



ANDREW M. CUOMO  
GOVERNOR

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

BENNET COHEN,

Complainant,

v.

WENTWORTH PROPERTY MANAGEMENT,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 10133499

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 6, 2011, by Thomas S. Protano, 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: **MAR 17 2011**  
Bronx, New York

  
GALEN D. KIRKLAND  
COMMISSIONER



DAVID A. PATERSON  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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HUMAN RIGHTS**

on the Complaint of

**BENNET COHEN,**

Complainant,

v.

**WENTWORTH PROPERTY  
MANAGEMENT CORP and COOPER  
SQUARE REALTY, INC.,**

Respondent.

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

Case No. 10133499

**SUMMARY**

Complainant, a property manager, alleged that Respondents refused to assign him buildings to manage because of his age. Respondents asserted that they did not feel they could trust Complainant after their clients had repeatedly asked for Complainant to be removed from his managerial responsibilities. Because Complainant was not able to prove that Respondents' stated reasons were a pretext for age discrimination, the case must be dismissed.

**PROCEEDINGS IN THE CASE**

On April 13, 2009, 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 S. Protano, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on September 20, 2010 and September 21, 2010. At hearing, the names of the Respondents were clarified and the caption was amended to reflect the proper Respondents.

Complainant and Respondent appeared at the hearing. Complainant was represented by Raymond Nardo, Esq. Respondents were represented by Keith J. Frank, Esq.

Permission to file post-hearing briefs was granted. Both attorneys made timely submissions.

#### **FINDINGS OF FACT**

1. Complainant was born on May 19, 1934. (Tr. 9)
2. In 2002, Complainant began working for Respondent Wentworth Property Management Inc. (Wentworth") as a property manager. At the time of his hiring, Complainant had been in the property management field for more than 40 years. (Tr. 14-18)
3. Wentworth manages large apartment buildings. (Tr. 28-29)
4. Complainant was hired to work for Wentworth by Steven Hyatt, executive vice president. (Tr. 126-27)
5. Most of Complainant's experience involved managing rental properties. He did not have extensive experience managing cooperatives ("co-ops") and condominiums. (Tr. 83)

6. Wentworth primarily managed co-ops and condominiums. Managing a co-op or condominium is different than a rental property in that the manager of a coop or condominium must maintain a good relationship with the tenants and the various boards. A manager of rental property can be more dictatorial. (Tr. 148-49)

7. As a property manager, Complainant handled tenant complaints, collected rents or maintenance fees, interfaced with vendors and supervised building employees. He managed five to six buildings for Wentworth and visited each one as needed. (Tr. 30-31)

8. In 2005, Complainant was removed from four of the five buildings he managed for Wentworth. This significantly reduced Complainant's salary, because he was paid based on the number of buildings he managed. (Tr. 40, 123)

9. Hyatt reassigned the buildings because he received complaints from the residents of the buildings. The board members of the co-ops and condominiums from which Complainant had been removed had asked Hyatt to remove Complainant from their buildings. (Tr. 149, 152, 162-63, 165,170, 175, 221)

10. Some board members felt that Complainant failed to properly serve their needs so they asked Hyatt to replace Complainant. (Tr. 220, 254, 264)

11. Hyatt feared that if he did not follow his customers' wishes and remove Complainant, he would lose the building as a client. (Tr. 153-54)

12. Hyatt noticed that Complainant did not have good relationships with the board members of the buildings he managed. (Tr. 149)

13. One of Complainant's former buildings was given to Jeff Hower, who was born on July 27, 1950. Two other buildings were given to Sam Reiver, who is presently 65 years of age. (Complainant's Exhibit 4; Tr. 84-85, 249)

14. In December 2006, Complainant met with Hyatt and John Klein, Wentworth's president. He requested more buildings to manage. When he was told there were no buildings available, Complainant stated that he felt he was being discriminated against because of his age. Complainant left the room without commenting any further. (Tr. 43)

15. A few weeks after that complaint, Wentworth gave Complainant a second building to manage. That assignment lasted only until the following July. Complainant was removed from the building because the tenants were not pleased with his performance. (Tr. 44-46)

16. On September 8, 2008, Wentworth hired Joanne Batista to manage Cadman Plaza North, Inc., a building for which Wentworth had a management contract. Batista was born on April 27, 1966. (Complainant's Exhibits 4 & 5; Tr. 63)

17. Complainant was neither informed of the vacancy at Cadman Plaza North nor offered the property manager position for that building, even though Complainant had asked Hyatt for more buildings to manage. (Tr. 64)

