Supreme Court, New York County, New York, Individual Assignment Part 6.

Marjorie Lee THORESON, a/k/a Anneka diLorenzo, Plaintiff,
v.
PENTHOUSE INTERNATIONAL, LTD. and Robert Guccione, Defendants.

Oct. 23, 1990.

Former employee, aspiring actress and model for men's magazine, brought action against former employer and its chairman to recover for sexual harassment and on basis of other theories. The Supreme Court, New York County, Individual Assignment Part 6, Wilk, J., held that: (1) coercing sexual activity with furniture manufacturer and chairman's financial advisor in order to advance employer's business amounted to sexual harassment, and (2) employee was entitled to compensatory damages of $60,000 and punitive damages of $4 million.

So ordered.

West Headnotes

[1] Contracts 322(3)
95k322(3) Most Cited Cases

[1] Damages 50.10
115k50.10 Most Cited Cases

[1] Fraud 28
184k28 Most Cited Cases

[1] Implied and Constructive Contracts 30
205Hk30 Most Cited Cases

[1] Torts 6
379k6 Most Cited Cases

Former employee, aspiring actress, who had signed agreement permitting former employer, publisher of men's magazine, to guide her career failed to establish fraud, misrepresentation, unjust enrichment, right to recover on basis of quantum meruit, breach of contract, prima facie tort, and intentional infliction of emotional distress; publisher and its chairman tried to promote employee's career as performer, and employee failed to prove that she was wrongfully denied any prizes to which she was entitled by virtue of her selection as "Pet of the Year.".

[2] Civil Rights 1184
78k1184 Most Cited Cases
(Formerly 78k167)

Employer is prohibited from exploiting dominant position of power in workplace by imposing sexual demands upon employee as implicit condition of continued employment. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[3] Civil Rights 1184
78k1184 Most Cited Cases
(Formerly 78k167)

Any attempt by employer to use terms, conditions, or privileges of employment to coerce employee, targeted on basis of gender, to agree to participate in sexual activity is form of sex discrimination. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[4] Civil Rights 1184
78k1184 Most Cited Cases
(Formerly 78k167)

To recover for sexual harassment, employee need not prove that he or she resisted abuse or refused to comply with sexual demands, that tangible job benefits were lost, or that discriminatory conduct was intentional. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[5] Civil Rights 1757
78k1757 Most Cited Cases
(Formerly 78k454)

Employee's refusal to comply with sexual demands, employee's resistance to abuse, loss of tangible job benefits, and employer's intent are factors in determining appropriate remedy. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[6] Civil Rights 1184
78k1184 Most Cited Cases
(Formerly 78k167)

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[6] Civil Rights 1765
78k1765 Most Cited Cases
(Formerly 78k454)

Coercing employee, aspiring actress and model for men's magazine, to participate in sexual activity with furniture manufacturer and financial advisor to employer's chairman in order to advance chairman's business was sexual harassment entitling employee to compensatory damages of $60,000 regardless of employee's response; chairman compelled employee to continue relationship with advisor for period of 18 months. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[7] Civil Rights 1744
78k1744 Most Cited Cases
(Formerly 78k453)

Compensatory damages for subjective mental suffering of employee from sexual harassment could be based on her testimony alone. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[8] Civil Rights 1769
78k1769 Most Cited Cases
(Formerly 78k454)

Sexual harassment by coercing employee, aspiring actress and model for men's magazine, to participate in sexual activity with a furniture manufacturer and with financial advisor to employer's chairman in order to advance chairman's business affected public trust and warranted punitive damages of $4 million; relationship with advisor lasted for 18 months, and employer and chairman had respective market value and net worth of $200 million and $150 million. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[9] Civil Rights 1765
78k1765 Most Cited Cases
(Formerly 78k454)

Neither actual intent to cause emotional distress nor intent to discriminate needs to be proved in order for State Division of Rights to hold employer liable for mental distress resulting from employment discrimination. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[10] Civil Rights 1188
78k1188 Most Cited Cases
(Formerly 78k167)

[10] Civil Rights 1263
78k1263 Most Cited Cases
(Formerly 78k167)

Employment as model for men's magazine was not waiver of right to be free from sexual harassment in workplace. McKinney's Executive Law § § 292, subd. 4, 296, subd. 1(a), 297, subd. 9.

