STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

December 8, 2015

CHRO No. 1120392 - Commission on Human Rights and Opportunities, ex rel., Andrew Schopick, Complainant v. Nutmeg Securities LLC, Respondent

CHRO No. 1120439 - Commission on Human Rights and Opportunities, ex rel., Andrew Schopick, Complainant v. Fieldpoint Private Bank & Trust, Respondent

CHRO No. 1120440 - Commission on Human Rights and Opportunities, ex rel., Andrew Schopick, Complainant v. Mathew Rochlin, Respondent

Memorandum of Decision

I. Procedural Background

On May 9, 2011, Andrew Schopick (the "complainant" or "Schopick") filed an affidavit of illegal discriminatory practice ("affidavit" or "complaint") with the Commission on Human Rights and Opportunities ("CHRO"). The CHRO designated this complaint no. 1120392. The cover sheet of the complaint listed three separate respondents – (1) Nutmeg Securities, LLC ("Nutmeg") (2) Matthew Rochlin ("Rochlin"), and (3) Fieldpoint Private Bank & Trust ("Fieldpoint"). On June 20, 2011, the complainant filed the identical affidavit with the CHRO two more times, naming the same three respondents and restating all of the same allegations. These latter complaints were designated CHRO no. 1120439 and no. 1120440, respectively. The cover sheet for each of the affidavits were identical and, in effect, claimed that the three respondents had discriminated against the complainant on the basis of his age in violation of section 46a-60(a)(1), retaliated against the complainant (46a-60(a)(4)), and aided and abetted discriminatory actions (section 46a-60(a)(5)).[1]

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[1] Section 46a-60(a), in relevant part states,

> It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness; ... (4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or

On March 20, 2014, a CHRO human right representative, for each of the three affidavits, certified that "after preliminary investigation, I determined that there was reasonable cause for believing that unfair practices have been committed as alleged in this complaint." At this time, on the certification form, the CHRO indicated that the respondent in case no. 1120392 was Nutmeg, Inc.; in case no. 1120439 was Fieldpoint; and in case no. 1120440 was Rochlin. On March 20, 2014, the CHRO sent the three affidavits to the office of public hearings ("OPH"), and the cases were assigned to human rights referee Alvin R. Wilson, Jr.

On April 11, 2014, a notice of contested case proceeding and hearing conference was issued for each of the three affidavits. The initial hearing conference was convened on May 15, 2014. The complainant was ordered to file an amended complaint in each of the cases to clarify which alleged facts supported what statutory violation by which of the three distinct respondents. On June 16, 2014, the complainant filed amended complaints that, once again, contained identical language for each of the three distinct respondents. All statutory and procedural prerequisites having been satisfied, the complaint is properly before this tribunal for hearing and decision.

The complainant was represented by attorney Scott Lucas. The respondent was represented by attorney Robert Hinton. The CHRO was represented by commission counsel Kimberly Jacobsen. The public hearing occurred on July 7, 8, and 9, 2015. On September 8, 2015, complainant's counsel and commission counsel both submitted post-trial briefs.[2] The complainant's brief contained proposed findings of fact, with citations to the record. On November 13, 2015, respondent's counsel submitted his post-trial brief. On November 25, 2015, complainant's counsel filed a post-trial reply brief noting, inter alia, that the respondent's brief did not include citations to the hearing transcript or exhibits introduced during the public hearing. Thereafter, the record was closed.

Upon review of the complainant's and the commission' respective post-hearing briefs, it appears that the issues to be resolved are –

(1) Whether Nutmeg Securities, LLC, discriminated against the complainant on the bases of age, in violation of section 46a-60(a)(1);

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testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84; (5) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so....

[2] The commission brief deferred to complainant's counsel to addressed the facts at issue in the case and focused on the legal standards regarding a violation of section 46a-60(a)(4), section 46a-60(a)(5), burden of proof regarding a 46a-60(a)(1) age discrimination claim, and the assessment of "stray remarks" as evidence of discrimination.

(2) Whether Nutmeg Securities, LLC, retaliated against the complainant, in violation of section 46a-60(a)(4);
(3) Whether Matthew Rochlin, in his individual capacity (as opposed to his role as President of Nutmeg), aided and abetted Nutmeg in discriminating against the complainant on the basis of age in violation of section 46a-60(a)(5);
(4) Whether Rochlin, in his individual capacity, aided and abetted any alleged retaliatory conduct by Nutmeg, in violation of section 46a-60(a)(5);
(5) Whether Fieldpoint Private Bank and Trust aided and abetted Nutmeg in discriminating against the complainant on the basis of age in violation of section 46a-60(a)(5);
(6) Whether Fieldpoint Private Bank and Trust aided and abetted any alleged retaliatory conduct by Nutmeg, in violation of section 46a-60(a)(5); and
(7) Whether Fieldpoint Private Bank and Trust is liable for any purported violations of Nutmeg as a successor in interest.

II. Findings of Fact[3]

Based upon a thorough review of the testimony and exhibits presented during the public hearing, and my assessment of the credibility of the witnesses, the following facts are found.

1. During his 20-year career with Nutmeg as a broker, the complainant's compensation was based entirely upon commissions that he generated when his clients purchased securities. He never received a salary from Nutmeg. The complainant and the respondent had an agreement that after deducting certain trade clearing costs, charge

[3] The complainant's post-trial reply brief, dated November 24, 2015, states that "respondents filed a Post-Trial Brief that fails to address the salient points raised in Complainant's September 8, 2015 Post-Trial Brief, which complainant supported by full citations to the record. Rather, respondents fail to include in their Post-Trial Brief any references to the trial testimony whatsoever, or any citations to a single trial exhibit." See C-reply brief 1. Complainant's counsel then discusses a number of purported flaws with arguments contained in Respondent's Post-Trial Brief.

The undersigned, prior to receiving the Complainant's Post-Trial Reply brief, made many of the same observations. Furthermore, I observed that both parties, in their respective post-trial briefs, assert that there is evidence in the record to support certain positions that I am unable to confirm. This is not unique to this case; many motions and brief submitted for my review suffer similar deficiencies.

In any proceeding, regardless of how a party characterizes the evidence or the law, my responsibility as the presiding officer is to examine the record created by counsel for reliable evidence that can support reasonable factual determinations. This is required for the decision to survive the appellate review afforded to the Commission on Human Rights and Opportunities, complainants, and respondents pursuant to the Connecticut Uniform Administrative Procedures Act and section 46a-94a. (See also, e.g., Ayantola v. Board of Trustees of Technical Colleges, 116 Conn. App. 531, 540, discussing the "clearly erroneous" standard of review.)

backs and write-offs, the net commission proceeds generated by the complainant would be split evenly -- half going to the complainant and half to the respondent.

