

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get **Booked Up** on Justice!

© TBD Corporation. All Rights Reserved.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

----- X

CAROL FIELD and ERIN MANCUSO, :

Plaintiffs, :

-against- :

TONAWANDA CITY SCHOOL DISTRICT, :

Defendant. :

----- X

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, CAROL FIELD and ERIN MANCUSO, by their counsel, Sanders & Sanders, complain as follows against defendant TONAWANDA CITY SCHOOL DISTRICT:

NATURE OF COMPLAINT

1. This is a proceeding for declarative relief, injunctive relief and damages to redress violations of Plaintiffs’ rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq. (“ADEA”), and the New York State Human Rights Law, Article 15 of the Executive Law, §290 et seq. (“New York HRL”). Specifically, Plaintiffs contend Defendant intentionally discriminated against them because of their age, through harassment, intimidation and different terms and conditions of employment, including reassignment.

JURISDICTION AND VENUE

2. This court has original jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(4), as this case asserts rights under the ADEA.

3. This court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 is invoked on the grounds that the acts challenged are also in violation of the laws of the State of New York.
4. Venue is proper under 28 U.S.C. § 1391.

PARTIES

5. Defendant Tonawanda City School District ("School District") is the public school district for the City of Tonawanda and is headquartered at 202 Broad Street, Tonawanda, New York.
6. At all relevant times, Plaintiff Carol Field has been a citizen of the United States and the State of New York, and was born on August 3, 1946.
7. At all relevant times, Plaintiff Erin Mancuso has been a citizen of the United States and the State of New York, and was born on May 11, 1947.

EXHAUSTION OF REMEDIES

8. Plaintiffs filed timely charges of age discrimination with the Equal Employment Opportunity Commission ("EEOC") on or about June, 21, 2004 and bring this action within ninety (90) days of the receipt of their Notices of Right To Sue, issued by the EEOC on January 11, 2007, true and accurate copies of which are attached hereto as Exhibit A.

STATEMENT OF CLAIM

9. Plaintiffs were employed by Defendant as Elementary School Teachers at Fletcher School. Plaintiff Field, who is 60 years old, had been employed since on or about April 1968. Plaintiff Mancuso, who is 59 years old, had been employed since on or about September 1969.
10. Plaintiff Field was the oldest teacher and the second most senior teacher in terms of service at Fletcher School, having been employed by Defendant for approximately 33 years. Plaintiff Mancuso was the second oldest teacher and the most senior teacher in terms of service at Fletcher School, having been employed by Defendant for approximately 34 years.
11. On or about February 20, 2004, Defendant announced its intention to offer an Early Retirement Incentive. Along with this announcement, the Defendant expressed its desire for senior teachers to retire. Employees who were interested in this incentive were instructed to inform Defendant no later than April 2, 2004.
12. Plaintiffs were discriminated against based on their age, were harassed and intimidated, subjected to different terms and conditions of employment in the form of increased formal observations and administrative visits, and reassigned in an effort to force them to take the Early Retirement Incentive.
13. On or about March 7, 2004 Plaintiff Field was notified of her reassignment from the second grade to the fifth grade for the upcoming school year. Plaintiff Mancuso was also reassigned at that time from the first grade to the fifth grade for the next school year.
14. In its Determination letters of September 26, 2006, attached hereto as Exhibit B, the EEOC found that the “record shows that the three oldest and most senior teachers,

including both Plaintiffs, were reassigned. The youngest and least senior teachers were not affected.”

15. According to Article 13.06 of the Agreement between the Tonawanda City School District and the Tonawanda Education Association, reassignments “should be held to a minimum.” Moreover, the principles that should be applied in reassignment include: “(a) best interest of students; (b) individual qualifications and (c) instructional requirements.
16. Removing experienced primary teachers (first and second grade) and reassigning them to an intermediate grade level (fifth grade) is an unsound administrative decision when the teacher in question has no expertise or prior experience in teaching at a higher-grade level. Both Plaintiffs were experienced primary teachers, not intermediate.
17. Both Plaintiffs have been very successful in their employment. Further, Plaintiffs have received numerous outstanding performance evaluations throughout their tenure.
18. Both Plaintiffs were subject to unprecedented observations and administrative visits:
 - a. In an August 27, 2003 “Opening Day Agenda” memo, it stated that untenured teachers would be observed during this particular school year. However, on March 9, 2004, during the retirement incentive participation period, Susan D’Angelo, the school’s principal, announced that observations of tenured teachers would take place. This was contrary to established past practice. Moreover, the only tenured teachers observed were Plaintiffs Field and Mancuso.
 - b. The EEOC determined that Plaintiff Field was observed on March 22, 2003 and again on March 15, 2004, despite Defendant’s past practice of only observing tenured teachers every other year. Similarly, Plaintiff Mancuso had been observed on April 8, 2003 and again on March 24, 2004.