[11] Damages 94
115k94 Most Cited Cases

Relative wealth of defendants had to be considered in fixing punitive damages.
****969 *152** Murray Schwartz, New York City, for plaintiff.

Jeffrey H. Daichman, Greenspoon, Gaynin, Daichman & Marino, New York City, for defendants.

****970** ELLIOTT WILK, Justice:

Plaintiff brought this action against defendants Penthouse ***153** International, Ltd. and Robert Guccione to recover damages for fraud, misrepresentation, unjust enrichment, quantum meruit, breach of contract, prima facie tort, intentional infliction of emotional harm and sexual harassment. Plaintiff also seeks an accounting.

Penthouse International, Ltd. is the publisher of Penthouse Magazine. Guccione is the founder, chairman and principal shareholder of Penthouse International, Ltd.

Plaintiff, Marjorie Thoreson, worked for Penthouse under the name Anneka diLorenzo from 1973 until 1980. She grew up in St. Paul, Minnesota. When she was twelve or thirteen, her parents were involved in a bitter divorce. When she was fifteen, plaintiff travelled to Los Angeles to seek her fortune. While in California, she had some minor brushes with the law. She found work as a cocktail waitress, a topless dancer, and a receptionist. She also studied acting and entered beauty contests. She did some work as a model and as an actress.

In 1973, she was impressed by a television interview of Guccione and sent some test photos to Penthouse. Guccione met with her in Los Angeles, after which

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he agreed to make her Penthouse Pet of the Month for September. Plaintiff was flown to New York and then to London, where she was photographed by Guccione. While in London, they became intimate. She was twenty years old.

Plaintiff told defendant that she aspired to a career as an actress. Defendant assured her that he would use his contacts to assist her. After about one week in London, they returned to New York. In June, 1973, plaintiff returned to Los Angeles. While in the taxi to the airport, plaintiff signed a management agreement with Penthouse.

It appears that the agreement was unique in the world of "Pets." The agreement generally provided that Penthouse would guide Thoreson in her career in the entertainment field. The contract noted plaintiff's inexperience and unfamiliarity with the entertainment area and her need for "supervised guidance and specialized training to develop her talents". Penthouse agreed to act as Thoreson's personal representative, general advisor and to use its best efforts to supervise, guide and direct her career. Penthouse was to assist plaintiff in the selection of suitable roles and projects in furtherance of her career in public entertainment. In exchange, plaintiff granted defendants exclusive control over her career and exclusive rights to commissions. In addition, plaintiff ***154** executed a power of attorney to allow Penthouse to handle her finances and to receive payments on her behalf.

Plaintiff was soon contacted by defendant with an offer to appear in Viva, a magazine published by Guccione. She appeared on the cover of the December issue.

Plaintiff also accepted an opportunity to do a fall, 1973 promotion tour for Penthouse and Viva. She returned to Los Angeles after the tour.

In 1974, she took acting classes, paid for by Penthouse, and made several promotional appearances for Penthouse. She also urged Guccione to hasten her acting career. Guccione agreed to make her Pet of the Year for 1975 and invited her to live with him in New York. In the spring of 1975, she moved into Guccione's house, where she was given a small room of her own. She did a Penthouse promotional tour after the 1975 Pet of the Year issue, which was followed by an international tour for the United States Department of Defense.

As Pet of the Year, plaintiff was to receive prizes valued at $50,000. She claims that the value of what she received was considerably less than that.

After the Defense Department tour, plaintiff returned to Guccione's New York house. In 1976, she began to hear about the movie Caligula, which was being produced by Penthouse. Plaintiff claims that defendant led her to believe that she might play Caligula's wife. To prepare herself for the role, at Guccione's urging, she had surgery to enlarge her breasts.

****971** While plaintiff was recuperating from the surgery, defendant told her that Caligula's director had hired another actress to play Caligula's wife. He promised to find plaintiff another role in the film.

In the spring of 1976, plaintiff flew to Rome, where Caligula was being filmed. She made a minor appearance and returned to New York. The shooting of the movie was completed by Christmas, 1976. Guccione correctly predicted that the film, which had experienced a series of defections, would be a commercial and critical disaster. In an effort to rescue the commercial end, he incorporated two new scenes into the movie.

Guccione returned to the set in January, 1977, with plaintiff and other Penthouse Pets to shoot the scenes. One scene graphically captured plaintiff performing oral sex on a man. The second showed plaintiff and Penthouse Pet Lori Wagner ***155** having sex with each other. Plaintiff claims to have performed in the scenes reluctantly and only after having been persuaded that it would further her career.