2. After the monthly commission split was determined, Nutmeg would then withhold federal and state taxes, social security, medicare; and make deductions for 401k deposits and health and dental coverage. The complainant would receive a check for the resulting net balance monthly. (See payroll information for the complainant. R-22 (2008), R-23 (2009), and R-24 (2010).)

3. Although Schopick had nearly 20 profitable years and generated hundreds of thousands of dollars in commission revenues for Nutmeg, his commissions suffered a drastic decline in 2010, totaling approximately $44,350. The complainant received monthly notice and payment for his effort, and, therefore was knew his production was down substantially. Typically, he received a check from Nutmeg each month. For example, in 2010, there were seven months (March, April, July, September, October, November, and December) when his 50% share of his net commissions was so low that his net pay after deductions and withholdings appears to have been zero dollars. See R-24.

4. In 2010, Nutmeg received no more than $22,000 to cover costs that it incurred in connection with Schopick's employment.[4] In addition to the complainant's office, which cost Nutmeg approximately $800/month, Nutmeg also paid for Schopick's market data subscription, which cost approximately $1,500/month, as well as his $2,000 annual registration fees.

5. Observing that Schopick's commission revenues had fallen precipitously, Rochlin had several discussions with the complainant to determine whether the complainant could rebuild his business. Rochlin suggested that Schopick make cold calls, but the complainant rejected the idea. Rochlin also recommended that the complainant call hedge funds to solicit business. During one of these conversations, Schopick indicated that he had plenty of money and did not see much opportunity in the markets. Rochlin stated that perhaps it was time for the complainant to consider retiring. Rochlin and Schopick also discussed the possibility of the complainant changing his business model from commission-based to a fee-based financial advisor. Rochlin created no written record of any of the conversations that he had with the complainant about his decline in commissions and plans to improve his business results.

[4] Although respondent's counsel placed into evidence that appears to contain the monthly figures that constituted the commission revenue Nutmeg actually received from the complainant in 2010, no witness for the respondent verified the actual total; it appears to be approximately $18,150. See R-25.

6. Historically, the respondent Nutmeg covered certain costs associated with the complainant's activities as a broker, including sales data subscriptions, office space, travel, and cell phone. In November 2005, Nutmeg stopped reimbursing the complainant travel expenses. At some point in late 2010, Rochlin, aware that the complainant was not generating sufficient commission revenue to justify Nutmeg paying for costs associated with Shopick's employment, stopped paying for the complainant's cell phone.

7. In contrast to Schopick, the majority of the brokers/financial planners affiliated with Nutmeg (approximately 32 in 2010 and 2011), were independent contractors for whom Nutmeg paid no expenses. These independent financial planners paid, on average, approximately 20-25% of their commission revenue to Nutmeg. The independent financial planners received no compensation or benefits from Nutmeg. In 2010, these independent brokers generated approximately $250,000 in revenue for Nutmeg – approximately $8,000 per broker.

8. The complainant had a unique business arrangement with Nutmeg. In 2010-2011 he was the only broker given an office in Nutmeg's facility. In 2011, Schopick was one of only two brokers classified as a W-2 employee.[5] The independent broker/financial planners received Form 1099's, maintained their own offices, and were responsible for their expenses.

9. After Nutmeg sold its institutional trading business to Williams Capital in 2009, its remaining business was unprofitable. Nutmeg was not generating sufficient commission revenues from its affiliated independent brokers and from the complainant, to sustain what remained of its business, i.e., approximately seven operations (i.e., non-broker) salaried W-2 employees.

10. Sometime in the fall of 2010, Rochlin began discussions with Fieldpoint to purchase Nutmeg. Fieldpoint wanted to acquire the portion of Nutmeg's business -- conducted by Nutmeg's non-broker personnel -- to expand the types of services it could provide its own clients. Rochlin dealt primarily with Kevin O'Hanlon, at Fieldpoint; Rochlin did not have discussions with Fieldpoint's President and CEO, Robert Matthews about the proposed acquisition. After conclusion of the contemplated deal, Fieldpoint intended

[5] In 2011, Hans Kummerfeld was the only other broker who was categorized as a W-2 employee. He began assuming duties in Nutmeg's compliance department after Marissa Santangelo, the head of the compliance department, was injured in an automobile accident, and was unable to perform all of her job responsibilities. Santangelo stopped working for Nutmeg at the end of 2007. In late 2010-early 2011 he stopped working as a broker and joined Nutmeg's compliance department fulltime.

to, and did in fact, sell the Nutmeg assets comprised of the commission revenues it received from its affiliated brokers. Fieldpoint did not want Nutmeg's commission revenue business. Fieldpoint, at no time, intended to retain the commission business that Nutmeg had or any of its affiliated brokers.

11. In late 2010 and early 2011, Rochlin informed his core employees, including Schopick (who worked in the Nutmeg office), that Fieldpoint was interested in acquiring Nutmeg. Rochlin asked them not to discuss the deal with anyone. Rochlin told his employees about the proposed deal because representatives of Fieldpoint would be observed conducting due diligence in Nutmeg's office during business hours. Rochlin, and O'Hanlon agreed not to discuss the possibility of this acquisition with any of Nutmeg's independent brokers because they could move their business to another firm at any time if they desired. Such an exodus would result in less commission revenue for Nutmeg, and reduce the value of one of its assets. The complainant was the only broker who was aware of the deal.

12. In January 2010, Rochlin and Schopick had a conversation about the Fieldpoint acquisition. On March 15, 2011, approximately eight weeks later, the complainant wrote a note to Rochlin which stated that, during the January 2010 meeting, Rochlin said Schopick was "old school" and would not be retained by Fieldpoint once the deal was finalized. Rochlin perceived the note to contain a threat of litigation. On the note, the complainant indicated that a copy had been sent by mail to Bob Matthews, President, Fieldpoint Private Bank & Trust.[6]

13. Rochlin admitted using the term "old school" during the January meeting. Rochlin did not say that the complainant would not be retained by Fieldpoint after the acquisition because he was "old school." Rochlin used the term "old school" to describe the way the complainant conducted his business at the firm. Rochlin noted, for example, that Schopick (1) gave written orders to buy and sell stocks to the operations department instead of using the firms trading system, (2) maintained handwritten blotters of his clients' trading positions, (3) refused Nutmeg's repeated offers to train him on its computer systems, (4) submitted a written complaint to the compliance department because it only provided a required continuing education course on-line, and (5) used a typewriter. There is no other evidence that Rochlin ever used any language that reflected an aged-based animus.

