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October 30, 2014

Maria Torres-Springer
Commissioner
Department of Small Business Services
110 William Street, 8th Floor
New York, NY 10038

RE: Resolution #: 2014/801C-30 Determination Pursuant to the Audit and Analysis of the Department of Small Business Services' Discrimination Complaint and Investigations Procedure from January 1, 2012 to December 31, 2013.

Dear Commissioner Torres-Springer:

On behalf of the Equal Employment Practices Commission (EEPC), I want to thank the Department of Small Business Services for the September 29, 2014 informal response to our October 15, 2013 Preliminary Determination, in the form of an e-mail on behalf EEO Officer Nancy Gannie, regarding the referenced audit and analysis. Consistent with the powers and duties of agency heads, set forth in New York City Charter Chapter 35, this Commission requires the agency head to issue the response to the Determination to report the steps the agency has taken, or will take, to implement the corrective actions.

As indicated in our Preliminary Determination, this Commission has adopted *Uniform Standards for EEPC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for municipal government employees and job applicants.

¹ Founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; New York City Human Rights Law (NYC Administrative Code, §§8-107.1(a) and 8-107.13(d)); New York State Civil Service Law §55-a; Equal Employment Opportunity Commission's Instructions to Federal Agencies for EEO, Management Directive 715; Uniform Guidelines on Employee Selection Procedures (29 CFR §§1607.3 - 1607.7) and the equal employment opportunity requirements of the New York City Charter.



Our findings and required corrective actions are based on this Commission's audit methodology which includes collection and analysis of the documents, records and data the agency provides in response to the *EEPC Document and Information Request Form*; responses to the *EEPC Interview Questionnaires* for EEO professionals and others involved in EEO program administration; responses to the *EEPC Employee Survey* and the *EEPC Supervisor/Manager Survey*; and, if applicable, review of the agency's *Annual EEO Plans* and *Quarterly EEO Reports* and analysis of workforce and utilization data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted, when appropriate.

After reviewing the response, our Determination is as follows:

Agree

Regarding your responses² to the following EEPC required corrective actions, we *Agree* based on documentation that was attached to your reply.

Corrective Action #1

In addition to the aforementioned, serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response: SBS has amended its complaint procedures to include the following language: "The individual(s) accused of discrimination (respondent) will be served with a notice of the complaint which will include notification of the respondent's right to respond to the allegations. The respondent has the right to respond in writing to the allegations in the complaint at any time after being served with a copy of the notice of the complaint. A copy of the notice of complaint will be maintained in the complaint file."

EEPC Response: The EEPC accepts the agency's response as documentation that corrective action #1 has been implemented.

Corrective Action #2

Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.

Agency Response: SBS has amended its complaint procedures to include the following language: "A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. Withdrawal of a complaint must be made or confirmed in writing. Written confirmation will be issued when a complaint is withdrawn and a copy of this confirmation will be maintained in the complaint file." In some instances, the agency EEO

² Excerpts are italicized; page numbers are provided.



Officer will find it appropriate to end the investigation when the complaint is withdrawn. Prior to ending the investigation, the EEO Officer must determine whether the agency should take corrective action to address inappropriate conduct. If the EEO Officer determines that corrective action is required, it may be necessary for the EEO Officer to continue the investigation or recommend action to remedy inappropriate behavior.

EEPC Response: The EEPC accepts the agency's response as documentation that corrective action #2 has been implemented.

Corrective Action #3

In addition to the aforementioned, serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response: *SBS complaint procedure has been amended to include the following language "The EEO Officer will submit a confidential written report of the complaint investigation to the agency head within 90 days of the date the discrimination complaint was filed. If the confidential report cannot be issued within 90 days, a note shall be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing."*

EEPC Response: The EEPC accepts the agency's response as documentation that corrective action #3 has been implemented.

At the EEPC's request pursuant to Section 815.a.(15) of the New York City Charter, the SBS submitted a copy of the agency head's memorandum to staff dated October 16, 2014, which outlined the corrective actions implemented in response to the EEPC's audit and reiterated commitment to the agency's EEO Program.

Conclusion

The Department of Small Business Services has implemented the required corrective actions this Commission deemed necessary in its Discrimination Complaint and Investigation Procedures and therefore, no corrective action is required at this time.

If no corrective actions are remaining: Your agency is exempt from the aforementioned monitoring period. However, as a last step, this Commission requires a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit/analysis and re-emphasizes commitment to the EEO program. This will be



considered your agency's final action. Upon receipt of the memo, a *Determination of Compliance* will be issued.

If corrective actions are remaining: Your agency's response should indicate (with attached documentation) what steps your agency has taken, or will take, to implement the corrective actions. Upon your agency's completion of the final corrective action, and tender of the final memorandum, a *Determination of Compliance* will be issued.

If there are further questions regarding this Determination or the compliance process, please have the Principal EEO Professional call Judith Garcia Quiñonez, Deputy Director/ Agency Counsel at 212-615-8939.

Thank you and your staff for your continued cooperation.

Sincerely,

A handwritten signature in black ink that reads "Elaine S. Reiss". The signature is written in a cursive, flowing style.

Elaine S. Reiss, Esq.
Commissioner

c: Nancy Gannie, Principal EEO Professional
Charise L. Hendricks, PHR, EEPC Executive Director
Judith Garcia Quiñonez, EEPC Deputy Director/Agency Counsel