

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

EMEKA E. EGONU,

Complainant,

v.

**CITY OF NEW YORK, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10118227

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 23, 2009, by Thomas J. Marlow, 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.

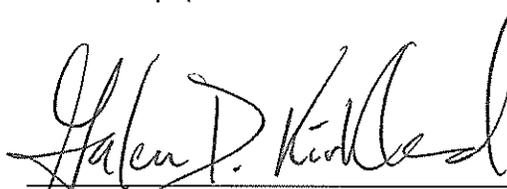
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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 11 2009**
Bronx, New York



GALEN B. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

EMEKA E. EGONU,

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**CITY OF NEW YORK, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Respondent.

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

Case No. 10118227

SUMMARY

Complainant alleged that Respondent discriminated against him because of his color and national origin and because he opposed unlawful discrimination. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On June 4, 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 Robert J. Tuosto, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on June 9, 2008.

Complainant and Respondent appeared at the hearing held on June 9, 2008. The Division was represented by Bellew S. McManus, Esq. Respondent was represented by Christopher A. Seacord, Esq., on behalf of Michael A. Cardozo, Corporation Counsel of the City of New York.

On July 30, 2008, pursuant to 9 N.Y.C.R.R. § 465.12(d)(2), the Division substituted ALJ Thomas J. Marlow for ALJ Tuosto. Another public hearing session was held on August 29, 2008.

Complainant and Respondent appeared at the hearing held on August 29, 2008. The Division was represented by Jane M. Stack, Esq. Respondent was again represented by Christopher A. Seacord, Esq., on behalf of Michael A. Cardozo, Corporation Counsel of the City of New York.

The Division and Respondent filed proposed findings of fact and conclusions of law after the conclusion of the public hearing.

FINDINGS OF FACT

1. In February of 1990, Complainant, a black man from Nigeria, began his employment with Respondent as an Assistant Civil Engineer. (Tr. 19-20, 224-25, 290, 312, 379)

2. In March of 2001, Anthony Maracic ("Maracic"), Chief for the Requirement Contracts section ("Contracts section") of Respondent's Bureau of Waste Water Treatment, hired Complainant to work in the Contracts section. (ALJ's Exhibit 10; Tr. 71, 164, 378-79, 381) Complainant was the only black man, and the only person from Nigeria, who was working as an Assistant Civil Engineer in the Contracts section. (Tr. 312, 224-25, 290, 379) Complainant alleges that he received no training for his work responsibilities in the Contracts section. Then,

within one year of working in the Contracts section, Maracic began to treat him poorly. (Tr. 226-27, 256)

3. While Complainant worked in the Contracts section between 2001 and 2007, Maracic was not pleased with Complainant's work performance. Complainant, however, always received an overall rating of good on his annual performance evaluations while working in the Contracts section. (Joint Exhibits 19-24; Tr. 174, 387-88) Given the extensive workload of the Contracts section, and the difficulty of hiring new people in a New York City agency, Maracic, although not pleased with Complainant's work performance, did not want to lose Complainant as an employee. (Tr. 384)

4. Complainant testified that, between 2002 and 2006, he was tormented every day at work by Maracic and his "army of people." (Tr. 226-27, 237-39, 293-98)

5. While employed with Respondent, Complainant was a union member of AFL-CIO, District Council 37 ("union"). (ALJ's Exhibit 12; Tr. 114, 122, 124-25, 233-35) As a union member, Complainant took advantage of union representation as early as 1999, when he accepted a fine to dispose of disciplinary charges brought against him. (Respondent's Exhibits 1, 2; Tr. 122) Complainant never formally sought to involve his union with the alleged torment he experienced at work. (Tr. 233-39, 242-44, 274-76)

6. In October of 2003, Maracic spoke with Complainant regarding Complainant's failure to comply with certain policies and procedures of Respondent. (Respondent's Exhibit 6) On February 25, 2004, Complainant filed a complaint of discrimination with Respondent's Equal Employment Opportunity office ("EEO"). Complainant accused his supervisors, Maracic and Mohammad Saghati ("Saghati"), of discriminating against him because of his color and national origin by treating him differently than other employees. EEO determined that Maracic and

Saghati had the right to establish policies and procedures and determined that Complainant's allegations that he was held to a different standard than others were unsubstantiated.

(Respondent's Exhibit 10) Complainant did not seek any further support from EEO because, in his opinion, EEO "always works in support of management." (ALJ's Exhibit 10)

7. While working in the Contracts section between 2001 and 2007, Complainant worked with another employee named Robert Chasan ("Chasan"). There was "bad blood" between Complainant and Chasan. On August 21, 2006, Chasan contacted the New York City Department of Investigation's Inspector General for the Department of Environmental Protection ("IG") and accused Complainant of timesheet abuse, signing in at a time earlier than Complainant actually came to work. Chasan claimed that those responsible for supervising Complainant were "aware of the abuse" but ignored it. (ALJ's Exhibit 14; Tr. 278-86)

8. Complainant thinks that Chasan was recruited by Maracic as part of Maracic's "army of people" who made Complainant's work experience "a living hell." (Tr. 55-56, 293-98) Maracic, however, did not speak with Chasan about making a complaint regarding Complainant's time and attendance before Chasan made his complaint, had no knowledge that Chasan was going to make the complaint, and had no involvement in the complaint being made to the IG. (Tr. 392)

9. On August 28, 2006, Complainant sent a memo to Maracic complaining about undue pressure and an atmosphere in the workplace that was not conducive to good work.