Plaintiff returned to Rome in the spring of 1977 to do the movie Messalina, in which she had the starring role. She was recruited for the part by Frederico Rosselini, who met plaintiff on the set of Caligula. She did four weeks of promotional work for the film in Italy, after which she went to Florida.

Plaintiff returned to New York in 1978 and, following a lead that she received in Rome, spoke to Mr. Polenco of the William Morris Agency about working as her agent. She auditioned for the lead in Raging Bull but did not get the part. The agency never contacted her again.

In 1978, Guccione told plaintiff that he was upset because his London based financial advisor was not spending enough time in the United States. He told plaintiff to seduce the advisor and to encourage him

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to move to this country. Plaintiff refused. Defendant insisted that plaintiff do so because it was important to him and to the Penthouse empire. Plaintiff capitulated. Her sexual affair with the financial advisor, carried on during his periodic trips to New York, and guided by Guccione, lasted eighteen months.

In the summer of 1980, defendant encountered difficulty in raising money to open a gambling casino in Atlantic City. Defendant asked plaintiff to sleep with a furniture manufacturer from Milan, who, defendant believed, could assist him with this venture. Plaintiff refused. Defendant told her that she had to do it because she owed him. She did.

Caligula was released in 1980. Promotions were done by plaintiff and Guccione. Defendant told plaintiff that he wanted her to promote Caligula in Japan. Plaintiff refused because her experience on the United States promotional tour had been degrading and humiliating. Defendant refused to discuss plaintiff's reluctance to go. Plaintiff did not go, as a consequence of which she was fired. She never did another film.

[1] With the exception of sexual harassment, I am not persuaded that plaintiff should prevail on any of her causes of action. I believe that defendant tried to promote plaintiff's career as a performer. It is not clear that defendant beckoned plaintiff down an unwanted path or that her acting talent was intentionally subordinated to any of her other attributes. In addition, plaintiff has failed to prove that she was wrongfully denied any of the prizes to which she was entitled by virtue of her selection as Pet of the Year.

***156** I do, however, find in plaintiff's favor on her sexual harassment claim.

The New York State Human Rights Law provides that any person "aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages ..." Exec.Law § 297(9). *See Murphy v. American Home Products Corp.*, 58 N.Y.2d 293, 307, 461 N.Y.S.2d 232, 448 N.E.2d 86 (1983). Actions of an employer which discriminate against an individual in the "terms, conditions or privileges of employment" because of that person's sex are encompassed within the ambit of actionable wrongs under this section. *See* Exec.Law ****972** § § 292(4) and 296(1)(a). This provision, like other civil rights statutes containing similar language, has been interpreted to prohibit acts of sexual harassment in the workplace. See the incisive analysis of Justice Kristin Booth Glen in *Rudow v. Commission on Human Rights,* 123 Misc.2d 709, 474 N.Y.S.2d 1005 (S.Ct., N.Y. Co., 1984), *aff'd,* 109 A.D.2d 1111, 487 N.Y.S.2d 453 (1st Dept., 1985), *appeal denied,* 66 N.Y.2d 605, 499 N.Y.S.2d 1025, 489 N.E.2d 1302 (1985); *see e.g. Salvatore v. New York State Division of Human Rights,* 118 A.D.2d 715, 500 N.Y.S.2d 47 (2nd Dept., 1986); *Matter of State University of New York v. State Human Rights Appeal Board,* 81 A.D.2d 688, 438 N.Y.S.2d 643 (3rd Dept., 1981), *aff'd,* 55 N.Y.2d 896, 449 N.Y.S.2d 29, 433 N.E.2d 1277 (1982). Plaintiff's cause of action based on her claim of sexual harassment is, therefore, cognizable under Executive Law § 297(9).