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[6] The evidence offered at the public hearing does not establish that Matthews ever received this letter. The evidence offered at the public hearing does not establish that O'Hanlon received a copy of this note prior to the complainant filing his affidavits with the CHRO, in May and June 2011, although Rochlin informed him of the complainant's accusations.

14. Despite the fact that the complainant admitted that there was a significant decline in his commission revenues for 2010, according to the complainant's March 15, 2011 note, he believed that nearly twenty years of dedicated service (including loaning money to the firm and generating substantial commission revenues) entitled him to greater consideration for future employment in connection with the pending transaction with Fieldpoint than he was being shown by Rochlin. Schopick believed he remained an asset to Nutmeg, despite the fact that he generated substantially lower commission revenues in 2010, had no plan to improve his production, and as a result, had become a financial liability to Nutmeg.

15. On March 16, 2011, after receiving the complainant's March 15, 2011 note, Rochlin went to Schopick and asked the complainant to meet in Rochlin's office to discuss the note. Although the complainant testified that Rochlin raced into his office, yelled and screamed at the top of his lungs (so that the whole office heard it), and was very angry at this meeting, the complainant's note memorializing the March 16, 2011 meeting does not reflect such behavior. The complainant testified he wrote the note shortly after noon on March 16, 2011.

16. The complainant's note, memorializing the March 16, 2011 meeting states in full –

"Notes from impromptu meeting with Matt Rochlin shortly after noon on March 16, 2011 –

"Matt stopped by my office and asked if he could talk to me in his office after seeing my email. This is the first conversation Matt has had with me since I requested a meeting with him in late Jan. about the firm's plan to merge its business, and what the implications were for me.

"I was asked if I had sent a copy of the email to Bob Matthews at Fieldpoint, which I confirmed. Matt explained this would force his hand in relation to my continued employment. He asked me what I wanted to do and if I had contacted any other firms for employment.

"Matt suggested I could retire, resign or he would be forced to give me a termination notice for lack of production. And I was pressured to reveal my plans within the next two weeks. I told Matt I have attempted discussions with other parties but that I had no alternative job offers or other professional plans yet.

"Matt emphasized I was now costing the firm money every month. (See attached.) (my monthly commission runs since last June [2010] show a cumulative net commission shortfall to date of $956.49 AFTER a 50% commission payout ratio and after pre-tax charges related to medical, dental, etc. plans.) Prior to this time period I was

consistently producing positive net commissions for the firm -- and this being over many years.

"General impression was that Matt clearly wants me out, but he has been reluctant to force the issue and he still seems to be reluctant to formally terminate me. I have not indicated any willingness to resign.

17. Rochlin was disappointed when he saw that the complainant had also addressed his March 15, 2011 message to Fieldpoint President Robert Matthews, because he previously had told the complainant that the deal was highly confidential and was not to be discussed with anybody outside or inside the firm. Rochlin believed that, despite the fact that the two had shared a mutually beneficial business relationship for about 20 years, the complainant breached the confidence and trust that Rochlin had in Schopick by sending the message to Matthews. Rochlin believed that the complainant was attempting to disrupt the deal being negotiated by Nutmeg and Fieldpoint. Rochlin also perceived the message to be a clear threat by Schopick to bring a lawsuit.

18. On March 25, 2011, Rochlin and Schopick had another discussion regarding the significant decline in the complainant's commission income in the past year. During this conversation, Rochlin told the complainant that he was being terminated for lack of production. Schopick asked Rochlin to provide him a letter of termination. Rochlin gave the complainant a letter, dated March 25, 2011, which stated, in pertinent part –

"As a follow-up to conversation today where we discussed the significant decline in your commission income over the past year, we regrettably will be terminating your full-time employment effective March 31, 2011. This decision was based on the fact that your commission revenues are not sufficient to cover the costs associated with maintaining your employment with the firm. In an effort to assist you and your clients during this transition period, we would consider offering you an independent contractor agreement. If this is of interest to you, please contact me."

19. The complainant's employment was terminated, effective March 31, 2011.

20. On or about April 5, 2011, Rochlin received a letter from the complainant's counsel, that stated in pertinent part, that Schopick's "termination ... appears to have been clearly prompted by his engagement in legally protected activity.... Your response was ... Mr. Schopick was not and would not be part of the sale or ongoing new operation with Fieldpoint due to the fact that he was 'old school' .... In response to your statements, Mr. Schopick submitted to you a letter dated March 15, 2011 protesting his exclusion and the ageist comments made by you.... As I am sure your counsel will inform you,

putting aside whether your exclusion of Mr. Schopick in the Fieldpoint discussions was on the basis of age as indicated by your comments to him, your termination of Mr. Schopick as a result of his protected activity is a clear violation of the anti-retaliations provisions of the Connecticut Fair Employment Practices Act. As a result, Nutmeg, and any successor in interest, will be subject to a claim for damages, including lost income and a punitive damages award, as well as for attorney's fees...." (Complainant's counsel sent two more letters, dated April 8, 2011 and April 11, 2011, in connection with settlement discussions.)

21. On April 19, 2011, Ms. Dale Brown, Office Manager for Nutmeg, at the direction of Rochlin, wrote a letter that memorialized her discovery of a two-page, double column list of pornographic websites in the office that the complainant had occupied. Nutmeg nor Rochlin possessed any evidence that the complainant had used his office computer or blackberry to view any pornographic websites.[7]

22. On May 3, 2011, Nutmeg, at the direction of Rochlin, filed two Form U5, Uniform Termination Notice for Securities Industry Registration, in connection with the termination of the complainant's employment. (U-5 forms are required to be filed with when a broker ends his affiliation with a firm.) In pertinent part, the first U5 filed stated that the explanation for the termination was "LACK OF PRODUCTION INVESTIGATION INTO INAPPROPRIATE CONDUCT." In pertinent part, the second U5 filed stated that the explanation for the termination was "REPRESENTATIVE IS TERMINATED FOR LACK OF PRODUCTION. SUBSEQUENT INVESTIGATION DISCLOSED EVIDENCE OF INAPPROPRIATE CONDUCT."

23. On May 9, 2011, the complainant filed an affidavit of illegal discriminatory practice with the CHRO, naming as respondents Nutmeg, Rochlin, and Fieldpoint.

