

**STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS**

**STATE DIVISION OF HUMAN
RIGHTS**

On the complaint of

SUSAN G. CERATO-OKON,

Complainant,

-against-

**SUFFOLK COUNTY POLICE
DEPARTMENT,**

Respondent,

-and-

**SUFFOLK COUNTY DEPARTMENT
OF CIVIL SERVICE,**

Necessary Party.

**NOTICE OF ORDER AFTER
HEARING**

**CASE No:
3502291E**

PLEASE TAKE NOTICE that the within is a true copy of an Order issued herein by the Hon. Edward A. Friedland, Executive Deputy Commissioner of the State Division of Human Rights, after a hearing held before Administrative Law Judge Margaret A. Jackson. 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, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

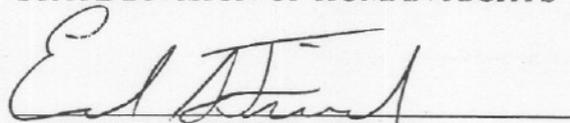
PLEASE ALSO TAKE NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice which is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or 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 days after

service of this Order. The Petition and Notice of Petition must also be served on all parties, including the Division of Human Rights.

DATED: **MAR 14 2007**

BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS

A handwritten signature in cursive script, appearing to read "Edward A. Friedland", written over a horizontal line.

EDWARD A. FRIEDLAND
Executive Deputy Commissioner

To:

Susan G. Cerato-Okon
14 Little Treasure Drive
Medford, New York 11763

Suffolk County Police Department
30 Yaphank Avenue
Yaphank, New York 11980
Attention Richard Dormer, Commissioner

Suffolk County Department of Law
P.O. Box 6100
100 Veterans Memorial Highway
Hauppauge, New York 11788-0099
Attention Chris P. Termini, Esq.

Suffolk County Department of Law
P.O. Box 6100
100 Veterans Memorial Highway
Hauppauge, New York 11788-0099

Suffolk County Department of Civil Service
P.O. Box 6100
Hauppauge, New York 11788-0099
Attention Alan Schneider, Commissioner

Caroline J. Downey, Acting General Counsel
Matthew A. Menes, of Counsel
State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Hon. Andrew Cuomo
Attorney General
120 Broadway
New York, New York 10271
Attention Civil Rights Bureau

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Complainant alleged that Respondent discriminated against her in employment based on her sex by subjecting her to disparate treatment. Because the record does not support her claim, it is dismissed.

PROCEEDINGS IN THE CASE

On May 19, 1994, Complainant filed a verified complaint, thereafter amended, with the State Division of Human Rights ("Division") charging Respondent with an unlawful discriminatory practice in violation of the Human Rights Law of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe Respondent had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to a public hearing.

After due notice, the case came on for public hearing at the Division on August 4 and 5, 2005, before Margaret A. Jackson, an Administrative Law Judge ("A.L.J.") of the Division.

Complainant and Respondent appeared at the hearing. The complaint was represented by the Division through Matthew Menes, Esq. of Counsel. Respondent was represented by Chris P. Termini, Esq., Assistant County Attorney and Christopher Gatto, Esq., Assistant County Attorney.

On August 23, 2006, ALJ Jackson issued a Recommended Findings of Fact, Opinion, Decision and Order ("Recommended Order") for the Commissioner's consideration. Complainant, pro se, filed Objections to the Recommended Order with the Commissioner's Order Preparation Unit dated October 2, 2006.

FINDINGS OF FACT

1. Complainant alleged that Respondent discriminated against her in employment based on her sex by subjecting her to disparate treatment when it terminated her employment for misconduct. Complainant alleged that Respondent maintained the employment of similarly-situated male probationary police officers who also committed misconduct. (A.L.J.'s Exhibit I).

2. Respondent denied discrimination. (A.L.J.'s Exhibit II).

3. On June 6, 1992, Complainant took a written examination to become a Suffolk County Police Officer. She passed both the written and physical examination and was called for the position. Complainant reported to the Police Academy in September of 1992 to begin an eighteen month probationary period. After six months of training in the Police Academy, Complainant was assigned to the Sixth Precinct for additional training as a probationary police officer. (Tr. 28-31, 35, 223).

