

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ROSE AMAOBI,

Complainant,

v.

**CITY OF NEW YORK, HUMAN RESOURCES
ADMINISTRATION,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10115091

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 February 3, 2009, by Edward Luban, 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 13 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

ROSE AMAOBI,

Complainant,

v.

**CITY OF NEW YORK, HUMAN
RESOURCES ADMINISTRATION,**

Respondent.

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

Case No. **10115091**

SUMMARY

Complainant alleged that Respondent terminated her employment because of her age and national origin. However, the evidence shows that Respondent terminated Complainant's employment for unsatisfactory performance. Therefore, the complaint should be dismissed.

PROCEEDINGS IN THE CASE

On December 5, 2006, Complainant filed a verified complaint 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 complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case 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 June 18-19, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondent was represented by Hilit Kroman, Esq. and Jessica Levie, Esq.

Permission to file post-hearing briefs was granted. Respondent submitted a brief; the Division did not.

After the hearing and receipt of post-hearing submissions, the case was reassigned to Edward Luban, another ALJ of the Division, pursuant to 9 NYCRR § 465.12(d)(2).

FINDINGS OF FACT

1. Complainant was born on September 3, 1945 and is from Nigeria. (Tr. 27-28)
2. On June 23, 2006, Respondent hired Complainant as a Job Opportunity Specialist (“JOS”). (Tr. 25) A JOS interviews applicants for public assistance, makes eligibility determinations, calculates budgets, and issues public assistance benefits, including food stamps and emergency assistance. (Tr. 77, 183, 206, 330)
3. Complainant was a probationary employee. From June 26 to October 5, 2006, she attended Respondent’s New Hires Training Program. (Tr. 206; Respondent’s Exh. 10) Complainant was the oldest trainee in the program. (ALJ’s Exh. 5)
4. Sarah Corbin was Complainant’s trainer. Stephanie Reid was Respondent’s Director of Specialized Training and directed the training of new hires. Madeline Soto was Reid’s Administrative Assistant. (Tr. 34, 206, 353-54; Respondent’s Exh. 10)

5. JOS trainees must master three computer applications, Welfare Management System (“WMS”), Paperless Office System (“POS”), and New York City WAY (NYCWAY”), and they must learn how to use manuals they will utilize on the job. (Tr. 80, 212-15, 355)

6. Complainant’s performance in the training program was unsatisfactory. Her computer skills were minimal, she could not calculate a budget, which was a critical part of the job, and she could not work independently. Complainant “appeared not to understand what was going on in the class.” (Tr. 228-30, 235, 238-39, 246, 337-38, 345)

7. On August 2, 2006, Corbin met with Complainant and told her that she was not meeting training standards. (Tr. 97, 232-33) Complainant’s performance did not improve after this meeting. (Tr. 237)

8. In August 2006, Soto observed Complainant and other trainees at the Waverly Job Center. Soto noted that Complainant could not perform “the most basic tasks,” such as logging into WMS and POS, that she could not follow verbal instructions, and that she was continuously lagging behind the class. (Respondent’s Exh. 9, 10)

9. On August 24, 2006, Soto met with Complainant at Complainant’s request. Complainant admitted to Soto that she was lagging behind the class. Complainant attributed this to her age and to her inexperience with the computer system. Complainant also told Soto that other trainees laughed at her when the trainer had to wait for her to catch up. Soto told Reid about the meeting and about her observations of Complainant’s performance. (Tr. 362; Respondent’s Exh. 9)

10. On August 28, 2006, Complainant scored 45 on the midterm exam. The passing grade was 70. (Tr. 245, 377; Respondent’s Exh. 4)

11. On September 1, 2006, Corbin and Mark Cullum, Respondent's training coordinator, met with Complainant and told her that her employment would be terminated if her performance did not improve. (Tr. 98, 238, 246) After the meeting, Corbin gave Complainant a memo summarizing Complainant's difficulties and noting that she was performing below the training standard. (Tr. 264-65; Complainant's Exh. 1)

12. Complainant met with Reid later that day. Complainant told Reid that she could not understand Corbin's accent and that Corbin had started to ignore her. Complainant also said that the younger trainees were more familiar with computers and that they laughed at Complainant when she could not keep up. (Tr. 52, 93, 367-68)

13. During the meeting with Reid, Complainant said she could perform basic tasks on the computer. Reid asked Complainant to demonstrate that she could calculate a "scratch pad budget" on Reid's computer. Complainant was unable to do so. (Tr. 248-50, 371-72)