19. Moreover, the EEOC found that these actions, including the reassignment and unprecedented observations, “occurred in a short period of time and just prior to the deadline for taking the retirement incentive.” As a result, the EEOC made a determination for both Plaintiffs that “[a] reasonable trier of fact can conclude that the timing of the observation and announcement of re-assignments were not coincidental, but, an effort by the Respondent to effect the decision by the Charging Part[ies] to take the incentive” and concluded that the evidence “establishes a violation of the statute as alleged.”

**FIRST CAUSE OF ACTION
AGE DISCRIMINATION IN VIOLATION OF ADEA**

20. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 19, as if fully set forth herein.
21. Plaintiffs have been discriminated against by Defendant on the basis of age in violation of the ADEA, through a course of specifically subjecting Plaintiffs to disparate treatment by intentionally discriminating against them because of their age and in connection with the terms and conditions of their employment, including reassignment.
22. As a direct result of Defendant’s age discrimination against Plaintiffs, Plaintiffs have lost past and future wages, bonuses and other employment benefits, and have suffered damages to their reputation and other incidental and consequential damages and expenses.

**SECOND CAUSE OF ACTION
AGE DISCRIMINATION IN VIOLATION OF NEW YORK HRL**

23. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1 through 22, as if fully set forth herein.
24. Plaintiffs have been discriminated against by Defendant on the basis of age in violation of the New York HRL, through a course of conduct of specifically subjecting Plaintiffs to disparate treatment by intentionally discriminating against them because of their age and in connection with the terms and conditions of their employment, including reassignment.
25. As a direct result of Defendant's age discrimination against Plaintiffs, Plaintiffs have lost past and future wages, bonuses and other employment benefits, and have suffered damages to their reputation and other incidental and consequential damages and expenses.

WHEREFORE, plaintiff requests relief as hereinafter provided:

- a) Empanel a jury to hear Plaintiff's complaint;
- b) Enter judgment declaring the acts and practices of Defendant to be in violation of the laws of the United States and the State of New York;
- c) Issue a permanent injunction ordering Defendant to cease and desist from engaging in the illegal and unlawful acts and practices described herein.
- d) Award Plaintiffs the amount of wages, including fringe benefits, lost as a result of Defendant's discrimination;
- e) Award Plaintiffs consequential damages for losses resulting from Defendant's discrimination;

- f) Award Plaintiffs compensatory damages for losses resulting from Defendant's discrimination;
- g) Award Plaintiffs the cost of this action, together with interest and reasonable attorney's fees.

Dated: April 11, 2007
Cheektowaga, New York

s/Harvey P. Sanders
Harvey P. Sanders, Esq.
SANDERS & SANDERS
Attorneys for Plaintiff
401 Maryvale Drive
Cheektowaga, New York 14225
(716) 839-1489



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4441
TTY (716) 551-5923
FAX (716) 551-4387

Elizabeth Cadle
Director

Elizabeth

Carol Field
25 Half Moon Court
N. Tonawanda, New York 14120

Re: EEOC Charge No.: 165-2004-00784
Carol Field v. Tonawanda City School District

Dear Ms. Field:

The Commission has determined that it will not bring a lawsuit against the above named Respondent. The issuance of the enclosed Notice of Right to Sue under the Age Discrimination in Employment Act concludes the processing of your charge by the Commission. If you decide to sue, you must file a lawsuit in Federal Court within 90 days of receipt of this letter and Notice of Right to Sue.