24. On June 6, 2011, Rochlin, in his capacity of President of Nutmeg, sent the complainant a letter (C-4) that stated in pertinent part,

> "Please be aware that in connection with the termination of your registration[,] Nutmeg ... has begun an investigation to review whether you may have violated firm policy, regulatory policy, regulations, or laws while you were employed at Nutmeg. In the process of cleaning out your office we discovered a handwritten

[7] In late 2012, during the investigation of the affidavits filed by the complainant by the CHRO, Schopick disclosed that he had compiled the lists of websites as part of his research for potential investment opportunities related to the pornography industry. The complainant had not discussed this research with anyone at Nutmeg while he was employed. A version of the report he claimed to have been writing and background articles were entered into the record of this hearing as evidence.

list of approximately 150 Websites (Copy enclosed) that appear to involve pornography and what I can only assumed (sic) to be extremely inappropriate for viewing while on the Nutmeg business premises and clearly against firm policies. ... I would like to give you the opportunity to respond to these findings before Nutmeg takes any further action.... 1. Does this handwritten note belong to you? 2. Is the handwriting yours? 3. Did you ever use the Nutmeg computer to visit any of the sites on the list? ... Additionally, it has come to our attention that you have been participating on various Investor conference calls representing yourself as an analyst with Nutmeg Securities. As you, know and have been told in the past, you no longer hold the required licenses to act as an analyst and any representation to the contrary is potentially a violation of United States Securities and Exchange Commission ("SEC"), Financial Industry Regulation Authority ("FINRA"), Connecticut Banking Commissioner, and Nutmeg rules governing public disclosures. (Copies enclosed). ... As you are aware, Nutmeg is required under SEC, FINRA, and state regulations to disclose and report any violation of regulatory or firm policies by a registered person. In an effort to make sure we have all of the pertinent information before we determine what, if any, further actions are required, we request that you provide us with any explanation of the occurrences listed in above in the next 10 days."

25. Richard Salter was the IT manager at Nutmeg in 2011. Salter worked for Rochlin for over ten years, at Nutmeg and at Williams Capital. He stopped working for Rochlin in March 2015. After Rochlin informed the complainant that he was terminated, Schopick asked Salter to set up a computer that the complainant had purchased for his home. After the complainant "filed a lawsuit against the firm," Rochlin told Salter he should no longer help the complainant.

26. On July 7, 2015, shortly before Salter was to testify in this case, the complainant sat down next to Salter in the waiting area of the hearing room, showed him a note that, in effect, asked Salter to testify in this forum contrary to testimony Salter had given to the CHRO, in 2012, during the agency's investigation of this complaint. Schopick requested that Salter answer yes or no to his request. Salter responded in effect, what do you want me to do? The complainant responded, tell the truth. Salter felt threatened by the complainant; he feared that Schopick would sue him if he did not recant his earlier testimony.

27. That evening, at 9:09 p.m., Salter sent a text message to Rochlin, Brown, and Santangelo, who were scheduled to testify the next day. The text message read -

"Hey Everyone Just a Heads up. I believe Schopick will try to sue all of us after this case is over. Before my hearing started today Schopick approached me real quick with a note for me to read. It pretty much said retract my statement let Matt take the fall and I wont have to worry about any legal issues. I just think everyone should know how crazy this guy is. I cant afford a lawyer if he tries to Sue me for deformation of character. Which is the only thing he can sue on. To be honest I am pissed I am dragged into this."

R-50. Brown and Rochlin received the text message. Brown told Santangelo about the message when they drove to the public hearing on the morning of July 8, 2015, to testify in this proceeding. Salter wrote sent the text message because he was upset that Schopick asked him to rescind comments he previous made during the investigation by the CHRO.

28. On July 8, 2015, the complainant testified that when he approached Salter, "I had in my possession the transcript of his testimony with me ... What I said to him was, I shook his hand, said hi ... I said, Rick I want you to know that I'm very concerned about the testimony that you've given in the past.... I just told him, if you felt coerced in any way with respect to the testimony he gave [to the CHRO investigator] ... to just say so and tell the truth ... When I walked back with him, I shook his hand and said good luck. That was it." Tr. 509-510. The complainant testified that "He [Salter] didn't say anything ... You know what ... he did have a response ... His response to me was 'what do you want me to say,' and I said I can't tell you what to say." Tr. 511.

29. On July 9, 2015, Salter returned from Rhode Island to testify about the issues raised by his text message. He was sworn in again and testified in pertinent part, "So pretty much I was sitting there and Mr. Schopick came by real quickly, had a note. I can't tell you verbatim exactly what the note said, I could tell you what the message implied. Pretty much to rescind my testimony from the previous hearing. All would be forgotten and let Mr. Rochlin deal with this on his own. On the message it said, just answer yes or no. I replied, what would you like me to do? Mr. Schopick replied, just be honest and tell the truth. That's what I did on Tuesday. When I got home I texted Mr. Rochlin, Dale Brown, and Marissa Santangelo in my concern of that message. I felt it was kind of threatening. I didn't really understand the purpose of that message. I understand if I try to rescind that testimony that could be perjury and I wasn't going to self-incriminate myself so that's why I'm here today." Tr. 534. Salter testified that the note "was just a white piece of paper about the size of you palm, it was typewritten or computer written, it was a small message." Tr. 535.

III. Legal Standards

A. Age Discrimination - "But For" or "Motivating Factor" Standard

Age discrimination claims made pursuant to section 46a-60(a)(1) are reviewed under the familiar standard set forth in McDonnell-Douglas v. Green and its prodigy. Damages for a violation of this section are available pursuant to section 46a-86(a) and section 46a-86(b).

The respondent asserts that the "but for" test applies to age claims brought pursuant section 46a-60(a)(1) . The respondent bases its argument on the decision of the U.S. Supreme Court in Gross v. FBL Financial Services, Inc., 557 U.S. 167 (2009) (ADEA plaintiffs must prove "but for" causation because the ADEA requires a plaintiff to show an adverse action "because of" her age.")

Although Connecticut courts consider federal employment discrimination precedent to be persuasive authority, our state's courts have recognized that under certain circumstances, federal law defines the beginning, but not necessarily the end, of its inquiry. State v. CHRO, 211 Conn. 464, 470 (1989), quoting Evening Sentinel v. National Organization for Women, 168 Conn. 26, 34–35 n. 5, (1975). See also, Levy v. CHRO, 236 Conn. 96, 103 (1996) (In deciding whether section 46a-60 had been violated, the court stated that "[a]lthough this case is based solely on Connecticut law, we review federal precedent concerning employment discrimination for guidance in enforcing our own anti-discrimination statutes.") See also Vollemans v. Town of Wallingford, 103 Conn. App. 188, 199-200 (2007) aff'd, 289 Conn. 57 (2008) (In clarifying the nature of the filing period of section 46a-82(e), the court stated, "[w]hile often a source of great assistance and persuasive force, ... it is axiomatic that decisions of the United States Supreme Court are not binding on Connecticut courts tasked with interpreting our General Statutes. Rather, Connecticut is the final arbiter of its own laws.")(citations and internal quotations omitted).

