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CHARGING PARTY
Debbie Almontaser
719 Westminster Road
Brooklyn, NY 11230

RESPONDENTS
New York City Department of Education
City of New York
52 Chambers St.
New York, NY 10007

New Visions for Public Schools
320 West 13th St.
New York, NY 10014

Re: **Debbie Almontaser v. New York City Department of Education and New Visions for Public Schools**

EEOC Charge No. 520-2008-02337

DETERMINATION

Under the authority vested in me by the Equal Employment Opportunity Commission ("Commission"), I issue the following determination on the merits of this charge. Respondents are employers within the meaning of Title VII of the Civil Rights Act of 1964, as amended. Timeliness and all other jurisdictional requirements have been met.

Charging Party claims that she was discriminated against on account of her race, religion, and national origin when she was constructively discharged from her position as Interim Principal of Khalil Gibran International Academy (KGIA), and later when she was rejected for the position of permanent Principal.

Charging Party is a Yemen-born woman of Arab ethnicity and Muslim religion. She was employed by Respondent (Board then) Department of Education (DOE) beginning in 1991. In 2005, she was coordinator of external programs for school district 15 and for many years had been active in programs to reduce intergroup tensions and promote racial and religious harmony, notably after September 11, 2001.

Because of this record, she was approached by Respondent New Visions to participate in the development of KGIA, a grade 6 to 12 school with special emphasis on Arabic language and culture. It was expected that she would become KGIA's founding principal. New Visions is a private, non-profit organization with the mission of improving the quality of education in New York City's public schools. During the development phase of KGIA, like other projects developed under New Visions's auspices, the project was supported by foundation funds and private philanthropic donors. After an intensive development process lasting several months, a formal proposal for creation of the school was presented to the Department of Education in December 2006 and approved two months later, with Ms. Almontaser designated project director. In July 2007 her title was changed to Interim Acting Principal. The school was scheduled to open in September of that year.

As noted in New Visions's position statement, Ms. Almontaser was never its employee; its role was as unpaid advisor to her and to the project.

It is undisputed that, from the start, the concept of a school with the emphasis on Arabic language and culture was the object of considerable public attention, much of it negative. Among the expressions of undisguised hostility was the assertion that KGIA would be a center of Muslim religious indoctrination. An organization sprung up called the Stop the Madrassa Coalition. Another was called The Center for Vigilant Freedom. A blog called Atlas Shrugs weighed in. As the New York Times later reported, "In newspaper articles and Internet postings, on television and talk radio, Ms. Almontaser was branded a 'radical,' a 'jihadist' and a '9/11/denier.' She stood accused of harboring unpatriotic leanings and of secretly planning to proselytize her students."

The controversy and opposition came to a head following a newspaper interview with Ms. Almontaser in which she was asked the meaning of the word "intifada." The word had been printed on T-shirts made by an organization of Muslim girls and sold at an Arab-American week fair the previous week. The Stop the Madrassa Coalition, one of the organizations opposed to KGIA, had issued a press release and the DOE press office had received a number of inquiries about Ms. Almontaser's connection with the T-shirts. Ms. Almontaser explained to DOE officials that she knew nothing about the T-shirts or the organization that had created them, except that it rented space from another organization of which she was a board member. Nevertheless, despite Ms. Almontaser's strong reservations, the DOE press office agreed that she

would be interviewed by the most aggressive of the publications requesting comment, a large circulation tabloid.

The interview, by phone, took place on August 5 and, as expected, the T-shirt issue was raised. She explained to the reporter that the Arabic root of the word intifada means "shaking off," although it had acquired other connotations because of the Palestinian crisis. The interview, as reported by the paper the following day, carried the headline "City Principal Is 'Revolting,'" with the subhead "Tied to 'Intifada NYC' Shirts." The lead reads: "Activists with ties to the principal of the city's controversial new Arabic-themed school are hawking T-shirts that glorify Palestinian terror...The inflammatory tees boldly declare 'Intifada NYC,' apparently a call for a Gaza-style uprising in the Big Apple." The article included comments by spokespersons for some organizations focused on Middle Eastern affairs; in their opinion, the T-shirt message reflected violence against Israelis. They described the school's sponsoring organization as an active supporter of Hezbollah and Hamas, which were characterized as terrorist groups. The article identifies Ms. Almontaser as a Muslim and is accompanied by a photo of her wearing a hijab; the caption reads "The pro-violence T-shirt is being defended by Principal Debbie Almontaser."