14. At Complainant's request, Reid reassigned her to a class taught by Evelyn Muñoz. (Tr. 54, 129-30, 253, 372)

15. Complainant's performance did not improve in Muñoz' class. Her computer skills were still slow, she was unable research material using the manuals, and she would not work independently. (Tr. 287, 313, 374; Respondent's Exh. 8)

16. On September 20, 2006, Complainant scored 59.5 on the final exam. The passing grade was 70. (Tr. 288, 370; Respondent's Exh. 4)

17. On September 26, 2006, Muñoz completed Complainant's performance evaluation. Muñoz rated Complainant's performance "unsatisfactory" in 31 areas and "marginal" in the remaining 13 areas. Muñoz found that Complainant's performance had not improved since the mid-term exam, that she could not work independently, that she did not meet the training

standard, and that she lacked the basic skills to perform the job. Muñoz recommended termination. (Tr. 300, 304; Respondent's Exh. 3)

18. Muñoz, Cullum, Soto, and Reid met and discussed Complainant's performance. They concluded that Complainant still could not perform independently and that she could not perform the duties of a JOS. (Tr. 379-81)

19. Reid recommended to Personnel that Complainant's employment be terminated. On October 8, 2006, Respondent terminated Complainant's employment. (Tr. 381; ALJ's Exh. 5)

20. Corbin did not know Complainant's age or that she was from Nigeria until after Complainant left Corbin's class. (Tr. 222-24, 226)

21. Complainant told Muñoz and Karen Ervin, another trainee in Corbin's class, that she could not understand Corbin's accent. (Tr. 282, 306, 335) Complainant did not tell Reid, Muñoz, or Ervin that Corbin discriminated against her because of her age or her national origin. (Tr. 186, 201, 240, 244, 247, 261, 284, 308, 363, 368)

22. Mapelola Oke was another trainee in Corbin's class. Oke is Nigerian. Neither she nor Ervin heard Corbin mention Complainant's age or her national origin, and neither heard Corbin mistreat, ridicule, belittle, or discriminate against Complainant. (Tr. 185-86, 191-92, 334, 336-37, 346, 349)

23. Two other Nigerians, Complainant's younger brother, Aloysius Okoro, and Bright Ogboe, were also in Corbin's class. Okoro and Oke passed the training and were retained by Respondent. Ogboe's employment was terminated. (Tr. 38, 43, 134-35, 185-86)

OPINION AND DECISION

It is an unlawful discriminatory practice for an employer to discharge an employee on the

basis of age or national origin. Human Rights Law § 296.1(a). Complainant has the initial burden to prove a prima facie case of discrimination. She must show that she is a member of a protected class, that she was qualified for her position, that she suffered an adverse employment action, and that the adverse action occurred in circumstances giving rise to an inference of discrimination. *Ferrante v. American Lung Association*, 90 N.Y. 2d 623, 629, 665 N.Y.S. 2d 25, 29 (1997); *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295, 305, 786 N.Y.S. 2d 382, 390 (2004). If Complainant makes such a showing, the burden shifts to Respondent to present a legitimate, non-discriminatory reason for its action. If Respondent does so, Complainant must show that the reasons Respondent has presented were merely a pretext for discrimination. *Id.* The ultimate burden of proof always remains with Complainant. *Ferrante* at 630, 665 N.Y.S. 2d at 29.

Complainant, who was 60 years old and Nigerian, is a member of a protected class. Respondent contends that Complainant was not qualified to be a JOS. However, Complainant established basic eligibility for her position when Respondent hired her. Whether or not her performance was satisfactory is a different issue. *See Slattery v. Swiss Reinsurance America Corp.*, 248 F. 2d 87, 92 (2d Cir. 2001), *cert. den.*, 534 U.S. 951, 122 S. Ct. 348 (2001). Complainant also suffered an adverse action when her employment was terminated.

However, Complainant failed to show that her age or national origin played any role in Respondent's decision to terminate her employment. On the contrary, the evidence, including testimony from two of Complainant's fellow trainees, is overwhelming that Respondent terminated Complainant's employment because she could not perform the job of a JOS. Moreover, although Complainant talked about her difficulties in the program with other trainees, her trainers, and administrators, she offered no evidence that she complained to anyone about age

or national origin discrimination when she did so.

Complainant failed to sustain her burden of proving unlawful discrimination. Therefore, the complaint 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 complaint be and the same hereby is dismissed.

DATED: February 3, 2009
Syracuse, New York

A handwritten signature in black ink, appearing to read 'Edward Luban', with a long horizontal flourish extending to the right.

Edward Luban
Administrative Law Judge