No Connecticut court has interpreted section 46a-60(a)(1) to require "but for" causation to prove age discrimination. Therefore, this United Supreme Court's ruling in Gross, does not control this tribunal's consideration of complaints alleging violations of section 46a-60. See Dwyer v. Waterfront Enterprises, Inc., 2013 WL 2947907, *7 (Conn. Super. Ct. May 24, 2013) and Hasemann v. United Parcel Serv. of America, 2013 WL 696424, *12-13 (D. Conn. Feb 26, 2013). See Wagner, 2012 WL 669544 at *11-12.

B. Stray Remarks

"[T]he stray remarks of a decisionmaker, without more, cannot prove a claim of employment discrimination ...." Weichman v. Chubb & Son, 552 F.Supp.2d 271, 284 (D.Conn.2008) (quoting Abdu–Brisson v. Delta Air Lines, Inc., 239 F.3d 456, 468 (2d Cir.2001)).

However, "the court should not categorize a remark as 'stray' or 'not stray' and then disregard that remark if it falls under the 'stray' category." Weichman, 552 F.Supp.2d at 284 (citing Tomassi v. Insignia Fin. Group, Inc., 478 F.3d 111, 115–16 (2d Cir.2007)). "Instead, the court must consider all the evidence in its proper context.... [T]he more a remark evinces a discriminatory state of mind, and the closer the remark's relation to the allegedly discriminatory behavior, the more probative the remark will be." Id. Stray remarks combined with additional evidence of discrimination "give more of an ominous significance to remarks of ... decisionmaker." Hayes v. Compass Group USA, Inc., 343 F.Supp.2d 112, 120 (D.Conn. 2004)(Supervisor and regional vice president often described older managers to be old school).[8]

C. Retaliation

A claim under section 46a-60(a)(4) is analyzed under one of the numerous variants of the burden shifting framework originally set forth in McDonnell Douglas v. Green, 411 U.S. 792, 802-804 (1973). (See, e.g., Cosgrove v. Sears, Roebuck & Co., 9 F.3d 1033, 1038-39 (2d Cir. 1993), CHRO ex rel. Nobili v David E. Purdy & Company, LLC., et al., CHRO No. 0120389 (2004) and CHRO ex rel. Shea v. Spruance, et al., CHRO No. 9640243 (1999)). First, the complainant must satisfy the burden of proving her prima facie case.[9] Tomka v. Seiler Corp., 66 F.3d 1295, 1308 (2d Cir. 1995); Newtown v. Shell Oil Co., 52 F.Supp.2d 366, 373 (1999).

To establish a prima facie case of retaliation, the complainant must prove that (1) he participation in a statutorily protected activity; (2) the respondent was aware that the complainant participated in such activity; (3) an adverse employment action was taken by the respondent that disadvantaged the complainant; and (4) a causal connection existed between the participation in the protected activity and the adverse action. Reed v. A. W. Lawrence &

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[8] See also, Castelluccio v. Int'l Bus. Machines Corp., No. 3:09CV1145 TPS, 2014 WL 3696365, at *4 (D. Conn. July 23, 2014)(quoting Weichman); Tremalio v. Demand Shoes, LLC, No. 3:12-CV-00357 VLB, 2013 WL 5445258, at *10 (D. Conn. Sept. 30, 2013)(motion for summary judgment denied where complaint alleged decision maker stated numerous times he wanted, and subsequently hired, younger female sales staff). ; Sedelnik v. City of Bridgeport, 837 F. Supp. 12 (D. Conn. 2011) (motion for summary judgment denied where there is evidence of numerous discriminatory comments and substantially younger candidates were hired).

[9] Under the McDonnell Douglas framework, the Complainant's initial burden is not onerous. "Recognizing that 'the question facing triers of fact in discrimination cases is both sensitive and difficult,' and that '[t]here will seldom be 'eyewitness' testimony as to the employer's mental process,' ..., the Courts of Appeals ... have employed some variant of the framework articulated in McDonnell Douglas to analyze [discrimination] claims that are based primarily on circumstantial evidence." Reeves at 141. "McDonnell Douglas and subsequent decisions have 'established an allocation of the burden of production and an order for the presentation of proof in ... discriminatory-treatment cases.' St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993)." Reeves at 142.

Co., Inc., 95 F.3d 1170, 1178; Manoharan v. Columbia University College of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988); Ayantola v Bd. Of Trustees of Technical Colleges, 116 Conn. App. 531, 536 (2009); Nelson v City of Bridgeport, 2012 WL 4902812 at 13 (Conn. Super.) and CHRO ex rel. Malizia v. Thames Talent, Ltd., CHRO No. 9820039 (2000). This burden is not onerous. Ann Howard's Apricots Restaurant, Inc. v CHRO, 273 Conn. 209, 225 (1991)). "Adverse actions for purposes of the antiretaliation provisions include denial of promotion ... threats, reprimands, negative evaluations, harassment, or other adverse treatment." (Citation omitted; internal quotation marks omitted.) Cullen v. Southington Oral & Maxillofacial Surgeons, P.C., No. HHDCV6037579S, 2014 WL 5571580, at *6 (Conn. Super. Ct. Sept. 30, 2014) (quoting *Hebrew Home & Hospital, Inc. v. Brewer,* 92 Conn.App. 762, 770–71, 886 A.2d 1248 (2005)).[10]

"A causal connection can be established indirectly by showing that the protected activity was followed close in time by adverse action; see, e.g., Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir.1996); but the inquiry into whether temporal proximity establishes causation is factual in nature. There is no 'bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between [protected activity] and an allegedly retaliatory action.' Gorman–Bakos v. Cornell Cooperative Extension Assn. of Schenectady County, 252 F.3d 545, 554 (2d Cir.2001). The trier of fact, using the evidence at its disposal and considering the unique circumstances of each case, is in the best position to make an individualized determination of whether the temporal relationship between an employee's protected activity and an adverse action is causally significant. Likewise, the trier of fact is in the best position to determine whether the employer acted with a retaliatory animus." Ayantola v. Bd. of Trustees of Tech. Colleges, 116 Conn. App. 531, 539-40, 976 A.2d 784, 790 (2009).

