondent to conduct and maintain all of its recruiting, processing, hiring, assignment, referral, dismissal and other employment practices in a manner which does not discriminate or have the effect of discrimination on the basis of race, color, creed, national origin, nationality, age, disability, sex, ancestry, marital status, affectional or sexual orientation, civil union status, gender identity or expression, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.
- C. Whereas Respondent and the Division on Civil Rights desire to assure that Respondent's hiring, employment, assignment, referral and dismissal practices fully afford equal employment opportunities in compliance with the Law Against Discrimination, Respondent hereby agrees with the Division to maintain specific written policies of non-discrimination, as set forth below.

- D. Respondents, by signing this Consent Order and Decree do not admit that they has violated the Law Against Discrimination or any other laws.
- E. The specific actions which are set forth herein are appropriate to the objectives of providing equal opportunities.
- F. The Division on Civil Rights certifies that the execution and implementation of this Consent Order and Decree is proper and authorized under its mandates.

III. REMEDIAL ACTIONS

- A. Respondents shall refrain from doing any act prohibited by the Law Against Discrimination.
- B. 1. Respondent shall pay Mr. Paul Nathan the back pay Mr. Nathan would have received had he not been discharged, stipulated by the parties to be \$38,224.19, less required withholding, and also less any amount of monies earned elsewhere during the damage period but not less any monies received from the New Jersey Unemployment Compensation Fund, and interest on the amount of such back pay in accordance with R. 4:42-11. Within 30 days after execution of this Consent Order, Mr. Nathan shall provide certified documentation to Respondent showing the amount of monies earned elsewhere during the period from August 2007 through April 2009.

2. Respondent shall also pay to Mr. Nathan the amount Respondent would have contributed to Mr. Nathan's medical, dental, group life insurance plan, and long term disability plans, stipulated by the parties to be \$7,550.48, and the amount Respondent would have contributed to Mr. Nathan's retirement plan, stipulated by the parties to be \$7,912.32.

C. 1. Respondent shall compensate Mr. Nathan \$31,550.48 for the humiliation, mental pain and suffering resulting from having been differentially treated and having been subjected to hostile environment due to his race and sexual orientation. This compensation shall also cover the pain and humiliation Mr. Nathan suffered as a result of having been discharged in retaliation for complaining about protected activity.

2. Respondent shall also compensate Mr. Nathan \$25,000 for any legal fees and/or expenses he incurred in pursuit of this matter

D. Payment of the award of back pay (III.B.1) shall be made by check payable to Mr. Nathan and mailed to his attorneys, Peterpaul & Clark, PC. Payments of the awards for reimbursement for benefits and retirement (III.B.2) and humiliation, mental pain and suffering (III.C.1) shall be made by a check made payable to Peterpaul & Clark, PC Trust Account, and shall be mailed to that law firm. Payment of the award for legal fees and expenses (III.C.2) shall be made by check payable and delivered to Peterpaul & Clark, PC.

- E. Respondent shall also compensate the New Jersey Division on Civil Rights for administrative costs attendant to the processing of this matter in the amount of \$5,000.00 which shall be paid by check to the Treasurer, State of New Jersey, and shall be delivered to Waleska Lucas, at the Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.
- F. Respondent shall expunge from all records any indication that Mr. Nathan was discharged. Respondent's personnel record for Mr. Nathan shall reflect that he terminated his employment without stating a reason.
- G. Respondents shall not engage in any retaliatory conduct against Mr. Nathan or against any participant in these proceedings or allow any of its members to engage in any such conduct.
- H. Respondents shall maintain effective anti-discrimination and anti-harassment policies, including effective complaint procedures for its employees to report discrimination and harassment.
- I. Respondent's anti-harassment policies and complaint procedures shall contain, at a minimum, the following:
 - (1) A clear explanation of the prohibited conduct, including a delineation of the classes and characteristics protected by the Law Against Discrimination, and the types of derogatory statements and conduct that may constitute unlawful harassment or discrimination;

(2) A clearly defined complaint process that designates, by names or job titles, those persons to whom discrimination complaints should be directed, and designates alternate individuals for circumstances in which the designated individuals are unavailable or may be conflicted;

(3) A process for addressing complaints that provides a prompt, thorough, and impartial investigation;

(4) A process for addressing complaints that ensures that Respondent will take prompt, effective and appropriate remedial action when it determines discrimination or harassment has or may have occurred;

(5) Assurance that individuals who make complaints of harassment or provide information related to such complaints will be protected against retaliation;

(6) Assurance that Respondents will protect the confidentiality of discrimination and harassment complaints to the extent possible; and

(7) Continuation of its current programs regarding training of personnel in anti-harassment and anti-discrimination policies.