4. In February or March of 1993, Complainant was transferred to the Fifth Precinct as part of her probationary training. (Tr 35-36).

5. On May 30, 1993, after working the 4 p.m. to midnight shift, Complainant went to a bar to see the performance of a fellow police officer. Complainant planned to meet Police Officer Michael Diamond at the bar. However, when he did not show up, she left the bar between 2 a. m. and 3 a.m. to go to his residence. Upon turning off the main road onto a dark residential street, Complainant ran her vehicle into a sand berm causing substantial damage to the front end of her vehicle and serious physical injuries to herself. (Tr. 194-197).

6. Police Officer Bondich, while on routine patrol, came upon Complainant's vehicle on an angle at the top of the mound of sand and found Complainant with off duty Police Officer Diamond who was about to fill out a police accident report. Officer Bondich completed and filed his report indicating that Complainant said that she was being followed by an unknown vehicle just before she hit the pile of sand. (Tr. 201).

7. Complainant refused medical assistance at the scene of the accident, but went to Stony Brook Hospital later that morning where the triage nurse noted a smell of alcohol. (Tr.199, 211). Complainant testified that she had not been drinking. (Tr. 115).

8. Complainant contacted a friend who worked at another insurance company, GEICO, about the requirements for filing an uninsured motorist claim and learned that contact with another vehicle was a critical allegation for her claim. Thereafter, Complainant notified her insurance company, CNA, about the accident and told them that she had been struck from behind. On August 15, 1993, Complainant filed a written complaint with New York State Insurance Department criticizing CNA's handling of her claim. (Tr. 119).

9. On February 18, 1994, CNA filed a complaint with Respondent's Internal Affairs Bureau alleging insurance fraud because there were many conflicting reports including the fact

that Complainant's initial report did not mention contact with another vehicle and there was no rear end damage to her car at the time of the accident. (Tr. 36-37, 109-112,157.245).

10. During the Internal Affairs' investigation a neighborhood canvas was made around the scene of the accident. Notably, a Kenneth Peters told the investigating officers that sometime between 2 a.m. and 3 a.m. in the morning, "there was a knock on the door of his house and a young woman was there bleeding, appeared dazed and he thought she had been drinking alcohol. She indicated that someone had chased her, beaten her, then stole her car and she asked to use the telephone." (Tr. 217). He offered to drive her around to look for her car and after a period of time, discovered the car on a pile of sand right down the block from where his house was. Shortly, thereafter, a car arrived with two men drinking beer. One of them identified himself as a New York City police officer and stated that they were going to take her with them. One of them talked to her privately and she agreed to get in their car and left with them. She later returned to the scene with Police Officer Diamond. (Tr.216-218).

11. A couple of weeks thereafter, Complainant discovered the rear window of her car broken and notified her insurance company and the State Department of Consumer Affairs that the break was due to the stress from the prior accident. Notably, Police Officer Michael Diamond helped her file two police reports regarding this broken window. The first report alleged that the window broke from stress from the accident. A later report indicated that it broke as a result of criminal mischief while parked in the precinct parking lot. (Tr. 121-124, 215).

12. Complainant testified that she was unaware that Officer Michael Diamond later admitted to filing two conflicting reports. He plead guilty to misconduct and was disciplined. (Tr. 126 -127).

13. After a review of the Internal Affairs investigation report, Robert B. Kearon, the then Deputy Police Commissioner of the Suffolk County Police Department, recommended termination of Complainant's employment as well as referral of the matter to the District Attorney's Office for possible criminal prosecution. (Tr. 185, 194; Respondent's Exhibit C).

14. Kearon determined that because of the mistruths that Complainant made under oath in connection with the car accident and subsequent broken window, she was not fit to become a police officer. Kearon also believed that Complainant had been drinking when she got into the accident. In accordance with Respondent's policy to discipline or terminate probationary and non-probationary police officers for misconduct, questionable moral turpitude or dishonesty, Respondent terminated Complainant's employment for unsatisfactory performance on March 8, 1994. (Tr. 40-43, 45, 48, 223-224).