Once the complainant satisfies his prima facie burden, a rebuttable presumption of retaliation is established, and the respondent must articulate a legitimate, non-discriminatory reason for taking the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Tomka, 66 F.3d at 1308; Newtown, 52 F.Supp.2d at 373. The respondent's burden at this stage is one of production, not persuasion; it does not involve an assessment of credibility. If the respondent's satisfies this burden, the complainant must to prove that the articulated reason was false and a pretext for retaliation. The complainant must prove that respondent's action was "prompted by an impermissible motive." Tomka, 66 F.3d at 1308; Newtown, 52 F.Supp.2d at 374. The ultimate burden of persuasion remains at all times with the complainant. Sumner

[10] The complainant is not required to establish that the conduct he opposed actually violated a state law prohibiting employment discrimination to prove that she was engaged in a protected activity. He must, however, possess a "good faith reasonable belief that the underlying challenged actions of the employer [or other person] violated the law." Reed, 95 F.3d at 1178 (citing Manoharan 842 F.2d at 593).

v. US Postal Service, 899 F.2d 203, 209 (2d Cir., 1990) (citing Texas Dept. of Community Affairs v. Burdine, 450 U.S.248, 253 (1981)).

In a retaliation case, liability depends on whether the adverse action was motivated by retaliation. Gordon v. New York City Bd. Of Educ., 232 F.3d 111, 116 (2d Cir. 2000)("[W]hen a retaliation case goes to the jury, [its] task is simply to determine the ultimate question of whether the plaintiff met her 'burden of proving that the defendant was motivated by prohibited [retaliation].'")(citations omitted). The ultimate question is whether the complainant has proven, by a preponderance of the evidence, that the respondent intentionally retaliated against him because he engaged in protected activity. Cosgrove, 9 F.3d at 1039. Sumner, 899 F.2d at 209 (citations omitted).

If the complainant successfully proves retaliation in violation of section 46a-60(a)(4), the next inquiry is whether there is evidence that the complainant is entitled to any of the damages that a human rights referee is authorized to award pursuant to section 46a-86(a) and/or 46a-86(b) for a violation of any of the subsections of section 46a-60.

IV. Analysis

A. Whether Nutmeg Securities, LLC, discriminated against the complainant on the basis of age, in violation of section 46a-60(a)(1)

The following analysis assumes arguendo that the complainant has satisfied his burden to prove, by a preponderance of the evidence, the first prong of the McDonnell-Douglas burden shifting analysis. The undersigned also concludes that the respondent has met its burden of production regarding its legitimate business reason for terminating the complainant, i.e., Schopick had become a financial liability because the commission revenue that he provided to Nutmeg in 2010 was less than the costs incurred by the respondent to employ him. The presumption that is created by the establishment of the prima facie case is, therefore, rebutted.

The complainant must now demonstrate sufficient evidence to establish that the respondent acted with a discriminatory animus based on age. The complainant can establish this with sufficient direct evidence to support such a finding. The complainant, in the alternative, can establish this by showing that the respondent's reason for terminating him was false, thus creating an inference of discrimination.

In this case, the complainant has offered no evidence to establish that the reason given by the respondent for terminating Schopick, his low production, was a pretext. The evidence offered to prove discriminatory animus based on age included (1) Rochlin's one-time use of the

term "old school" to describe the complainant; (2) the complainant's assertion that he "was the oldest employee at Nutmeg[11] when Rochlin entered into negotiations with Fieldpoint for the sale of Nutmeg's membership interests in late 2010," C-brief 18; (3) "Rochlin urged Schopick to find employment outside of Nutmeg," C-brief 18; and (4) Nutmeg began for the first time to expressly deduct the cost of medical expenses for Schopick after a 50/50 split of the commissions; (5) "Schopick found himself being excluded from meetings concerning employment opportunities with Fieldpoint, Nutmeg's successor in interest. C-brief 18; (6) that many of the independent brokers had less that even $10,000 in commissions. C-brief 22; and (7) that Rochlin falsely claimed terminating Schopick would save Nutmeg money. C-brief 23. The complainant argues, "the falsity of Nutmeg's purported justification, along with the fact that it contradicts the evidence presented at trial is sufficient to support a finding of pretext." C-brief 22. I disagree.

The undersigned had carefully reviewed the totality of the evidence adduced during this hearing. The complainant has failed to point to any compelling "indicia of discrimination" attributable to Rochlin or Nutmeg.

First, the evidence clearly reveals that the complainant was not similarly situated to the independent brokers. Nutmeg was not responsible for paying any of those brokers' expenses, as it did for the complainant.

Second, although there is evidence that representatives of Fieldpoint were in Nutmeg's offices conducting due diligence in connection with the acquisition of the business, there is no evidence that any Nutmeg employees or the independent brokers were engaged in discussions directly with Fieldpoint to discuss future employment options. In fact, there is evidence that Rochlin and O'Hanlon agreed not to discuss the deal with the independent brokers, for fear they would take their accounts to another more secure firm. There is evidence that Fieldpoint intended to, and did, sell its interest in the independent brokers as soon as practical after the acquisition of Nutmeg.

Third, contrary to complainant's assertion, Nutmeg did not begin deducting the costs of his medical and dental benefits in late 2010 after a 50/50 commission split. The evidence

[11] Although no evidence was offered to substantiate that assertion, the lack of objection to Schopick's testimony on this point, permits a reasonable inference that he was, in fact, one of Nutmeg's oldest employees. (No evidence was offered regarding the ages of the independent brokers; however, this appears not to be relevant because the evidence adduced at the hearing establishes that those brokers are not similar situated to the complainant.)

reveals that Nutmeg had been making these deductions for the benefit of the complainant routinely throughout 2009 and 2010. It was nothing out of the ordinary.

Fourth, as discussed above, the evidence demonstrates that Schopick was not generating enough commission revenue to cover the costs associated with his employment. Rochlin convincing testified that (1) its expenses would have been reduced if Schopick became an independent broker Nutmeg would no longer be responsible for any of the complainant's expenses and (2) Nutmeg avoided having to acquire additional office space, at an additional cost, for two of its operations employees because Schopick's office space became available when his employment was terminated.

This leaves as the only evidence of discriminatory animus, the one-time use by Rochlin of the term "old school." On the record presented to this tribunal, I conclude that this is the quintessential stray remark. The complainant has failed to proffer any additional evidence to support a finding of age discrimination. The complainant, therefore, fails to establish that Nutmeg, through the actions of Rochlin, was motivated by a discriminatory animus based on age. The age discrimination claim is dismissed in its entirety.

