

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

RUNA ALAM,

Complainant,

v.

AIRPORT MANAGEMENT SERVICES LLC,

Respondent.

**NOTICE AND
FINAL ORDER**

Case Nos. 10117425, 10120819

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 13, 2009, by Thomas J. Marlow, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

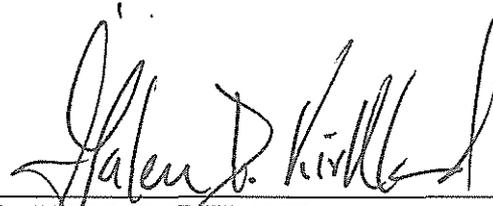
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **APR 24 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
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on the Complaint of

RUNA ALAM,

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v.

AIRPORT MANAGEMENT SERVICES LLC,
Respondent.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case Nos. 10117425, 10120819

SUMMARY

Complainant alleged that Respondent discriminated against her because she opposed unlawful discrimination, because of her disability, and by refusing to provide a reasonable accommodation to a disability. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On April 27 and October 15, 2007, Complainant filed verified complaints with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaints and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the cases to public hearing.

After due notice, the case came on for hearing before Thomas J. Marlow, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on April 2 and 3, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Aaron Woskoff, Esq. Respondent was represented by Peter Golden, Esq.

At the public hearing session held on April 2, 2008, on the record, the complaint regarding Case No. 10117425 was amended to reflect the correct name of Respondent: Airport Management Services LLC.

Permission to file proposed findings of fact and conclusions of law was granted. Respondent so filed after the conclusion of the public hearing.

For consistency, all exhibits marked “Division’s Exhibits” have been marked “Complainant’s Exhibits.”

FINDINGS OF FACT

1. In April of 1994, Complainant began her employment with Respondent as a cashier. Respondent is in the retail business of selling newspapers, magazines, and other retail merchandise. (Tr. 19)

2. In 2000, Respondent promoted Complainant to one of its positions of Manager for Respondent’s locations at Grand Central Station, New York, New York (“Grand Central”). (Tr. 19, 22)

3. In 2005, James Butt (“Butt”), a General Manager for Respondent at Grand Central, promoted Complainant to the position of Operations Manager. (Tr. 23, 142, 382, 396)

4. In 2006, Butt warned Complainant on many occasions that her work performance as Operations Manager was inadequate. (Tr. 141-42, 320, 383, 386)

5. In November of 2006, Butt demoted Complainant back to the position of Manager because of poor work performance, including failing to maintain warehouse space according to fire code requirements, failing to properly handle the movement of cash at Grand Central, failing to adhere to Respondent's uniform code, and failing to relate professionally with her subordinates. (Respondent's Exhibits 1, 13; Tr. 25-26, 139-40, 155, 164, 310, 314, 321, 383-84, 390-91, 396)

6. In January of 2007, Complainant filed a verified complaint with the Division (Case No. 10115439) alleging that Respondent unlawfully discriminated against her because of her age by demoting her, denying her vacation, and harassing her. (Respondent's Exhibit 1; Tr. 146-47) The Division dismissed this complaint with a determination that there was no probable cause to believe that Complainant was discriminated against because of her age. (Tr. 325-26)

7. In March of 2007, Complainant received her annual evaluation for 2006 with an overall rating of "needs improvement." (Respondent's Exhibit 2) When Complainant received this evaluation, she already had been late for work six times in 2007, had left her store and register keys unattended on a counter in one of Respondent's stores at Grand Central in violation of Respondent's policy, had violated Respondent's cash handling procedures, and had failed to relate professionally with her supervisor. (Respondent's Exhibits 3, 4, 6; Tr. 418, 441)

8. After Complainant received her evaluation for 2006, she filed another verified complaint with the Division (Case No. 10117425) alleging that Respondent retaliated against her for filing her first complaint with the Division by evaluating her work performance as needing improvement, denying her a raise, and harassing her. (ALJ's Exhibit 1)

9. On May 29, 2007, Complainant left one of Respondent's stores open but unattended and fell asleep in a telephone booth approximately 15 feet away from the store. (Respondent's Exhibit 8, 11; Tr. 290-91, 453-57, 464) On May 29, Respondent suspended Complainant for this conduct. (Respondent's Exhibit 8; Tr. 463-64) On June 7, 2007, Respondent terminated Complainant's employment for this conduct. (Respondent's Exhibit 12)

10. After Complainant's employment was terminated, she filed another verified complaint with the Division (Case No. 10120819) alleging that Respondent retaliated against her for filing her complaints with the Division by continued harassment, refusing to grant disability accommodation, and terminating her employment. Further, Complainant alleged that Respondent unlawfully discriminated against her because of an ankle disability, claiming that she was not asleep in the phone booth, but rather, she was sitting because of her ankle disability. (ALJ's Exhibit 2)

11. When Complainant awoke in the telephone booth, she said nothing about an ankle disability, and, when asked why she was sleeping, said that she was up all night with a sick husband. When she was asked about the seriousness of her actions before she was suspended, she said nothing about an ankle disability. (Tr. 456, 463-64)

12. In April of 2007, Complainant told Butt that sometimes her ankle bothered her, making walking to one of Respondent's stores difficult. Butt told Complainant that when her ankle bothered her she should inform her supervisor and she would not have to go to that store. Butt so informed the supervisor. (Tr. 504-06)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer to retaliate against an employee because she opposed unlawful discrimination. *See* Human Rights Law § 296.7.

Complainant alleges that Respondent unlawfully discriminated against her because she opposed unlawful discrimination by giving her a bad evaluation, denying her a raise, harassing her, denying her an accommodation request for an ankle disability, and, ultimately terminating her employment. After considering all of the evidence presented, and evaluating the credibility of the witnesses, I find that the evidence does not support this allegation. There is no credible evidence to support the contention that Complainant was harassed in any fashion. The only accommodation request she made was granted. Complainant was demoted, given a bad evaluation, and denied a raise because of poor work performance. Ultimately, her employment was terminated because she was caught sleeping on the job. There is no causal connection established between Complainant's filing of her complaints with the Division and any of Respondent's actions. The only causal connections that exist are found between Complainant's poor work performance and Respondent's appropriate actions.

The Human Rights Law also makes it an unlawful discriminatory practice for an employer to discriminate against an employee in the terms, conditions, or privileges of employment because of the employee's disability or to refuse to provide a reasonable accommodation to the employee's disability. *See* Human Rights Law §§ 296.1(a), 296.3(a).

Complainant has further alleged that Respondent unlawfully discriminated against her because of an ankle disability and by refusing to provide a reasonable accommodation for the disability. Following the abovementioned analysis, there is no evidence to suggest that any of

Respondent's actions occurred under circumstances giving rise to an inference of discrimination because of disability. Further, there is no credible evidence to support the contention that Respondent unlawfully discriminated against Complainant by refusing to provide a reasonable accommodation to the disability.

Conclusory allegations, unsupported by credible evidence, are insufficient to establish unlawful discrimination. *See Gagliardi v. Trapp*, 221 A.D.2d 315, 633 N.Y.S.2d 387 (2d Dept. 1995). Complainant has the burden to establish by a preponderance of the evidence that discrimination occurred. *See Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003). Since Complainant has failed to meet this burden, the complaints must be dismissed.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaints be, and the same hereby are, dismissed.

DATED: January 13, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge