

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

LASHONNA CLINTON,

Complainant,

v.

**PRICE CHOPPER SUPERMARKET, DIV. OF
GOLUB CORP.,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10113739

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 December 31, 2007, by Christine Marbach Kellett, 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 KUMIKI GIBSON, 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, this 28th day of January, 2008.



KUMIKI GIBSON
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

LASHONNA CLINTON,

Complainant,

v.

**PRICE CHOPPER SUPERMARKET, DIV.
OF GOLUB CORP.,**

Respondent.

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

Case No. 10113739

SUMMARY

Complainant charged Respondent with discrimination in employment on the basis of sex. Respondent denied the charge. Complainant failed to appear at the preliminary conference and failed to appear at the public hearing although on notice. Complainant failed to cooperate with the Division in the prosecution of her complaint. The complaint should be dismissed.

PROCEEDINGS IN THE CASE

On August 22, 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 an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Christine Marbach Kellett, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on November 13, 2007.

Complainant did not appear at the hearing. Respondent, by its representative Carrie Szydowski, appeared at the hearing. The Division was represented by Anton Antomattei. Respondent was represented by Patrick J. Saccocio, Esq.

FINDINGS OF FACT

1. On August 22, 2006, Complainant filed a complaint with the Division alleging discrimination in employment on the basis of sex. (ALJ’s Exh. 1)
2. Respondent denied the charge. (ALJ’s Exh. 3)
3. On August 29, 2007, the Division served a notice of hearing, to which was attached a copy of the complaint, on Complainant and on Respondent. (ALJ’s Exhibits 1,2)
4. The notice of hearing advised the parties of a preliminary conference scheduled for September 14, 2007, with the public hearing scheduled for October 22-23, 2007. (ALJ’s Exh. 1)
5. At the preliminary conference on September 14, 2007, Division Attorney Anton Antomattei (“Division Attorney”) advised the parties that Complainant was not responding to his efforts at contact. (Division’s Exh. 1; Tr. 4-5)
6. The Division Attorney made additional efforts at contacting Complainant after confirming through an autotrack search that the Division’s address for Complainant was current. (Division’s Exhibits 2, 3, 4; Tr. 7)

7. On October 30, 2007, the Division Attorney sent Complainant by certified mail, a thirty-five day letter, in which he asked Complainant to contact him or risk the dismissal of her complaint. (Division's Exh. 5; Tr. 8)

8. On November 8, 2007, a second Notice of Hearing was served on the parties due to a change in the hearing date. (ALJ's Exh. 4; Division's Exhibits 2, 3; Tr. 6)

9. The mail sent to Complainant's last known address by first class mail and by certified mail and by Fed Ex, has not been returned. (Tr. 9)

10. The mail, having not been returned, is presumed delivered.

11. By correspondence dated December 10, 2007, the Division Attorney advised Respondent's counsel and the ALJ, that Complainant had not contacted him in response to the thirty-five day letter. The letter is received as Division's Exh. 6. (Division's Exh. 6; Tr. 11)

12. Respondent moved to dismiss the complaint. (Tr. 10)

OPINION AND DECISION

Complainant failed to appear at the preliminary conference. Complainant failed to cooperate with the Division Attorney. Complainant failed to appear at the public hearing. No excuse has been provided for Complainant's absences or failures to respond to the numerous contacts made by Division personnel. Respondent's oral application for dismissal of the complaint should be granted.

The Division submitted documentary evidence of its numerous attempts to contact the Complainant. Various methods of delivery including first class mail, certified mail and Fed Ex, were used. The letters sent to Complainant were not returned and are presumed delivered.

Complainants have an obligation to cooperate with the Division in the prosecution of

their complaints. Complainant has not met that obligation. The complaint should be dismissed based upon the Complainant's failure to cooperate with the Division and upon her unexcused failure to attend the public hearing despite notice. *See: Cuyler v. Searle Building, Inc. et al*, DHR Case No. 10113871 (November 14, 2007).

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 with prejudice.

DATED: December 31, 2007
Bronx, New York



Christine Marbach Kellett
Administrative Law Judge