J. Within (30) days of the entry of this Consent Order, Respondent shall by email remind all U.S. personnel of Respondent's anti-discrimination and anti-harassment policies and complaint procedures and direct all personnel to those policies and procedures on Respondent's intranet.

- K. Within thirty (30) days from the execution of this agreement, a copy of Respondent's policy and complaint procedures shall be forwarded to Ana Limo-Magras at the Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.
- L. Respondent shall provide re-training to the individual Respondents, Charles Ferrari, and Walter Gorski, on anti-discrimination and anti-harassment policies, rules, and laws, with a focus on race, sexual orientation, and reprisal. A plan and projected schedule of training shall be mailed to the Division within thirty (30) days after entry of this Consent Order.
- M. Respondent shall contribute toward the payment for Mr. Nathan's psychotherapy with a licensed psychologist, psychiatrist or psychotherapist, up to a maximum amount of \$150 per hourly session and a maximum frequency of once per week, for a maximum period of 52 weeks, to begin when Mr. Nathan makes his first such appointment within 60 days of final execution of this Consent Order. The mental health provider's bills shall be mailed directly to Respondent c/o Barbara Ross, Esq., One BNY Mellon Center, Room 151-1915, 500 Grant Street, Pittsburgh, Pa. 15258. Respondent will make payments against such bills periodically, directly to the mental health provider, in accordance with Respondent's usual practices for vendor payments.

IV. ENFORCEMENT

- A. This Consent Order and Decree shall have the same force and effect as a cease and desist order issued by the Director pursuant to N.J.S.A. 10:5 19, and shall operate as a complete and final disposition of the aforesaid verified complaint and the complainant's EEOC charge subject only to the fulfillment of all the foregoing provisions.
- B. In the event that Respondent defaults with respect to any provisions herein, Respondent hereby consents to the entry of this consent order and decree in the Chancery Division of the Superior Court of New Jersey, thereby making this consent order and decree an order of the court for purposes of enforcement therein.

Paul Nathan
PAUL NATHAN

March 23 2010
DATE

THE BANK OF NEW YORK MELLON
(formerly known as The Bank of New York)

By: Carl Melillo

3-25-2010
DATE

Carl V. Melillo Managing Director
(print or type name and title)

CHARLES FERRARI

DATE

WALTER GORSKI

DATE

Chinh Q. Le

CHINH Q. LE, DIRECTOR,
DIVISION ON CIVIL RIGHTS

03/31/10

DATE

THE BANK OF NEW YORK MELLON
(formerly known as The Bank of New York)

By: _____

DATE

(print or type name and title)


CHARLES FERRARI

3/25/10
DATE


WALTER GORSKI

3/25/10
DATE

CHINH Q. LE, DIRECTOR,
DIVISION ON CIVIL RIGHTS

DATE

SUPPLEMENTAL SETTLEMENT AGREEMENT

This Agreement supplements the Consent Order entered into this date in the matter of Paul Nathan, et al. v. The Bank of New York, et al., DCR Docket No. EJ09WB52897, before the New Jersey Division on Civil Rights, Department of Labor, and is entered into between PAUL NATHAN ("NATHAN") and THE BANK OF NEW YORK MELLON (the "BANK").

WHEREAS the parties to this Agreement have resolved all disputes between them by entering into the Consent Order, and

WHEREAS the parties wish to supplement the terms of the Consent Order to provide for allocation of a portion of the settlement monies to be paid to NATHAN to settlement of his claims of bodily injury;

IT IS HEREBY AGREED as follows:

1. The BANK shall pay, by check payable to Peterpaul & Clark, PC Trust Account and mailed to that law firm, \$70,000 in full and final settlement of all bodily injury claims NATHAN may have against the BANK, whether referenced in the course of the DCR proceedings or otherwise.
2. This Agreement is contingent upon NATHAN's execution of and compliance with the terms of the Consent Order, and the terms of that Consent Order are incorporated herein by reference.

THE BANK OF NEW YORK MELLON



By:

Dated: March 24, 2010

PAUL NATHAN

Dated: March ___, 2010

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THE BANK OF NEW YORK MELLON

By:

Dated: March __, 2010

Paul Nathan
PAUL NATHAN

Dated: March 23, 2010

23, (PW)