15. On May 19, 1994, Complainant, who had not been previously criticized for her work performance before the car accident, filed the instant claim alleging male police officers received preferential treatment by Respondent and were not terminated for misconduct or incidents that were unbecoming a police officer. Of the officers Complainant named, only five were probationary police officers and thus similarly-situated. Respondent's evidence demonstrated that those officers were either terminated or engaged in misconduct of such a lesser degree that they did not warrant termination. (A.L.J.'s Exhibit 1; Complainant's Exhibit 8; Respondent's Exhibit D1, D2; Tr. 230-233, 237-238). Respondent produced evidence that in 1994, eight probationary police officers were terminated for misconduct and acts considered unbecoming a police officer. Of those eight, only one, Complainant, was a woman. (Respondent's Exhibit D1; Tr. 236-239).

16. Respondent referred Complainant's case to the District Attorney's office for criminal charges for insurance fraud. There was a grand jury indictment but the Judge directed a not guilty verdict. As a probationary police officer, the court also determined that Complainant had not been given the proper notice requirements before termination. Hence, on July 22, 1998, Complainant was given a departmental hearing, but reinstatement was denied. (Tr. 54).

DECISION AND OPINION

Complainant alleged that Respondent discriminated against her in employment based on her sex by subjecting her to disparate treatment when it terminated her employment for misconduct. Complainant alleged that Respondent maintained the employment of similarly-situated male probationary police officers who also committed misconduct. Because the credible evidence does not support her claims, her complaint is dismissed.

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discharge from employment an individual because of her sex. Human Rights Law § 296.1.

A Complainant has the initial burden of establishing a prima facie case. To do so, she must demonstrate that she was a member of a protected class and that Respondent subjected her to an adverse action as a result of her membership in that protected class. Once a Complainant has established a prima facie case, the burden shifts to Respondent to show that the action was taken for legitimate, nondiscriminatory reasons. Complainant is then afforded an opportunity to prove the reasons offered by Respondent were pretextual. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 377 N.Y.S.2d 471 (1975); see also *McEniry v. Landi*, 84 N.Y.2d 554, 558, 620 N.Y.S.2d 328 (1994).

Complainant successfully established a prima facie case of discrimination based on sex. She alleged that she was terminated for misconduct and pointed to other police officers who were male and committed misconduct, but were not terminated.

Respondent is not required to provide a reason for the termination of employment of its probationary employees, See York v. McGuire, 63 N.Y.2d 760, 480 N.Y.S.2d 320, 469 N.E.2d 838 (1984). However, such termination may not be for reasons protected under the law. Respondent has demonstrated that all but five of the officers Complainant named were not probationary police officers and, therefore, not similarly-situated. Of the five probationary police officers she named, Respondent has presented credible evidence that they were either terminated or the misconduct they committed did not rise to a level meriting termination. Respondent has additionally shown that in 1994, eight probationary police officers from Complainant's class were terminated. Of those eight only one, Complainant, was female. Complainant's employment was terminated for the same reasons that male probationary police officers employment were terminated. Respondent determined that her conduct was unbecoming of a police officer. Respondent produced credible evidence that the decision to terminate Complainant's employment was not because she is a woman, but because of the results of the investigation by the internal affairs bureau, because she filed conflicting police reports and because Kearon believed she had been drinking when she got into the car accident. All of these issues raised questions about her moral turpitude.

Complainant has not demonstrated that Respondent's proffered reasons were a pretext for discrimination.

The record supports a finding that the decision to terminate Complainant's employment was not in violation of the Human Rights Law. Accordingly, the instant complaint is dismissed.

ORDER

Based upon the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law, it is

ORDERED that the complaint be, and the same hereby is, dismissed.

DATED: **MAR 14 2007**

BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS

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EDWARD A. FRIEDLAND
Executive Deputy Commissioner