

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

LINDA DEFILIPPIS,

Complainant,

v.

STATE OF NEW YORK, UNIVERSITY HOSPITAL
AT STONY BROOK,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10109449

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 April 23, 2008, by Margaret A. Jackson, 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.

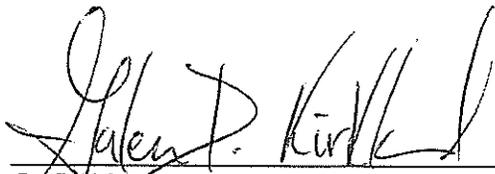
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **AUG 06 2008**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

LINDA DEFILIPPIS,

Complainant,

v.

**STATE OF NEW YORK, UNIVERSITY
HOSPITAL AT STONY BROOK,**

Respondent.

**RECOMMENDED ORDER
OF DISMISSAL**

Case No. 10109449

SUMMARY

Complainant charged that Respondent discriminated against her by denying her employment as an electrician based on her gender. Respondent established that Complainant's non-selection for the electrician position was not in violation of the Human Rights Law. Therefore, Complainant's case must be dismissed.

PROCEEDINGS IN THE CASE

On January 6, 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 unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

The case was assigned to Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. The Division was represented by Sandra S. Thomas, Esq. Respondent was represented by Michele J. LeMoal-Gray, Esq., Associate Counsel

FINDINGS OF FACT

1. Between 2000 and 2005, Complainant, who was seeking employment as an electrician, submitted on-line and written applications for employment as an electrician. In many instances, she did not receive an interview or a job from the prospective employers. (Tr. 57)
2. On August 9, 2005, Complainant, submitted an on-line application for employment as an electrician to Respondent. The salary for the position was \$31,000 per year. Complainant’s previous salary as stated on her application was \$55,000 per year. (Tr. 7, 10, 165 Complainant’s Exhibit1)
3. The pre-requisite for the electrician position was four years of full time experience under a journeyman electrician. (Tr. 13, 141)
4. Complainant met the minimum qualifications for the position. She graduated from a five year apprenticeship program under the National Joint Apprenticeship Training Commission and was working in the field as an electrician and a foreman for a total of fifteen years. (Tr. 14)
5. Respondent followed a uniform practice and procedure. It reviewed Complainant’s application along with a pool of 25-30 applicants and determined that only 10-14 of the applicants were qualified for the position based on their qualifications and previous annual salary. (Tr. 163, 185)

6. Complainant received a letter dated August 10, 2005, from Respondent advising her that she would be contacted directly if the department wished to interview her for the electrician position. (Respondent's Exhibit 1)

7. Complainant was not among the applicants selected to interview for the electrician position.

8. In September of 2005, Complainant inquired about the status of her application and was told that the position had been filled. (Tr. 11, 16-17)

9. Respondent hired the male electrician that it believed was most qualified for the job. (Tr. 166, 171-72)

10. On September 26, 2005, Complainant filed an affirmative action complaint with Respondent because she had sent a number of applications to Respondent for an electrician position, had not been offered an interview and believed that it was because of her gender. (Tr. 69, 182)

11. Respondent investigated the complaint and determined that there was no wrongdoing. (Tr. 22, 188)

12. On January 6, 2006, Complainant filed a complaint with the Division contending that Respondent's failure to hire her was for discriminatory reasons. (Tr. 23)

OPINION AND DECISION

Under the Human Rights Law, it is unlawful for an employer "to refuse to hire or employ" an individual on the basis of his or her gender. N.Y. Exec. Law § 296 (1) (a). A complainant has the burden of establishing a prima facie case by showing that he or she is a member of a protected group, that he or she suffered an adverse employment action and that the

respondent's action occurred under circumstances giving rise to an inference of discrimination. Once a prima facie case is established, the burden of production shifts to the respondent to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its employment decision. The ultimate burden rests with the complainant to show that the respondent's proffered explanations are a pretext for unlawful discrimination. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 39-40, 377 N.Y.S.2d 471 (1975) [citing *McDonnell Douglas Corp. v. Green*, 411 U.S.792 (1973)].

Complainant established a prima facie case by demonstrating that she is a member of a protected group and was not hired despite her qualifications for the position. However, Respondent did not base its decision not to hire the Complainant upon mere speculation that she could not perform the job because she is a female. Respondent applied the same criteria to all applicants. It reviewed the applicants' qualifications as well as their previous salary as stated on their applications, without regard to gender, to determine who would receive an interview. Using this process the applicant pool was narrowed from approximately 30 to approximately 10. Interviews were held for the remaining applicants and the person that Respondent believed was most qualified for the position was hired. That person happened to be a male. Respondent was entitled to rely on its Human Resource department practices while following a uniform procedure to evaluate applicants. *See, Pageau v. Tolbert*, 304 A.D. 2d 1067, 1068, 758 N.Y.S.2d 712 (3d Dept. 2003) [citing *Matter of Curcio v. Nassau County Civil Service Commission*, 220 A.D. 412, 413, 631 N.Y.S.2d 881 (2d Dept. 1995) *lv. Denied*, 87 N.Y.2d 806 (1996)].

Complainant argues that she was not given an interview or hired for the electrician position because of her gender. Employers have wide discretion in developing hiring standards and related tests. "A neutral hiring standard which in operation and effect adversely affects

employment opportunity for a protected class of persons is not proscribed... if it bears a rational relationship to job performance.” *Sontag v. Bronstein*, 33 N.Y.2d 197, 351 N.Y.S.2d 389 (1973).

After full consideration of Complainant’s arguments, I find that they are without merit. Accordingly, the complaint is 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 dismissed.

DATED: April 23, 2008
Bronx, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive style with a large, sweeping flourish at the end.

Margaret A. Jackson
Administrative Law Judge