If you file suit, please forward a copy your court complaint to this office within 10 days. We can then preserve your file and consider your suit when taking other actions. If you have any questions regarding the legal remedies available to you as set out above, please contact the EEOC representative listed in he enclosed Notice of Right to Sue..

On Behalf of the Commission:

Elizabeth Cadle, Director
Buffalo Local Office

Date: JAN 11 2007

Encl.: Notice of Right to Sue

cc: Harvey Sanders

Exhibit A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: **Carol Field**
25 Half Moon Court
North Tonawanda, NY 14120

From: **Buffalo Local Office - 525**
6 Fountain Plaza
Suite 350
Buffalo, NY 14202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
165-2004-00784	John E. Thompson, Investigator	(716) 551-4441

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

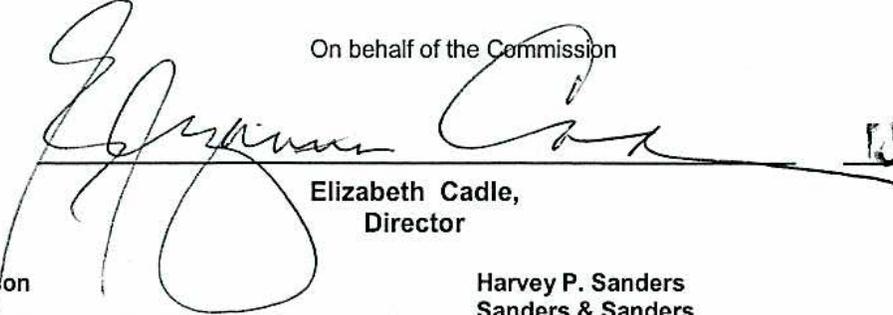
Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)


Elizabeth Cadle,
Director

JAN 11 2007

(Date Mailed)

CC: **George Batterson**
Superintendent
TONAWANDA CTY SCHOOL DIST
202 Broad Street
Tonawanda, NY 14150

Harvey P. Sanders
Sanders & Sanders
401 Maryvale Drive
Cheektowaga, NY 14225

Michael P. McClaren, Esq.
Webster Szanyi
1400 Liberty Building
Buffalo, NY 14202



Elizabeth Cadle
Director

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4441
TTY (716) 551-5923
FAX (716) 551-4387

Erin Mancuso
101 Patricia Drive
Tonawanda, New York 14150

Re: EEOC Charge No.: 165-2004-01204
Erin Mancuso v. Tonawanda City School District

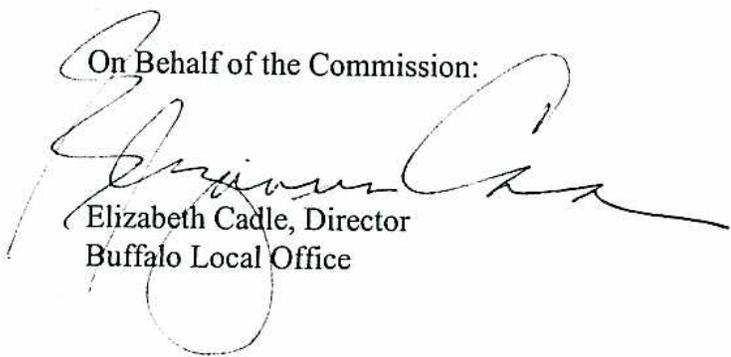
Dear Ms. Mancuso:

The Commission has determined that it will not bring a lawsuit against the above named Respondent. The issuance of the enclosed Notice of Right to Sue under the Age Discrimination in Employment Act concludes the processing of your charge by the Commission. If you decide to sue, you must file a lawsuit in Federal Court within 90 days of receipt of this letter and Notice of Right to Sue.

If you file suit, please forward a copy your court complaint to this office within 10 days. We can then preserve your file and consider your suit when taking other actions. If you have any questions regarding the legal remedies available to you as set out above, please contact the EEOC representative listed in he enclosed Notice of Right to Sue..