Initially, Department of Education spokespersons defended Ms. Almontaser, pointing out that her connection with the T-shirts was "tenuous." However, there was daily followup in the original tabloid and in other newspapers and blogs; the president of the NYC Teachers' union called for her resignation. After two days, the Department of Education asked the Executive Director of New Visions to persuade Ms. Almontaser to resign. She declined to do so and said she wanted to speak with the Schools Chancellor. He was unavailable but the Deputy Mayor for Education agreed to meet with her. He stated that she had become a focal point and that he would like to have her resignation. She then issued a resignation letter, explaining that the "intolerant and hateful tone" of the attacks had caused concern to parents and students and that her departure would permit the academy to flourish. A former employee of New Visions, who is not Muslim or of Arabic ethnicity, was appointed acting interim principal. Ms. Almontaser remained in her Principal position and became Director of Policy and Special Projects at DOE's Office of School and Youth Development, later becoming Director of its Regional Assistance Center. In July 2009, this job was eliminated and she was reduced to the position of teacher, with a corresponding sharp reduction in compensation.

The position of permanent principal was announced in early October and Ms. Almontaser expressed her intention to apply. On October 17, the Chancellor's spokesperson announced that the department would not consider reappointing her. Nevertheless, she submitted her application.

According to documents provided by the Department of Education, there were 27 applicants for the position. Five were determined to be ineligible. The 22 valid applications, including that of Ms. Almontaser, were forwarded to the Community

District Superintendent responsible for evaluating the candidates and making the final decision. Applicants had been scored according to each of the following indicators: essay, strength of preparation and experience, demonstrated achievement, educational background, experience. The Superintendent identified nine of those who she felt merited further consideration, not including Ms. Almontaser. Ultimately, she selected the only candidate who had been scored as Highly Recommended, a white American non-Muslim woman. Two other Arab-American applicants were also rejected in the first elimination round.

Respondent DOE's position

In its position statement, Respondent Department of Education denies discriminating against the Charging Party, generally asserts that as project director and then interim acting principal she did not demonstrate that she was performing her job duties satisfactorily, notably in handling the press, and claims that demanding her resignation does not constitute constructive discharge. Respondent asserts that it was well aware that she was Arab-American and a Muslim at all times. Others may have directed their hostility toward her but DOE did not, thus her protected class status cannot be seen as a factor in her removal.

Respondent Deputy Mayor for Education explains that Ms. Almontaser had become a flashpoint and his confidence in her was dimming. She needed to be able to marshal support, articulate a vision, be a leader, manage, and sell, to "take it to the next level." Instead, she lacked judgment and allowed the tabloid to have a field day. The reaction of members of the public, education leaders, and the Mayor was to question the ability of the school to open.

The Community Superintendent in charge of the school, who was her "rating officer," stated that she felt the coverage of Ms. Almontaser's interview was unfair and that it was inappropriate for the media to be allowed to force her out. But, although she was supportive of Ms. Almontaser, she was not consulted as to DOE's decision that the future of the school was contingent upon Ms. Almontaser's departure. This view was expressed to Ms. Almontaser by the Deputy Mayor in a meeting on August 8, after which she offered her resignation.

With respect to her non-selection as permanent principal, DOE presents what it characterizes as a legitimate non-discriminatory reason for rejecting her. It cites her lack of school-based experience. Also cited are the continuing circumstances surrounding her resignation and the "unpleasant" media attention.

Respondent New Visions's position

Respondent New Visions asserts that it was never her employer, that it had approached her at the beginning of this project, supported her in its lengthy development, and continued to work with her until her removal. In its position

statement, Respondent asserts that she displayed certain weaknesses during the process necessitating additional special coaching and mentoring in important areas. Its president expressed admiration and respect for her but felt she did not effectively manage her way through the process; there were even conflicts with the community partner without whose participation the school could not open.

New Visions states that, even before the T-shirt event, it received "repulsive, racist, anti-Muslim" letters referring to Ms. Almontaser's activities. Some questioned whether the curricular materials were to be religious rather than secular.

