

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

RICHARD C. COLE,

Complainant,

v.

PRIME INC.,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10119479

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 July 24, 2008, 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 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:

Bronx, New York

GALEN D. KIRKLAND
COMMISSIONER

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

Case No. **10119479**

SUMMARY

Complainant charged Respondent denied him employment on the basis of his disability. Respondent denied the charge. Complainant failed to appear at the public hearing despite notice. The complaint should be dismissed.

PROCEEDINGS IN THE CASE

On August 9, 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 Christine Marbach Kellett, an Administrative Law Judge (“ALJ”) of the Division. The public hearing was held on May 12, 2008.

Complainant failed to appear at the public hearing. Respondent appeared at the hearing. The Division was represented by Lawrence Zyra. Respondent was represented by Damian Christian Shammus, Esq.

FINDINGS OF FACT

1. Complainant charged Respondent with violating the Human Rights Law sec. 2926.1(a) (Disability) when it failed to hire him for the position of truck driver. (ALJ Exh. 1)
2. Respondent denied illegal discrimination. (ALJ Exh. 3)
3. The Division served the parties with parties a notice of hearing. (ALJ Exhibits 1,2)
4. On or about May 9, 2008, Complainant advised the Division Attorney that he would not be attending the public hearing. (Tr. 3-5)
5. Complainant acknowledged notice of the public hearing. (ALJ Exhibits 1, 2; Tr. 7-8)
6. Complainant did not request an adjournment of the public hearing. (Tr. 4)
7. The Division Attorney indicated he asked Complainant if someone else could appear and testify, including Complainant’s father, who allegedly had personal information relevant to the complaint, but Complainant declined to produce anyone. (Tr. 8-9).
8. The Division Attorney indicated on the record that he had advised Complainant that Complainant’s presence at the public hearing was necessary. (Tr. 8-9)
9. The Complainant was also advised that failure to appear might result in a dismissal of the complaint. (Tr.9)
10. Respondent appeared and was prepared to produce its defense. (Tr. 3, 11)

OPINION AND DECISION

Complainant failed to appear at the public hearing despite notice. The complaint should be dismissed. Complainants have an obligation to cooperate with the Division in the prosecution of their complaints. Complainant advised the Division Attorney assigned to the case that he not only declined to come to the public hearing himself, but he also declined to produce his own father, an individual identified in the complaint as possibly having information relevant to the complainant's case. Although advised about asking for an adjournment, Complainant did not ask for adjournment. Complainant failed to cooperate with the Division's public hearing process.

The complaint should be dismissed based upon Complainant's deliberate failure to appear at the public hearing and his deliberate refusal to cooperate with the public hearing process. *See: Cuyler v. Searle Building, Inc. et al*, DHR Case No. 10113871 (November 14, 2007); *Swails v. Classic Fashion Resources, d/b/a Pittsford Pendleton Shop*, DHR Case No. 10115317 (February 6, 2008).

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: July 24, 2008
Bronx, New York



Christine Marbach Kellett
Administrative Law Judge