On Behalf of the Commission:

Date:


Elizabeth Cadle, Director
Buffalo Local Office

Encl.: Notice of Right to Sue

cc: Harvey Sanders

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: **Erin Mancuso**
101 Patricia Drive
Tonawanda, NY 14150

From: **Buffalo Local Office - 525**
6 Fountain Plaza
Suite 350
Buffalo, NY 14202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

165-2004-01204

John E. Thompson,
Investigator

(716) 551-4441

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

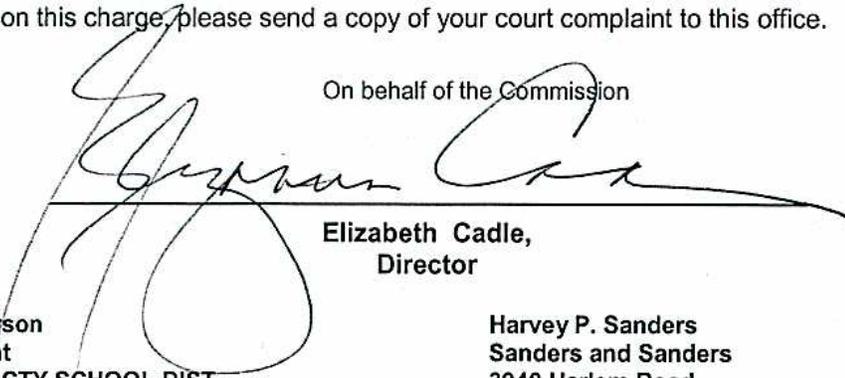
Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)


Elizabeth Cadle,
Director

JAN 11 2007

(Date Mailed)

CC: **George Batterson**
Superintendent
TONAWANDA CTY SCHOOL DIST
202 Broad Street
Tonawanda, NY 14150

Harvey P. Sanders
Sanders and Sanders
3940 Harlem Road
Amherst, NY 14226

Michael McClaren, Esq.
Webster Szanyi
1400 Liberty Building
Buffalo, NY 14202



Elizabeth Cadle
Director

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4441
TTY (716) 551-5923
FAX (716) 551-4387

Charge No.: 165-2004-00784

Carol Field
25 Half Moon Court
N. Tonawanda, New York 14120

Charging Party

Tonawanda City School District
202 Broad Street
Tonawanda, New York 14150

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of the Age Discrimination in Employment Act (ADEA), and timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged she was discriminated against based on her age, in that she was harassed, intimidated, subjected to different terms and conditions of employment, and reassigned in an effort to force her to take an Early Retirement Incentive.

The investigation revealed that Charging Party was the second oldest teacher and the most senior employed as an Elementary School Teacher at Fletcher School. In November, 2003, the Respondent School Board President stated that the district could no longer afford to keep teachers who were making \$70,000 - \$80,000 a year, when it could hire newer teachers for \$30,000 and save money. In furtherance of this concept, Respondent offered an early retirement incentive in February, 2004, with a March 26, 2004 decision deadline. Charging Party elected not to retire.

On March 7, 2004, the principal at Fletcher school announced that there would be teaching re-assignments for the following year. Charging Party, who had been teaching second grade for several years was re-assigned to teach the fifth grade. The record shows that the three oldest and most senior teachers, including Charging Party, were reassigned. The youngest and least senior teachers were not affected.

Additionally, Charging Party was observed on March 22, 2003 and again on March 15, 2004, despite Respondent's practice that tenured teachers are observed every other year. Hence,

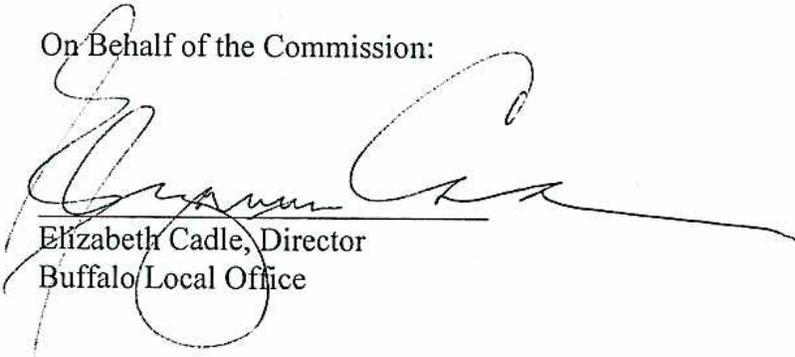
Charging Party should have been observed in 2005 and not 2004. Again, the actions taken occurred in a short period of time and just prior to the deadline for taking the retirement incentive.