B. <u>Whether Nutmeg Securities, LLC, terminated the complainant's employment in violation of section 46a-60(a)(4);</u>

The complainant argues, inter alia, that Nutmeg retaliated against him when Rochlin terminated Schopick's employment ten days after receiving the complainant's March 15, 2011 complaint that Rochlin had referred to Schopick as being "old school" in January 2011. Assuming arguendo that the complainant has satisfied his minimal burden to establish a prima facie case of retaliation, the burden shifts to the respondent to produce evidence of a legitimate reason for the adverse action that it has taken against the complainant. With respect to the allegation of retaliatory discharge, to rebut the complainant's prima facie case, the respondent offers low production by the complainant as its legitimate reason for the discharge, i.e., the same reason it offered to rebut the age discrimination claim.

As discussed above, the undersigned finds that the evidence supports the conclusion that the complainant had become a liability to Nutmeg during 2010 and the first three months of 2011 because Nutmeg's share of the complainant's net commission revenues failed to cover the costs that Nutmeg incurred to employ him. Although the record establishes that Rochlin met with the complainant, on March 25, 2011, within days of receiving the March 15, 2011 note, and informed him that he was to be terminated effective March 31, 2011, the complainant failed to present sufficient evidence to persuade this tribunal that the respondent's articulated reason for terminating the complainant (low production) was a

pretext. More importantly, the evidence does not support the conclusion that Nutmeg harbored a retaliatory animus because Schopick complained, on March 15, 2011, about being referred to as "old school" by Rochlin.

Some of the evidence offered also indicates that Rochlin was displeased with the complainant because he violated Rochlin's trust and confidence by sending a copy of the March 15, 2011 note to the President of Fieldpoint, Bob Matthews. Although it is reasonable to infer that this perceived breach of trust and confidence, in combination with the low production, also provoked Rochlin to terminate the complainant's employment, it does not compel the conclusion that Rochlin terminated the complainant's employment because the March 15, 2011 note raised the issue of age discrimination and was perceived by Rochlin to be a threat of litigation.

For the foregoing reasons, the claim that Nutmeg terminated the complainant in retaliation for him complaining to Rochlin (and allegedly Matthews) about age discrimination on or about March 15, 2011, in violation of section 46a-60(a)(4), is dismissed.

C. <u>Whether Nutmeg Securities, LLC, filed false information on a Form U-5 in violation of section 46a-60(a)(4);</u>

The complainant also argues that Nutmeg and Rochlin retaliated against him when Rochlin filed two Form U-5s, on May 3, 2011, that included as a reason for termination, the following language -- (1) "INVESTIGATION INTO INAPPROPRIATE CONDUCT" and (2) "SUBSEQUENT INVESTIGATION DISCLOSED EVIDENCE OF INAPPROPRIATE CONDUCT." The complainant argues that this was done because his attorney sent a letter, on or about April 5, 2011, to Rochlin alleging that Schopick had been the victim of age discrimination and communicating a desire to resolve that matter without having to resort to litigation. More to the point, the complainant asserts that Rochlin include false information on the Form U-5 to retaliate against the complainant for threatening litigation.

Although Rochlin testified that he sought the advice of an attorney before including the disputed phrase on the U-5 forms, no evidence was proffered during the hearing to establish that federal, state, or financial industry regulators required Nutmeg to report as "inappropriate conduct" the discovery of a list of pornographic websites in the complainant's office. The complainant argues that respondent included this information on the U-5, filed May 3, 2011, in retaliation for Schopick threatening to file a lawsuit alleging that Nutmeg had discriminated against him based on his age. In fact, in April 2011, Rochlin and complainant's attorney (Lucas) had communicated on numerous occasions about Schopick's belief that he was the victim of age discrimination, including the possibility of a settlement.

Given the sequence of events, it is reasonable to infer that Rochlin included on the the language on the U-5 in retribution for Schopick asserting, through his attorney, his right to raise with the respondent his belief that he had been discriminated against on the basis of his age. I find, therefore, that by doing so, Nutmeg and Rochlin retaliated against the complainant in violation of section 46a-60(a)(4).

Having reached this conclusion, the question is what, if any, proof of damages available pursuant to section 46a-86(a) and/or 46a-86(b) were adduced at the hearing.[12] The complainant's post-trial brief does not address this question. Instead, the only argument it makes for damages assumes that the complainant was unlawfully terminated based on age discrimination or retaliation.[13]

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[12] The authority of a human rights referee to award damages for a violation of sections 46a-60(a)(4) and 46a-60(a)(5) are created by subsections (a) and (b) of § 46a-86. At the time that the complainant's affidavits of illegal discriminatory practices were filed with the CHRO, these damages provisions stated:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall state the presiding officer's findings of fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter...

(b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer may order the hiring or reinstatement of employees, with or without back pay, or restoration to membership in any respondent labor organization, provided, liability for back pay shall not accrue from a date more than two years prior to the filing or issuance of the complaint and, provided further, interim earnings, including unemployment compensation and welfare assistance or amounts which could have been earned with reasonable diligence on the part of the person to whom back pay is awarded shall be deducted from the amount of back pay to which such person is otherwise entitled. The amount of any such deduction for interim unemployment compensation or welfare assistance shall be paid by the respondent to the commission which shall transfer such amount to the appropriate state or local agency.

(Note - These sections were modified during the 2015 session of the Connecticut General Assembly. See Section 78 of Public Act No. 15-5 of the June 2015 Special Session -- An Act Implementing Provisions of the State Budget for the Biennium Ending June 30, 2017, concerning General Government, Education, Health and Human Services and Bonds of the State.)

[13] In complainant's post-trial brief, p. 2, footnote 1, states, "This tribunal has indicated that back pay is the only relief available under the current state of the law. (See discussion, infra, at pp. 45-46.)" On pp. 45-46 of complainant's post-trial brief, counsel notes that this tribunal stated it is constrained by the

Noting that by concluding that Nutmeg's decision to terminate the complainant's employment was neither discriminatory nor retaliatory in violation of section 46a-60, any actions taken by Nutmeg after it legitimately had terminated the complainant's employment were against a person who was not an employee. In such a circumstance, damages are not appropriately estimated based upon the evidence of the complainant's earnings while a securities broker employed by Nutmeg.