[2][3][4][5] Under the Human Rights Law ("HRL"), an employer is prohibited from exploiting a dominant position of power in the workplace by imposing sexual demands upon an employee as an implicit condition of continued employment. Any attempt by an employer to use the terms, conditions or privileges of employment to coerce an employee, targeted on the basis of gender, to agree to participate in sexual activity is a form of sex discrimination outlawed by state law. Proof of such discriminatory conduct on the part of an employer suffices to trigger liability under the Executive Law. *See Cullen v. Nassau County Civil Service Commission,* 53 N.Y.2d 492, 496- 497, 442 N.Y.S.2d 470, 425 N.E.2d 858 (1981). The employee need not prove that he or she resisted the abuse or refused to comply with the sexual demands, *see e.g. Meritor Savings Bank v. Vinson,* 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986); *Rudow, supra,* 123 Misc.2d at 718, 474 N.Y.S.2d 1005 quoting *Bundy v. Jackson,* 641 F.2d 934, 945 (D.C.Cir., 1981); that tangible job benefits were lost, *id.; cf. Crookston v. Brown,* 140 A.D.2d 868, 528 N.Y.S.2d 908 (3rd Dept., 1988); or that the discriminatory conduct was intentional. *See Cullen, supra.* Those issues, relating to the ***157** harm suffered by the employee and the relative offensiveness of the employer's actions, are factors in determining the appropriate remedy. *Id.; see also Batavia Lodge v. Division of Human Rights,* 35 N.Y.2d 143, 359 N.Y.S.2d 25, 316 N.E.2d 318 (1974).

[6] The credible evidence reveals that defendant Guccione utilized his employment relationship with plaintiff to coerce her to participate in sexual activity with the furniture manufacturer and with his financial advisor in order to advance his business. He compelled plaintiff to continue the relationship with

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his advisor, which he helped to choreograph, for a period of eighteen months.

Plaintiff's testimony concerning these matters was controverted only by defendant Guccione's blanket denial that the events took place. I do not believe him.

[7] Because plaintiff capitulated to the demands of her employer, she was not discharged. Proof of compensatory damages was comprised of her testimony about the emotional impact of these experiences. The statute authorizes the awarding of compensatory damages for plaintiff's subjective mental suffering, on her testimony alone. *See Cullen v. Nassau County Civil Service Commission,* 53 N.Y.2d at 497, 442 N.Y.S.2d 470, 425 N.E.2d 858; *Batavia Lodge v. Division of Human Rights,* 35 N.Y.2d at 146-147, 359 N.Y.S.2d 25, 316 N.E.2d 318. As compensatory damages, plaintiff is awarded $60,000.

[8] In addition to compensatory damages, which are designed exclusively to redress actual injury, plaintiff requests punitive damages.

Although punitive damages may not be available under the HRL to a party who seeks redress before the Human Rights Division, as Justice Harold Baer observed in his well-reasoned decision in *Seitzman v. Hudson River Associates,* 143 Misc.2d 1068, 542 N.Y.S.2d 104 (Sup.Ct., N.Y.Co., 1989), they may be imposed in a judicial proceeding. *Compare* Exec.Law § 297(4)(c) (sanctioning an award of "compensatory ****973** damages" by the State Division) *with* Exec.Law § 297(9) (authorizing an action in court "for damages and such other remedies as may be appropriate"); *see Murphy v. American Home Products Corp.,* 136 A.D.2d 229, 527 N.Y.S.2d 1 (1st Dept., 1988).

An award of exemplary damages is traditionally available under the common law where "the plaintiff proves sufficiently serious misconduct on the defendant's part...." *Smith v. Wade,* 461 U.S. 30, 52, 103 S.Ct. 1625, 1654, 75 L.Ed.2d 632 (1983), quoting D. Dobbs, *Law of Remedies* 204 (1973). It represents an appropriate response to "conduct ***158** having a high degree of moral culpability (*see, Walker v. Sheldon,* 10 NY2d 401, 405 [223 N.Y.S.2d 488, 179 N.E.2d 497]) which manifests a 'conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.' (*Welch v. Mr. Christmas,* 57 NY2d 143, 150 [454 N.Y.S.2d 971, 440 N.E.2d 1317])." *Home Insurance Co. v. American Home Products,* 75 N.Y.2d 196, 203-204, 551 N.Y.S.2d 481, 550 N.E.2d 930 (1990). The function or purpose of punitive damages is to

> act as a deterrent to the offender "and to serve as a warning to others. They are intended as punishment for gross misbehavior for the good of the public and have been referred to as 'a sort of hybrid between a display of ethical indignation and the imposition of a criminal fine.' [citations omitted.] Punitive damages are allowed on the ground of public policy.... The damages may be considered expressive of the community attitude towards one who willfully and wantonly causes hurt or injury to another" (citations omitted).

Id. at 203, 551 N.Y.S.2d 481, 550 N.E.2d 930.