18. In June of 2008, Complainant sought the manger position for another building, Brigham Co-op Apartments. That position was given to Linda Romolo, who was born on September 6, 1957. (Complainant's Exhibit 4; Tr. 67)

19. In May of 2008, Complainant sought the property manager position for Pratt Towers. That position was given to Carmen Esquivel, who was born on March 3, 1968. (Complainant's Exhibit 4; Tr. 65)

20. On April 1, 2009, while Complainant was asking for more buildings to manage, Nicole Feldman was hired to manage Brigham Park Co-op Apartments. Her date of birth is May 15, 1970. Feldman's employment was terminated by Wentworth on January 15, 2010. (Respondent's Exhibit 4; Complainant's Exhibit 4; Tr. 66-67, 141)

21. In 2008 and 2009, Hyatt considered Complainant's prior experience while working for Wentworth when he sought to assign property managers for buildings. Hyatt did not think Complainant was suitable for any of the openings he had during that period. Hyatt did not consider Complainant's age when assigning property managers. (Tr. 133-36, 161-62)

22. During this same period, Hyatt used Complainant as a replacement when other property managers went on vacation or were otherwise unavailable, but he did not appoint Complainant to any permanent positions. (ALJ Exhibit 2)

23. Hyatt felt that Complainant's performance was acceptable "over the short term...because he's loyal, shows up and checks after the employees." Complainant also "has a temper, he doesn't write well, he doesn't make oral presentations that well." For those reasons and the fact that there had been customer complaints about Complainant, Hyatt was not willing to give Complainant any new buildings to manage on a permanent basis. (Tr. 144-45)

24. As a result of Complainant's problems, Hyatt attended co-op and condominium board meetings with Complainant. Because of Complainant's poor writing skills, Hyatt also wrote and submitted reports on Complainant's behalf. Those duties were the responsibility of the property manager, not Hyatt. (Tr. 140)

25. Alex Peaker is a property manager who currently works for Respondent. He manages "four or five" buildings and was assigned a building as recently as 2008. Peaker, whose date of birth is May 8, 1932, is older than Complainant. (Complainant's Exhibit 4; Tr. 147)

26. Patrick Jones, who was born March 13, 1939 and Ed Maccone, who was born on July 16, 1941, are property managers who are currently working for Wentworth. (Complainant's Exhibit 4; Tr. 154)

27. In July of 2009, Complainant's employment with Wentworth ended when the last building Complainant managed, Embassy Co-op, discontinued its relationship with Wentworth and hired a new management company. (Respondent's Exhibit 4; Tr. 194)

28. Of nine property managers who were let go by Wentworth in 2009, Complainant was the oldest. (Respondent's Exhibit 4)

### OPINION AND DECISION

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

To make out a prima facie case of unlawful discrimination under Human Rights Law, a complainant must show (1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Ferrante v. American Lung Ass'n*, 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 a complainant can establish a prima facie case of discrimination or retaliation, the respondent must then articulate a legitimate, non-discriminatory business reason for its actions. If the respondent does so, then the complainant must show that the proffered reason is a pretext for discrimination. *Pace University v. N.Y. City Comm. on Human Rights*, 85 N.Y.2d 125, 128, 623 N.Y.S.2d 765 (1995); *Pace v. Ogden Svcs. Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3d Dept. 1999)

In the instant case, Complainant has clearly established the first three prongs of his prima

facie case in that he is a member of a protected class who was qualified for his position and was denied additional property management responsibilities. In addition, Complainant has shown that he repeatedly requested additional managerial responsibilities from Respondent. Respondent refused Complainant's requests and gave the buildings to younger property managers. Complainant has thus established a prima facie case of discrimination.

In response, Wentworth countered that Complainant's employment history with other buildings and boards led Hyatt to lose confidence in Complainant's ability. Respondents have supported this with evidence of Complainant's inability to get along with Wentworth's clients and his poor writing skills. Complainant has not shown this to be a pretext for discrimination. Complainant was not the oldest property manager and some of the buildings removed from Complainant's responsibility were given to a property manager who was not significantly younger than complainant. There is no evidence that Respondent was motivated by discriminatory animus when it failed to assign Complainant to any additional buildings so, therefore, the case 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 case be, and the same hereby is, dismissed.

DATED: January 6, 2011  
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas S. Protano", with a long horizontal stroke extending to the right.

Thomas S. Protano  
Administrative Law Judge