Immediately following the "intifada" press interview, the Chancellor and the Deputy Mayor told New Visions's Executive Director that the school was in jeopardy and asked him to "relay" to her the message that she should consider resigning. At this point, although he sympathized with her, he agreed that she should resign. Accordingly, he did as requested and discussed with her the likelihood of KGIA not being able to open if she continued as Interim Principal. She refused to resign, declaring that she wanted to hear it directly from the Chancellor.

With respect to the selection of permanent principal, a New Visions employee discussed the candidates, including Ms. Almontaser, with the Community District Superintendent and concurred in her ultimate choice.

Analysis

It is undisputed that both Respondents endorsed the concept of a school focused on Arab-American language and culture, approved the selection of Ms. Almontaser as project director and acting interim principal, and put their resources into its development over a period of several months. It is undisputed that they knew at all times that she was Arab-American and Muslim, that, as such, she had dedicated herself over many years to interfaith and community work, and that her identity was seen as an asset to the project. From the start, the project was not without controversy, springing not only from the heated post-9/11 atmosphere, but also from other issues, such as the school's relationship with the community organization which was its sponsor, and community dissatisfaction with the school's location and its proximity (or not) to the Arab community in Brooklyn.

Following the public announcement of the school's creation, both Respondents agreed not to respond to comment and criticism emanating from opposing groups, and to stay focused on opening the school. At all times, Ms. Almontaser maintained a low profile and was infrequently offered for interview by the DOE press office. In her opinion, they did not want to showcase her as a Muslim woman who wears a hijab. Nevertheless, neither Respondent wavered in its support for the school and for the Charging Party until the T-shirt event.

This interview and the subsequent article was the watershed event leading directly to the Charging Party's forced resignation a few days later. Immediately after the interview, which was by phone, the DOE press representative expressed the opinion to Ms. Almontaser that it had gone well. But the situation changed the next day when the article appeared. As described above, the most inflammatory parts of the article as published were neither quotations from Ms. Almontaser nor legitimate background information; they were characterizations and opinions either from the reporter or as attributions to unnamed others. Even more attention-getting was the headline in which Ms. Almontaser is somewhat confusingly described as "revolting," the subhead in which she is tied to the "pro-violence" T-shirts, and the explicit statement of her religion, Muslim, along with the photo of her in a hijab.

It is highly relevant that the focus was on her ethnicity. For instance, the tabloid article based on the interview refers to her as "Dhabah 'Debbie' Almontaser." Charging Party uses the first name Debbie professionally, personally, on a day-to-day basis, and at all times. She uses her Arabic name (correctly, Dhaba) only on official documents. Prior to the T-shirt article, the press, including the tabloid in question, referred to her as Debbie. For this article it chose to emphasize her foreign-sounding first name and to picture her wearing a hijab (head scarf). The article highlights her ethnicity and ties the T-shirts (with which in fact she had no connection whatever) to terrorism, anti-Israel violence, and a Gaza-style uprising in Brooklyn. Other publications with lesser circulation but fewer restraints, characterized her as a "9/11 denier," a "jihadist," and a person who "promotes Islamic fundamentalism." One group saw her as exemplar of a broader threat and opined that she was a member of a moderate Muslim group seeking to infiltrate the system in order to promote radical Islam from the inside.

Significantly, it was not her actual remarks but their elaboration by the reporter - creating waves of explicit anti-Muslim bias from several extremist sources - that caused DOE to act. Although both Respondents claim that she demonstrated performance deficiencies during the previous months, neither claims that they were of a magnitude to warrant termination nor was any evidence presented that she was put on notice that her continued employment was in jeopardy. Nor can her remarks in themselves possibly be supported as cause for dismissal.

There is no question that the Department of Education faced a major public relations problem. Clearly, it was not merely what Ms. Almontaser said, but who she was, that gave rise to the situation. As the deciding parties put it, she was a "lightning rod." She had become the symbol of the school because she shared its ethnicity. They concluded that the only way to calm the critics was to remove her, which was done within days. A non-Muslim American-born woman (and a Sabbath-observing Jew) was appointed temporary principal, the clamor died down, the parties dealt with their other practical problems, and the school opened on schedule. The Department's concession to its critics brought relative peace. At no point did Respondent express the view that Ms. Almontaser was, in fact, a jihadist or any of

the characterizations offered by the school's opponents in their press and internet statements. Thus DOE succumbed to the very bias that creation of the school was intended to dispel and a small segment of the public succeeded in imposing its prejudices on DOE as an employer.