The undersigned finds no evidence in the record that the complainant suffered any actual damages available pursuant 46a-86(b) because of the retaliatory U-5 forms. There is no evidence that the complainant was refused any employment opportunity that he sought because of the inclusion of the retaliatory language on the U-5 forms. Without evidence of actual harm to the complainant, this tribunal is not authorized, pursuant to section 46a-86(b), to order any award of monetary damages. To the extent that damages can be awarded pursuant to section 46a-86(b), the amount must be calculated based on evidence proffered at the hearing to delineate actual harm suffered by the complainant.[14]

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ruling in Bridgeport Hosp. v. CHRO, 232 Conn 91 (1995) (The term "affirmative action" in section 46a-86(a) does not authorize a human rights referee to award compensatory or punitive damages). The undersigned did make the latter, but not the former, remark.

More precisely, the undersigned explained to the parties that section 46a-86 does not authorize human rights referees to award attorney's fees in cases alleging age discrimination pursuant to section 46a-60(a)(1). Attorney's fees and costs are included in the damages authorized for a violation of the provisions listed in section 46a-86(c), but damages for age discrimination are available only under section 46a-86(a) and (b). There is no claim for age discrimination under section 46a-58(a) (one of the provisions listed in section 46a-86(c)) because age is not included among the protected classes listed in section 46a-58(a). Therefore, the only damages available for an age discrimination claim are available pursuant to section 46a-86(a) and (b). See Bridgeport Hospital v. CHRO, et al., 232 Conn. 91 (1995).

[14] The Connecticut Supreme Court stated that --

> "[w]hile we recognize that a hearing officer has broad authority to construct remedies for employees who have suffered discrimination in the workplace, this power can be exercised only to accomplish the remedial purpose of the statute, which is to " 'restore those wronged to their rightful economic status absent the effects of the unlawful discrimination.' " State v. Commission on Human Rights & Opportunities, 211 Conn. 464, 484, 559 A.2d 1120 (1989). We agree with the well expressed limitations placed on § 46a–86(a) by the trial court in Fenn Mfg. Co. v. Commission on Human Rights & Opportunities, Superior Court, judicial district of Hartford–New Britain at Hartford, Docket No. CV92–509435, 1994 WL 51143 (February 8, 1994), aff'd, 232 Conn. 117, 652 A.2d 1011 (1995). The trial court stated: "This language does not confer on the [the hearing officer] the power to impose exemplary or punitive damages on a discriminating employer, nor even to compensate the employee for any consequential or incidental damages he or she may have suffered by reason of the employer's discriminatory

Upon a close review of the record, there appears to be no evidence to establish that the complainant, in fact, suffered any damages – for example, was refused employment and lost income -- because of the retaliatory U-5 forms filed by Nutmeg at the direction of Rochlin. The focus of the complainant's argument for damages is evidence of back pay that would have been due if the complainant established that his termination constituted age discrimination or retaliation. (See C-brief 45-47.) On the state of the record, any monetary damage award for the filing of the U-5 forms would be purely speculative and exceed the authority granted to this tribunal.[15]

It is within my authority to order Rochlin and Nutmeg to take measures to have the retaliatory phrases removed from any form U-5 that it filed regarding the complainant, on or after May 3, 2011.

> conduct. Instead, it directs the [hearing officer] to ensure that whatever remedy is fashioned for the employee be designed to return him or her to the same economic status he or she would have had in the workplace if unlawful discrimination never occurred. This, of course, requires that consideration be given to placing the employee in a position which is 'the functional equivalent of the position' he or she would have occupied had there been no unlawful discrimination, and that he or she be 'accorded all the rights and privileges appertaining thereof ... includ[ing] the right to be considered for additional promotional possibilities on the same footing as' other similarly situated persons who have suffered no discrimination. Civil Service Commission v. CHRO, supra, [195 Conn. at 231, 487 A.2d 201]. It also requires ... that consideration be given to awarding monetary relief to any employee who cannot otherwise be restored to the economic status he or she would have had were it not for the discriminatory conduct in question. Apart, however, from closing any financial gap which is directly related to workplace status, such as pay rates, bonuses and benefits ... [and] absent express statutory authorization for the awarding of such [monetary relief] damages, as is explicitly made for public accommodations cases in General Statutes § 46a–86(c), no such damages can be awarded in an employment discrimination case under the 'affirmative action' clause of § 46a–86(a)." Id.

Bridgeport Hosp. v. Comm'n on Human Rights & Opportunities, 232 Conn. 91, 111-12, (1995).

[15] "Administrative agencies [such as the commission] are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves.... We have recognized that [i]t is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner.... It cannot modify, abridge or otherwise change the statutory provisions, under which it acquires authority unless the statutes expressly grant it that power." Rweyemamu v. Comm'n on Human Rights & Opportunities, 98 Conn. App. 646, 650, (2006) (quoting Figueroa v. C & S Ball Bearing, 237 Conn. 1, 4 (1996) (Internal quotation marks omitted).

Decision and Order

In light of the foregoing, I find in that respondents did not violation section 46a-60(a)(1) or section 46a-60(a)(4), by terminating the complainant's employment due to low production. It is hereby ordered that these claims be dismissed, in accordance with the provisions of subdivision (4) of subsection (d) of section 46a-54-88a of the Regulations of Connecticut State Agencies ("Reguations").

Also, as stated above, I do find that Nutmeg and Rochlin violated section 46a-60(a)(4) by filing the retaliatory U-5 forms, and that Rochlin violated section 46a-60(a)(5) when he directed that the retaliatory U-5 forms be filed. However, because there is no proof that the complainant suffered any damages, as a result of the retaliation, no compensation can be awarded pursuant to section 46a-86(b).

There was no evidence proffered during the public hearing, nor was there any discussion in the complainant's post-trial brief, regarding any residual impacts of the U-5 forms, and whether it is necessary to order that the retaliatory language be removed from the complainant's regulatory records. To the extent that it is necessary, the complainant is to provide written direction, on or before December 31, 2015, via his attorney, to respondent's counsel, for the respondents Nutmeg and Rochlin to take the necessary action to have the retaliatory phrases removed from the U-5 forms pursuant to my authority under section 46a-86(a).

Having concluded that the Nutmeg did not discriminate or retaliate against complainant on the basis of age when it terminated his employment, and that the complainant failed to provide evidence of damages incurred as a result of Nutmeg and Rochlin filing the retaliatory U-5 forms, there is no need to consider the complainant's argument regarding the successor liability of Fieldpoint. The complaint against Fieldpoint is dismissed.

It is so ordered this 8th day of December 2015.

Alvin R. Wilson, Jr.
Presiding Human Rights Referee