



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

VENECIA DELOSSANTOS,

Complainant,

v.

NEW YORK INN, EURO BUDGET HOTELS, INC.,
Respondents.

NOTICE AND
FINAL ORDER

Case No. 10127703

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 1, 2010, 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: **FEB 18 2011**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



DAVID A. PATERSON
GOVERNOR

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VENECIA DELOSSANTOS,

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**NEW YORK INN; EURO BUDGET HOTELS,
INC.,**

Respondent.

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

Case No. 10127703

SUMMARY

Complainant accused Respondent of terminating her employment because of her national origin. Respondent asserts that Complainant left her job after engaging in an ongoing dispute with a co-worker. Because the Complainant's testimony could not be credited over the testimony of Respondent's witnesses, her claim must fail.

PROCEEDINGS IN THE CASE

On July 16, 2008, 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 August 18, 2010 and August 19, 2010. At hearing, the caption was amended to include Respondent's corporate name.

Complainant and Respondent appeared at the hearing. The Division was represented by Aaron Woskoff, Esq. Respondent appeared without representation.

FINDINGS OF FACT

1. Complainant is from Dominican Republic. (Tr. 18)
2. Complainant worked for Respondent, a hotel, from December, 2004 until about March, 2008 as a housekeeper. (Tr. 17, 30)
3. While she worked for Respondent, Complainant was the only employee of Dominican national origin. (Tr. 18)
4. There are at least four other Hispanic housekeepers from Puerto Rico, Guatemala, Peru and Mexico. (Tr. 29, 68-69, 77)
5. Complainant identified Carmen Nunez as one of her supervisors; however, Nunez was a housekeeper, not a supervisor. (Tr. 21, 86)
6. Nunez is from Puerto Rico. In her tenure as a housekeeper for Respondent, she has never witnessed or heard of any discriminatory acts committed at the hotel. (Tr. 89-90)

7. Kamlesh Paneri was the Respondent's front desk manager. He was in charge of the hotel operation and all staff during his eight hour shift. (Tr. 66-67)

8. Paneri is of Indian national origin. (Tr. 68)

9. Paneri was unaware of Complainant's national origin. (Tr. 64)

10. Complainant speaks little if any English. She testified at the hearing through an interpreter. Paneri does not speak Spanish. (Tr. 95, 97)

11. While Complainant worked for Respondent, she had a dispute with Anthony Clark regarding her tip money. Complainant accused Clark of stealing her tip money. (Tr. 70, 73, 90, 101)

12. Complainant made a complaint about stolen tip money to Paneri and others. Paneri investigated the incident but Clark denied taking the money. (Tr. 64, 101)

13. Thereafter, Paneri called a meeting of the staff and told all employees that tips left in the rooms belong to the housekeepers. (Tr. 102)

14. Although Complainant agrees that Clark was stealing her tip money, she denied making any complaints about stolen tips to Paneri. (Tr. 61)

15. Complainant and Clark often argued over the allegedly stolen tip money in the hotel while guests were present. (Tr. 69)

16. Complainant asserts that throughout her tenure with Respondent Paneri repeatedly told her she was "stupid" and threatened to fire her. She alleges that he told her he "didn't like Hispanic people." Paneri denied making any such statements. (Tr. 23-24, 64-65, 69)

17. Complainant alleged that Paneri always made these statements "when no one was there" to hear his comments. (Tr. 22)

18. Complainant accuses Paneri of firing her "for no reason." (Tr. 28)

19. Paneri stated that Complainant left her job voluntarily because of her ongoing disputes with Clark. (Tr. 69)

20. Complainant received unemployment compensation after her employment with Respondent terminated. (Complainant's Exhibit 8)

21. Paneri claimed he has no authority to hire or fire anyone. (Tr. 93)

22. Gill Daniel, maintenance worker, was not hired by Paneri. He was hired by Ramesh Bhatia, an employee at Respondent's corporate offices, which were at a different location from the hotel. He was sent to the hotel to work after he was hired. (Tr. 99)

23. Despite Paneri's claims, he does have some authority to hire and/or fire. Both Complainant and Nunez stated that Paneri is responsible for hiring and firing. (Tr. 29, 76)

24. Daniel has stated that he never witnessed any incidents of discrimination at the hotel. (Tr. 100)

OPINION AND DECISION

The Human Rights Law § 296 (1) (a) makes it an unlawful discriminatory practice for an employer "because of . . . national origin . . . to discriminate against an individual in compensation or in terms, conditions or privileges of employment."

In order to prevail, a complainant must first make out a prima facie case. To make out a prima facie case of unlawful discrimination under Human Rights Law, a complainant must show (1) she is a member of a protected class; (2) she was qualified for the position; (3) she 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, the testimony of all parties was riddled with contradictions. Complainant identified Nunez as her supervisor, even though Nunez was not a supervisor. Complainant denied making complaints about Clark even though she asserts he was stealing her tip money and both Nunez and Paneri knew she had accused Clark and Paneri even held a meeting to address the issue. Paneri stated he cannot hire or fire anyone but he was identified by Nunez as responsible for hiring and firing. Despite that, Daniels was hired by someone else. Paneri also states that Complainant was not fired, but she received unemployment benefits, which are usually not available to workers who leave their employment. Finally, Complainant asserts that Paneri made threats to her when no one was around, even though she speaks limited English and Paneri speaks no Spanish.

The evidence in the record is full of inconsistencies and discrepancies. Little, if any, of the testimony received at hearing can be credited because of the rampant disparities. As such, Complainant has not established a prima facie case of discrimination because her testimony cannot be credited over that of Respondent's. Complainant cannot show that the termination of her employment, whether it was of her own volition or at Paneri's behest, was under circumstances from which one can infer discrimination. Since the Complainant bears the burden

of proving discrimination, her claim must fail. See, *Ferrante*, at 630; *Tibbits v. Verizon New York, Inc.*, 40 A.D.3d 1300, 836 N.Y.S.2d 727, N.Y.A.D. (3 Dept. 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 case be, and the same hereby is, dismissed.

DATED: December 1, 2010
Bronx, New York

A handwritten signature in black ink, appearing to read 'Thomas S. Protano', written in a cursive style.

Thomas S. Protano
Administrative Law Judge