

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

BENNIE BATES,

Complainant,

v.

**FUND FOR COMMUNITY LEADERSHIP
DEVELOPMENT, INC.,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10115830

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 12, 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: **FEB 13 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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

Case No. **10115830**

SUMMARY

Complainant alleged that Respondent discriminated against him because of his creed. Because the evidence does not support the allegation, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On January 24, 2007, 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 Robert J. Tuosto, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on February 5, 2008. On

March 19, 2008, pursuant to 9 N.Y.C.R.R. § 465.12(d)(2), the Division substituted ALJ Thomas J. Marlow for ALJ Tuosto. A final public hearing session was held on March 24, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Jane M. Stack, Esq. Respondent was represented by Adam I. Kleinberg, Esq.

The Division and Respondent filed proposed findings of fact and conclusions of law after the conclusion of the public hearing.

For consistency, all exhibits marked "Division Exhibits" have been marked "Complainant's Exhibits."

FINDINGS OF FACT

1. Complainant is a Baptist. (ALJ's Exhibit 2; Tr. 82-83)
2. Complainant worked for Respondent at the New Life Tabernacle of Bedford Stuyvesant Church ("New Life"), from September 7, 2004, to May 31, 2006, as a facilitator-outreach coordinator ("facilitator"), a salaried position with a flexible work schedule to promote its Uth Turn Project and serve the needs of its participants. (Respondent's Exhibits 3, 17; Tr. 19-20, 26, 290-98) New Life is a Pentecostal Church. (Tr. 269)
3. As a facilitator for Respondent, Complainant had the responsibility to follow the directions of the Reverend C. Vernon Mason ("Mason"), the Chief Executive Officer of Respondent, with regard to conducting intervention activities, participating in outreach efforts, and acting as a liaison with New Life. (Respondent's Exhibit 3; Tr. 283)
4. Displeased with Complainant's work performance, Mason directed Complainant, as a liaison with New Life, to be present at New Life on the weekends. (Tr. 288-98, 306-10, 314-19, 336-38, 341-44, 381-82, 385) Complainant refused to work on the weekends, claiming it was his

own time and that he had other activities such as being a party planner, that occupied his time on the weekends. (Tr. 83, 141, 288-98, 322-24, 407-08, 484)

5. Mason directed Complainant to act as a liaison with New Life on the weekends, not to worship at New Life. (Tr. 288-90, 333-34, 336-38, 346, 370-71)

6. On May 31, 2006, after refusing to follow Mason's direction regarding weekend work at New Life, Complainant's employment was terminated because of dissatisfaction with Complainant's work performance. (Respondent's Exhibit 17; Tr. 351)

7. On January 24, 2007, Complainant filed his verified complaint with the Division, alleging that he was unlawfully discriminated against because he is a Baptist. (ALJ's Exhibit 2) Complainant testified that he doesn't think that he was discriminated against because he is a Baptist. (Tr. 481-83) Complainant thinks that Respondent had no authority to direct him to work on the weekends. (Tr. 483, 485-86)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an individual in the terms, conditions, or privileges of employment because of that individual's creed. *See* Human Rights Law § 296.1(a).

Complainant alleges that Respondent discriminated against him because of his creed when it terminated his employment. After considering all of the evidence presented, and evaluating the credibility of the witnesses, I find that the credible evidence does not support this allegation. The credible evidence establishes that the employment of Complainant was terminated for poor work performance and after failing to follow a direction from Respondent's Chief Executive Officer. Complainant does not think that the termination of his employment had

anything to do with the fact that he is a Baptist and there is no evidence to suggest that the termination occurred under circumstances giving rise to an inference of discrimination because of creed.

Ultimately, Complainant has the burden to establish by a preponderance of the evidence that unlawful discrimination occurred. *See Stephenson v. Hotel Employees and Restaurant Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 811 N.Y.S.2d 633 (2006)
Complainant has failed to meet this burden.

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: January 12, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge