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September 1, 2020

Trustee Kate Hirsch
Village of Flower Hill
1 Bonnie Heights Road
Manhasset, New York 11030

Re: Employee Complaints

Dear Trustee Hirsch:

On February 26, 2020 the Village of Flower Hill (“Village” or “Flower Hill”) received an official complaint filed by an employee alleging, *inter alia*, that on that date you engaged in conduct which harassed, demeaned and embarrassed the employee in the presence of other Village employees; created a hostile work environment by speaking to and about the employee in a derogatory manner; discriminated against the employee on the basis of a physical disability; made public allegations that the employee was engaged in illegal acts; and, threatened retaliation against the employee including potential loss of employment. On May 20, 2020, this same employee filed a second complaint alleging that on that date you created a hostile work environment by again demeaning the employee.

On March 3, 2020, the Village received a further complaint filed by another Village employee relating to the events of February 26, 2020. This complaint alleged that on that date you were rude, dismissive and unprofessional in your interactions with the complainant and another Village employee; created a hostile work environment; and, made discriminatory and insulting remarks regarding religious faith, beliefs and practices also in the presence of other employees.

In order to ensure that Flower Hill is at all times acting in a manner consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000E) and the Human Rights Law of the State of New York (Executive Law §296), upon receiving these complaints, the Village retained independent counsel to investigate these allegations. In the course of this investigation, counsel interviewed each of the complainants, other individuals present at the time of the alleged incidents, all relevant documents and a recording made of the events of February 26, 2020. Through communications with an attorney initially retained to represent you in connection with this matter and subsequently in conversations and written communication, you were afforded the opportunity to be interviewed in connection with this investigation. On separate occasions you advised the

investigating attorneys, both verbally and in writing, that you would not participate in any interview relating to the investigation.

Counsel has now produced to the Village its report of this investigation which has been reviewed and considered by the Board of Trustees without your participation. The evidence established the following facts:

- On February 26, 2020 at approximately 10:00 a.m. you entered the Village office seeking to file documents with a particular Village official.
- At this time, you demanded to speak with the particular Village official and referred to the official utilizing a term which was intended to ridicule and demean the employee.
- The term used to describe the employee was heard and described by each of the employees of the Village present in the office during this time. Further, a recording made of the events of that day confirm your use of the term when referring to the employee.¹
- You questioned the employee's competence and knowledge of the Village Code.
- You ridiculed the employee's use of a calculator to perform certain mathematical calculations.
- Significantly, the employee confirmed that neither prior nor after February 26, 2020 had you ever discriminated against the employee based upon this disability.
- While you have never specifically made any direct statement regarding your intentions if elected as mayor, your actions and comments placed the employee in fear that his/her future employment would be terminated.
- In May of this year after being advised that this same Village employee did not have any notes relating to a meeting with officials of a local hospital, you were condescending towards the employee and proceeded to laugh at him/her until the employee hung up the phone.

¹ We have considered whether the recording of this incident, which was made by another employee of the Village, violated any laws. In this respect, we note that New York State Penal Law §250.05 makes it unlawful for an individual to mechanically overhear a conversation. As defined by the Penal Law, "Mechanical overhearing of a conversation" means the intentional overhearing of recording of a conversation or discussion without the consent of at least one party thereto, *by a person not present thereat*, by means of any instrument, device or equipment." [Emphasis supplied]. Because the person who recorded the conversation was actually present, we have concluded that the recording of this conversation was lawful. *See, People v. Kirsh*, 176 A.D.2d 652, 575 N.Y.S.2d 306 (2d Dep't. 1991).

- On the same date of February 26, 2020, in the presence of a number of employees, upon observing ashes on the forehead of a Village employee, you made a comment in a manner insulting and demeaning of religious faith, beliefs and practices. ²

While the investigation determined the facts as set forth above, and which are determined to demonstrate behavior on your part toward employees that is inappropriate and unacceptable in the workplace, it nevertheless concluded that your actions did not rise to the level of a violation of either Title VII or the New York State Human Rights Law. This is because your conduct, while unacceptable, was not sufficiently severe or pervasive to create a hostile or abusive workplace environment as defined under the provisions mentioned above. In this regard, it is noted that your conduct on February 26, 2020 while constituting negative statements and harsh tones, was not of sufficiently serious nature to rise to a hostile work environment. Further, it does not appear that you were aware of any particular disability of the employee at the time you belittled him/her inability to perform mathematical calculations. Similarly, your comments regarding the second employee's religious practices appear to have been a one-time event and therefore do not rise to the level of severe or pervasive conduct.

Nor does it appear that you ever directly threatened the employee's continued employment with the Village. While your negative interaction with the employee clearly caused him/her to be concerned, there is no evidence of a clear and unequivocal threat of retaliation.

For similar reasons your conduct was determined not to constitute an actionable claim under New York Executive Law §296. This law provides that if the employee is treated "less well" than other employees in a protected class the conduct complained of will state a claim. Religious practices and beliefs are within the category of protected classes. However, because your comments were described as a singular event, the investigation concluded it was not actionable.

The Board of Trustees in a duly convened executive session has concluded that your conduct was unacceptable. The Board condemns, in the strongest terms your actions directed towards the employees in question. The Village is committed to ensuring that each and every employee is treated with respect and dignity and afforded a workplace free of the type of conduct which you exhibited. While your conduct may not have met the legal standard sufficient to establish a violation of either Federal or State law, it was highly inappropriate, unacceptable and will not be tolerated. You are hereby admonished for your unacceptable actions towards employees of the Village.

As an elected official we remind you and indeed insist that you are to treat all Village employees and officials with respect, consideration, understanding the highest degree of professionalism. Your actions as established by the investigation failed to meet this standard and will not be tolerated.

In order to ensure that conduct of this nature never again occurs, we insist that you review and comply with the Village's Non-Discrimination/Anti-Harassment Policy, a copy of which is being provided to you together with this letter. We expect you to confirm in writing, within five (5) days hereof, that you have reviewed this policy.

² February 26, 2020 was the Christian holiday of Ash Wednesday during which observant Christians acknowledge their mortality by the placement of ashes upon the forehead.

You are further instructed that comments regarding anyone's religious faith, practices or beliefs are inappropriate in the workplace. If, in the future you have issues with an employee and his or her job performance, you should address these issues with the employee in private. Employees should never be demeaned or criticized in front of other Village employees.

Additionally, you are required to participate and satisfactorily complete an anti-discrimination/anti-harassment training course as designated by the Board.

In conclusion, we believe it important to state that we expect you will at all times conduct yourself in a professional manner and conduct of the nature revealed by this investigation will never be repeated.

Please sign and deliver to the Village a copy of this letter acknowledging receipt.

Yours,

Mayor Brian Herrington

Deputy Mayor Randall Rosenbaum

Trustee Jay Beber

Trustee Gary Lewandowski

Trustee Frank Genese

Trustee Mary Jo Collins

Read and Acknowledged

Kate Hirsch, Trustee