In consideration of these public-oriented goals, "[p]unitive damages generally are reserved for ... aggravated circumstances which effect a public interest." *Laurie Marie M. v. Jeffrey T.M.,* 159 A.D.2d 52, 58, 559 N.Y.S.2d 336 (2nd Dept., 1990). One category of misconduct which implicates the public interest, in which punitive damages are often upheld, is "where persons in positions of power or authority wantonly misuse their authority" or betray a "relationship involving a public trust." *Id.* at 59, 559 N.Y.S.2d 336. This is particularly true where sexual abuse is involved. *Id.; see Micari v. Mann,* 126 Misc.2d 422, 481 N.Y.S.2d 967 (S.Ct., NY Co., 1984). Such misconduct, by its nature, "causes incalculable injury to society as well as private interests" *Laurie Marie M.,* 159 A.D.2d at 60, 559 N.Y.S.2d 336.

An award of punitive damages under Exec.Law § 297(9) is a particularly appropriate response to flagrant acts of discrimination. The HRL extends to the work place basic notions of equality and human dignity emanating from the Constitution. Indeed,

> [i]n enacting the Human Rights Law, our State Legislature, in a preamble, minced no words in declaring that the discriminatory practices it was interdicting violated the fundamental principles underlying a free society and threatened the peace and tranquility of the State (Executive Law, § 290; see *City of Schenectady v. State Div. of Human Rights,* 37 NY2d 421, 423-424 [373 N.Y.S.2d 59, 335 N.E.2d 290]).

Cullen v. Nassau County Civil Service Commission, 53 N.Y.2d 492, 495-496, 442 N.Y.S.2d 470, 425 N.E.2d 858 (1981). An employer's prejudicial abuse of his authority to coerce sexual compliance on the part of an employee is an egregious violation of equality principles and of a relationship in which the public has, by virtue of the HRL, demonstrated a

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strong ***159** interest. Plaintiff's legal action, by its nature, serves the dual purpose of enabling her to vindicate her individual rights and to promote "the good of the public" by advancing society's interest in enforcing statutory proscriptions against discrimination. *Home Insurance Co.,* 75 N.Y.2d at 203, 551 N.Y.S.2d 481, 550 N.E.2d 930.

The evidence demonstrates that defendant Guccione's acts of discrimination were "intentionally committed," *Batavia Lodge,* 35 N.Y.2d at 147, 359 N.Y.S.2d 25, 316 N.E.2d 318, and "willfully directed at [a] ****974** specific individual[ ]". *Cullen,* 53 N.Y.2d at 497, 442 N.Y.S.2d 470, 425 N.E.2d 858. The cold and calculating use of his authority as plaintiff's employer, in precisely the manner deemed by the legislature to be harmful to society, affects a public trust. Because that abuse of power within a protected relationship entailed sexual coercion, it is precisely the sort of extreme misconduct that would justify the imposition of punitive damages even under traditional common-law principles. [FN1] *Cf.* PL § § 135.60; 230.30(1).

FN1. The wrong committed by defendant in this case, statutorily defined as employment discrimination, also constitutes tortious conduct under the common-law theory of intentional infliction of emotional harm. *See e.g., Micari v. Mann, supra; Ford v. Revlon, Inc.,* 153 Ariz. 38, 734 P.2d 580 (1987). There is no need, however, to address that overlapping legal claim. Under circumstances such as these, where relevant common-law tort theories are subsumed within the ban on sexual harassment, a statutorily-authorized judicial award of appropriate damages pursuant to Executive Law § 297(9) will "fully redress the wrong committed." *Koerner v. State of New York,* 62 N.Y.2d 442, 449, 478 N.Y.S.2d 584, 467 N.E.2d 232 (1984).

Protection for the societal interests implicated by defendant's conduct is suggested not only by the traditional punitive damages doctrine, but by the HRL itself. The statute has long been interpreted, primarily in the context of adjudications by the State Division of Human Rights, to require consideration of these public-oriented principles in determining the appropriate remedy for acts of employment discrimination.

The HRL confers upon the State Division of Human Rights "broadly stated policy-laden discretion" in providing an appropriate remedy for acts of discrimination, in order to effectively "combat the pernicious effects of the outlawed evils." *Cullen v. Nassau County Civil Service Commission,* 53 N.Y.2d at 496, 442 N.Y.S.2d 470, 425 N.E.2d 858. In recognition of the public, as well as private, nature of the wrong committed in acts of employment discrimination, a ***160** flexible statutory standard governs the fashioning of a remedy, to ensure that societal, as well as individual, interests are effectively served.