After her expulsion, Respondent expressed criticism of some aspects of her work, but offered no documentation whatever suggesting that such weaknesses rose to the level of failing performance, that her termination had been under consideration, or that any reservations had been expressed to her directly. Indeed, only weeks before the notorious interview, she had been promoted from project director to Interim Acting Principal with a corresponding significant increase in salary.

Respondents further deny that they actually terminated Ms. Almontaser, claiming that she resigned voluntarily. Ms. Almontaser asserts that she was told both by New Visions and by the NYC Deputy Mayor for Education that, in all likelihood, the school would not be able to open unless she resigned immediately. Since the school had been, for her, the culmination of a lifetime of work fostering better intergroup relations, causing its failure by refusing to resign was not a tolerable option for her. Her graceful resignation letter explains that she decided to step aside so that the "fear mongers" attacking her would not be allowed to derail the Academy. A review of the evidence on both sides leads to the conclusion that she was constructively discharged.

With respect to her application for the permanent position of Principal, analysis of the applications forwarded for the Community Superintendent's review, including the ratings of each, shows that the chosen candidate had higher ratings than her competitors except for the essay, in which her rating was lower than the median. Significantly, all others had major school management experience ranging from Assistant Principal up to Principal (as did the Charging Party, having been Acting Principal), but the chosen candidate had none. In any case, it is clear from testimony about the selection process that Ms. Almontaser's candidacy was evaluated with respect to her recent history with the school and the circumstances of her resignation as Acting Principal, and not with respect to her credentials and score. In addition, Respondent had already announced on October 17 that she would not be considered, rendering all subsequent qualitative explanations pretextual.

Respondent New Visions was not in a position to declare Charging Party ineligible or unqualified, since it was not and would not be her employer. It concurred in DOE's judgment that she should resign and acted as agent in advising her to do so, but she refused until directly confronted by DOE. In the course of its advisory services to the Community Superintendent in the selection process, it concurred in DOE's conclusion that the circumstances of her resignation were such that continuing her candidacy was not desirable.

Based on this analysis, I have determined that the evidence obtained during the investigation establishes that (1) Respondent Department of Education discriminated against Charging Party on account of her race, religion, and national origin by constructively discharging her from her temporary position as acting principal and disqualifying her as candidate for the permanent position; (2) Respondent New Visions was not her employer and had no authority either to materially affect her employment or to deter DOE from carrying out its adverse employment decisions regarding her. Accordingly, there is not cause to believe that New Visions discriminated against her.

Upon finding that there is reason to believe that a violation of Title VII of the Civil Rights Act of 1964, as amended, has occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution to this matter. If Respondent declines to discuss settlement or when, for any reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. An outline of proposed remedies is enclosed

On behalf of the Commission:

March 9, 2010
Date

Spencer Lewis Jr.
District Director

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March 9, 2010
Re: Charge #520-2008-02337
Almontaser v. NYC Department of
Education and New Visions

Paul Marks Esq.
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100 Church St.
New York, NY 10007

J. Scott Dyer Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Ave.
New York, NY 10017

Dear Mssrs. Marks and Dyer,

You will find enclosed the Commission's determination, which concludes the investigation of the above-referenced discrimination charge. With respect to Respondent DOE, we find reasonable cause to believe that discrimination has occurred; accordingly, the conciliation process now begins. Through her attorney, Ms. Almontaser has outlined the remedies she seeks:

- Reinstatement to her position as principal with full seniority and job protection at KGIA or at another comparable school;
- Lost wages, i.e., restoration of the principal's salary that ceased in July 2009 when she was demoted to teacher, plus pension credit;
- Issuance of a mutually acceptable public statement;
- Compensatory damages including, but not limited to, pain and suffering ($300,000);
- Attorneys' fees ($50,000) and litigation costs ($20,000).

We ask that Respondent Department of Education consider these demands and respond to the undersigned no later than March 24 with acceptance of these terms or a reasonable counteroffer.

If you have any questions, please do not hesitate to call.

Sincerely,

Electra Yourke
Enforcement Manager

cc: Debbie Almontaser
Alan Levine Esq.