A reasonable trier of fact can conclude that the timing of the observation and announcement of re-assignments were not coincidental, but, an effort by the Respondent to effect the decision by the Charging Party to take the incentive. It is interesting to note that reassignments were made prior to the conclusion of the incentive period, when it would be much more realistic to see how many teachers took the incentive prior to making staffing decisions.

Based on this analysis I conclude that the evidence obtained during the investigation establishes a violation of the statute as alleged. Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution to this matter. The confidentiality provisions of Commission Regulations apply to information obtained during conciliation.

When the Respondent declines to discuss settlement or when, for any reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission:



Elizabeth Cadle, Director
Buffalo Local Office

SEP 26 2006

Date



Elizabeth Cadle
Director

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4441
TTY (716) 551-5923
FAX (716) 551-4387

Charge No.: 165-2004-01204

Erin Mancuso
101 Patricia Drive
Tonawanda, New York 14150

Charging Party

Tonawanda City School District
202 Broad Street
Tonawanda, New York 14150

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of the Age Discrimination in Employment Act (ADEA), and timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged she was discriminated against based on her age, in that she was harassed, intimidated, subjected to different terms and conditions of employment, and reassigned in an effort to force her to take an Early Retirement Incentive.

The investigation revealed that Charging Party was the second oldest teacher and the most senior employed as an Elementary School Teacher at Fletcher School. In November, 2003, the Respondent School Board President stated that the district could no longer afford to keep teachers who were making \$70,000 - \$80,000 a year, when it could hire newer teachers for \$30,000 and save money. In furtherance of this concept, Respondent offered an early retirement incentive in February, 2004, with a March 26, 2004 decision deadline. Charging Party elected not to retire.

On March 8, 2004, the principal at Fletcher school announced that there would be teaching re-assignments for the following year. Charging Party, who had been teaching first grade for several years was re-assigned to teach the fifth grade. The record shows that the three oldest and most senior teachers, including Charging Party, were reassigned. The youngest and least senior teachers were not affected.

Additionally, Charging Party was observed on April 8, 2003 and again on March 24, 2004, despite Respondent's practice that tenured teachers are observed every other year. Hence, Charging Party should have been observed in 2005 and not 2004. Again, the actions taken occurred in a short period of time and just prior to the deadline for taking the retirement.

A reasonable trier of fact can conclude that the timing of the observation and announcement of re-assignments were not coincidental, but, an effort by the Respondent to effect the decision by the Charging Party to take the incentive. It is interesting to note that reassignments were made prior to the conclusion of the incentive period, when it would be much more realistic to see how many teachers took the incentive prior to making staffing decisions.

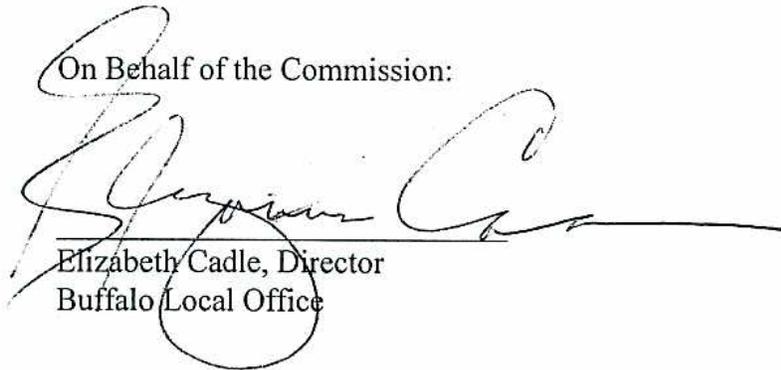
Based on this analysis, I have determined that the evidence obtained during the investigation establishes a violation of the statute. Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution to this matter. The confidentiality provisions of Commission Regulations apply to information obtained during conciliation.

When the Respondent declines to discuss settlement or when, for any reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

SEP 26 2006

Date

On Behalf of the Commission:



Elizabeth Cadle, Director
Buffalo Local Office

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get **Booked Up** on Justice!

© TBD Corporation. All Rights Reserved.