> [R]ecovery [under the Human Rights Law] should not be based solely on common- law strictures as would be applied in determining liability for a tort. Recovery here, instead, is based on a statute which effectuates a State policy against discrimination....
> The extremely strong statutory policy of eliminating discrimination gives the Commissioner of Human Rights more discretion in effecting an appropriate remedy than he would have under strict common-law principles ... the right is statutory and involves vindication of a public policy as well as vindication of a particular individual's rights.

Batavia Lodge v. Div. of Human Rights, 35 N.Y.2d at 145-146, 359 N.Y.S.2d 25, 316 N.E.2d 318.

[9] The statutory expansion of the remedial powers usually available enables the State Division, in awarding compensatory damages, to hold an employer liable for the mental distress shown to have been suffered by the plaintiff as a result of the act of discrimination. [FN2] Neither actual intent to cause emotional distress, nor intent to discriminate, need be proved. The statute charges the guilty employer with the duty to foresee the mental and emotional consequences that could flow from his or her conduct.

FN2. Under the common law, compensatory damages for mental distress are only available under certain circumstances, as in cases involving extreme misconduct. *See Prosser and Keeton on Torts* (5th Ed., 1984), ch. 2, § 12. Under this standard, liability has often been imposed for insult and indignity inflicted by persons in positions of power or responsibility with respect to the public, *id.* at pp. 57-59; or, "the extreme and outrageous nature of the conduct may arise not so much from what is done as from abuse by the defendant of some relation or position which gives the

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> defendant actual or apparent power to damage the plaintiff's interests. The result is something like extortion". *Id.* at p. 61. The statute protects employees from acts of extortion motivated by prejudice, and the insult and indignity perpetrated by employers who discriminate. Compensatory damages are available for mental distress caused in every employment discrimination case, as long as the emotional harm is proved.

Courts use the same broad standard in actions brought under Exec.Law § 297(9) ****975** to determine the appropriate relief. *Cf. Koerner v. State of New York,* 62 N.Y.2d 442, 448-449, 478 N.Y.S.2d 584, 467 N.E.2d 232 (1984). The "important public policy to be served in" cases brought under the HRL, *Palmer v. New York State Human ***161** Rights Appeal Bd.,* 47 N.Y.2d 734, 735, 417 N.Y.S.2d 253, 390 N.E.2d 1177 (1979), is a most appropriate yardstick by which punitive damages may be measured. Such an award provides concrete expression to the statutorily-communicated attitude of the community that employees are absolutely protected from the insult, indignity and economic consequences, if any, attendant to discrimination. It also effectuates the strong statutory policy of eliminating and preventing discrimination.

Given the public policy aims of the HRL, which mirror the dual functions served by punitive damages--retribution and deterrence--plaintiff is entitled to punitive damages to the extent calculated to reflect the community's outrage and moral indignation, and to protect "the public good" by attempting, through deterrence, to eradicate such conduct. *See Home Insurance Co., supra; Micari v. Mann,* 126 Misc.2d at 425, 481 N.Y.S.2d 967.

In order to fix punitive damages, we must, in light of these principles, assess the nature of defendant's conduct, the harm caused, and the degree to which the conduct offends principles of justice. The award must be consistent with the wrong committed and the defendant's financial condition, and sufficient to punish the defendant and to act as an effective deterrent against the commission of such acts in the future. *See Micari v. Mann, supra.* Evaluation of the harm caused, and the extent to which "the wrong complained of is morally culpable", *Garrity v. Lyle Stuart, Inc.,* 40 N.Y.2d 354, 358, 386 N.Y.S.2d 831, 353 N.E.2d 793 (1976), is guided by the policy embodied in the prohibitions against employment discrimination generally, and sexual harassment in particular.

Anti-discrimination laws are designed to eliminate the misguided notion that fundamental rights and liberties of certain classes of people need not be respected. The resulting harm to society inheres in the potential creation or perpetuation of a subclass, thus branded inferior and denied the means to participate equally in the social order. *See* Exec.Law § 290; *Plyler v. Doe,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

The HRL is rooted in our philosophical tradition of individual liberty and the right of self-determination. Prohibitions against discrimination are designed to promote these concepts by encouraging respect for human dignity. Prohibitions against employment discrimination reflect a legislative recognition that these principles are threatened by an unequal ***162** allocation of power between employer and employee. [FN3] The misuse of that power by an employer laboring under the atavistic belief that certain groups may be relegated to a subordinate status perpetuates discrimination and reinforces barriers to opportunity.

> FN3. ("In a highly developed commercial and economic society, the use of private force is not the danger, but the uncontrolled use of coercive economic sanctions in private arrangements." *Garrity v. Lyle Stuart, Inc.,* 40 N.Y.2d at 359, 386 N.Y.S.2d 831, 353 N.E.2d 793.)

The coercive use of power by an employer to exact sexual compliance from an employee severely undermines the Human Rights Law guarantee of equal treatment. *Cf. Skinner v. Oklahoma,* 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967). Defendant's subjugation of plaintiff through the use of sexual coercion forced her to safeguard her employment by sacrificing her body. In so doing, she surrendered one of the most private and intimate aspects of her personal liberty. *See People v. Onofre,* 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936 (1980), *cert. den.,* 451 U.S. 987, 101 S.Ct. 2323, 68 L.Ed.2d 845 (1981). Unquestionably, "[s]exual harassment in the workplace is among the most offensive and demeaning torments an employee can undergo." *Crookston v. Brown,* 140 A.D.2d at 869, 528 N.Y.S.2d 908, quoting *Petties v. New York State Dept. of Mental Retardation and*

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Developmental Disabilities, 93 ****976** A.D.2d 960, 961, 463 N.Y.S.2d 284 (3rd Dept., 1983); *cf. People v. Liberta*, 64 N.Y.2d 152, 485 N.Y.S.2d 207, 474 N.E.2d 567 (1984), *cert. denied*, 471 U.S. 1020, 105 S.Ct. 2029, 85 L.Ed.2d 310 (1985). Unless eliminated, such conduct permits the employment structure to be permeated by attitudes and relationships which we have determined to be abhorrent. When female employees such as plaintiff are allowed to be confronted by sexual coercion on the job, women as a group are relegated to a subordinate status.

For these reasons, Guccione's request for sexual compliance, by itself, constitutes an act of sexual harassment, [FN4] without regard to plaintiff's response. Defendant's attempt at sexual ***163** extortion entailed precisely the type of insult and indignity that the statute is designed to eradicate. (See fn. 2, *supra)*. Forcing plaintiff, because she is female, to choose between her right to liberty (bodily and personal integrity) and property (the right to earn a living) is *per se* discriminatory. As employers who abused their dominant status by forcing a female employee to choose between compromising either her job or her personal dignity, defendants are guilty of attempting to reduce plaintiff, because of her sex, into a position of servitude.

> FN4. The statute removes sexual advances or solicitation by an employer from the traditional rule that "there is no harm in asking." *Mitran v. Williamson*, 21 Misc.2d 106, 107, 197 N.Y.S.2d 689 (Sup.Ct., Kings County, 1960), quoting 49 Harv.L.Rev. 1033, 1055. Between strangers, it may be true that "[m]ere words cannot amount to an assault," *Prince v. Ridge*, 32 Misc. 666, 667, 66 N.Y.S. 454 (Sup.Ct., Queens County, 1900), and even if they did, not all assaults give rise to damages to compensate for any "insult and indignity" and mental suffering caused. *Id.* Under the HRL, by contrast, if an employer uses his or her status "to induce [an employee] to grant him the favor of sexual intercourse with her," he is guilty of sexual discrimination and is liable for compensatory damages for the mental suffering caused. *Id.*

In this case, defendants' attempt at sexual extortion or coercion was successful. *See also Meritor Savings Bank v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). Defendant, by requiring plaintiff to participate, over her protestations, in sexual relationships with the salesman and the financial advisor, engaged in conduct that was reprehensible. *Cf. Micari v. Mann, supra.* It was aggravated by his insistence that plaintiff maintain one of the relationships for a year and a half, under his direct supervision. Defendant's ability to coerce plaintiff, her vulnerability to his dominating influence as her employer, and the nature of the behavior that he required, make the imposition of substantial punitive damages even more important.

[10] The offensiveness of defendants' conduct is not mitigated by the fact that plaintiff's job as a model and actress for Penthouse involved, in part, the commercial exploitation of her physical appearance. Sexual slavery was not a part of her job description. The fact that plaintiff accepted employment which exploited her sexuality does not constitute a waiver of her right to be free from sexual harassment in the workplace. *Cf. State Division of Human Rights v. New York State Department of Correctional Services*, 61 A.D.2d 25, 28-29, 401 N.Y.S.2d 619 (4th Dept., 1978); *People v. Liberta*, 64 N.Y.2d at 163-164, 485 N.Y.S.2d 207, 474 N.E.2d 567. Indeed, the purpose of the statute is to vest individuals with the power to decide for themselves whether or not to accept a particular job, even if it carries risks, *see* 61 A.D.2d at 28, 401 N.Y.S.2d 619, and the right to maintain that job as long as they perform the duties for which they were hired. Protections against sexual harassment are arguably more necessary in a workplace permeated by conceptions of women as sex objects. When there is a significant potential for discriminatory abuse of power by an employer, the need for an effective deterrent to enforce public policy and protect employees is even greater.

[11] To insure that the size of a damages award is reasonable as punishment and effective as a deterrent, a final inquiry ***164** must be made concerning the net worth of each defendant. *See Rupert v. Sellers*, 48 A.D.2d 265, 368 N.Y.S.2d 904 (4th Dept., 1975). Such an inquiry is generally improper because "the theory of our government, and a cardinal principle of our jurisprudence, [****977** provides] that the rich and poor stand alike in courts of justice...." *Laidlaw v. Sage*, 158 N.Y. 73, 103, 52 N.E. 679 (1899). This situation is the exception that proves and enforces that rule. The relative wealth of the defendants must be considered in fixing punitive damages, because

> [i]f the purpose of punitive damages is to punish and to act as a deterrent ... [u]nless [they are] of sufficient substance to "smart," the offender in

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> effect purchases a right to [harm] another for a price which may have little or no effect upon him. Indeed, in such a situation a defendant, instead of being deterred from repetition of his offense, may be encouraged to renew his assault.

Reynolds v. Pegler, 123 F.Supp. 36, 41-42 (S.D.N.Y., 1954), *aff'd*, 223 F.2d 429 (2nd Cir., 1955), *cert. denied*, 350 U.S. 846, 76 S.Ct. 80, 100 L.Ed. 754 (1955). Failure to compute punitive damages using a relative measurement, based on the subjective financial positions of the defendants, would contravene the basic tenet that "neither the wealth of the [rich] nor the poverty of the [poor should] be permitted to affect the administration of the law," *Laidlaw v. Sage*, *supra*, at 103, 52 N.E. 679, for it would permit the wealthy to do wrong and evade the "pinch" that would be felt by those with fewer assets who had committed a similar offense. *See Batavia Lodge*, 35 N.Y.2d at 147, 359 N.Y.S.2d 25, 316 N.E.2d 318 (damages awarded under the HRL should be reasonable "under the circumstances"); *Laurie Marie M. v. Jeffrey T.M.*, 159 A.D.2d at 61, 559 N.Y.S.2d 336 (punitive damages award excessive under the circumstances in the absence of evidence to show that defendant "is a wealthy man").

The parties have stipulated, for purposes of this action, that defendant Penthouse International possesses assets with a market value of $200 million, and that defendant Guccione's net worth is $150 million. These figures supply the subjective framework within which an appropriate award must be measured.

After considering the nature of the offense and the enormous wealth of defendants, it would be inappropriate to assess punitive damages that are not significant. Only a substantial award will have the effect of punishing the defendants and vindicating the rights of the community.

Conduct of the sort committed by defendants represents the quintessential violation of our constitutionally-based relational ***165** norms of equality. Defendants used the plaintiff in furtherance of their business as if she were property owned by them. Although the plaintiff's employment enabled the defendants indirectly to profit from her physical appearance and acting abilities, it did not render her a commodity to be leased, sold, traded or exploited because of her womanhood. Defendants' conduct is punishable as more than simply a violation of plaintiff's job-related property rights. It represents a flagrant abuse of power, violating plaintiff's civil rights and denigrating women as a class.

Accordingly, plaintiff is awarded four million ($4,000,000) dollars in punitive damages.

563 N.Y.S.2d 968, 149 Misc.2d 150, 59 Fair Empl.Prac.Cas. (BNA) 1085, 55 Empl. Prac. Dec. P 40,457

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