(Joint Exhibit 1)

10. On September 11, 2006, the IG wrote to Douglas Greeley, a Deputy Commissioner for Respondent, informed him of Chasan's allegation of Complainant's falsification of time sheets, and indicated that he should take appropriate action. (Joint Exhibit 2) Pursuant to the IG's direction, Respondent conducted an investigation of Complainant's time and attendance records.

When the investigation was concluded, disciplinary charges were brought against Complainant. (Tr. 166, 177, 392-93)

11. Complainant thinks he was singled-out regarding the time and attendance issue and thinks he did nothing different than several other employees. (ALJ's Exhibit 10; Tr.28-29, 112-15, 336)

12. Pursuant to Civil Service Law § 75, the disciplinary charges brought against Complainant were referred to the New York City Office of Administrative Trials and Hearings ("OATH") and a hearing ("OATH hearing") before an Administrative Law Judge was commenced on May 4, 2007 and concluded on May 17, 2007. At the OATH hearing, Complainant was represented by Mitchell B. Craner, Esq., and Complainant testified on his own behalf. (Joint Exhibit 6)

13. At the time Respondent conducted its investigation of Complainant's time and attendance records and up to the time of Complainant's hearing before OATH, Respondent had received no complaints about any other employee falsifying time sheets. (ALJ's Exhibit 18; Tr. 90-91; 393-95)

14. On June 4, 2007, after the abovementioned hearing but before a decision was rendered by OATH, Complainant filed his complaint with the Division, alleging that Respondent discriminated against him because of his color and national origin and because he opposed unlawful discrimination. (ALJ's Exhibit 1)

15. On July 24, 2007, OATH found Complainant guilty of falsifying his timesheet on 115 occasions within a seven-month period, June through December of 2006, and recommended that Complainant's employment be terminated. (Joint Exhibit 6) On July 30, 2007, Respondent's

Commissioner informed Complainant that she adopted the recommendation of OATH and that his employment was terminated. (Joint Exhibit 5)

16. Complainant concedes that the judge who conducted Complainant's hearing at OATH, who found Complainant guilty, and who recommended termination of Complainant's employment "acted professionally throughout the trial" and, based on the evidence presented at the OATH hearing, "did what he had to do." (ALJ's Exhibit 10; Tr. 364)

17. Complainant's testimony during this hearing often was evasive, and, at times, contradictory. I do not find Complainant's testimony credible. (ALJ's Exhibit 1, 10; Tr. 46, 79-80, 89-90, 97, 113-14, 124-25, 233-37, 241-44, 277-82, 336-40, 343-44, 346-48)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an individual in the terms, conditions, or privileges of employment because of that individual's color or national origin, or to retaliate against an individual in the terms, conditions, or privileges of employment because that individual opposed unlawful discrimination. *See* Human Rights Law §§ 296.1(a), 296.7.

Complainant raised an issue of unlawful discrimination in the conditions of employment because of color and national origin. Complainant can sustain his burden of proving unlawful discrimination in the conditions of employment because of color or national origin by showing that there was a hostile work environment at his place of employment and that it existed because of his color or national origin. After considering all of the evidence presented, however, and evaluating the credibility of the witnesses, I find that the credible evidence does not support a finding that a hostile work environment existed. Complainant testified that, between 2002 and

2006, he was tormented every day at work, yet he never formally sought the involvement of his union, although he had utilized the services of his union as early as 1999 concerning a disciplinary matter. Further, except for one time in 2004 when he was counseled regarding Respondent's policies and procedures, Complainant never sought the involvement of Respondent's EEO. When Complainant was questioned at this hearing, he was, at times, evasive and contradictory. Maracic, the Chief for the Contracts section, credibly testified that Complainant's work performance was not great, and the record is clear that Complainant was counseled. Maracic, however, given Respondent's hiring practices, did not want to lose Complainant. I do not credit Complainant's recitation of torment that he claims to have endured and find that there was no credible proof of a hostile work environment.

Complainant's employment termination was clearly an adverse employment action; however, there is no proof that the termination occurred under circumstances giving rise to an inference of discrimination because of color or national origin. The evidence establishes that Chasan, a fellow employee, was angry with Complainant and reported to the IG that Complainant was falsifying his time and attendance records. This led to an investigation and a hearing before an independent ALJ. Complainant concedes the ALJ "acted professionally throughout the trial" and "did what he had to do." Complainant's employment was terminated pursuant to the finding and recommendation of this ALJ. At the time of the investigation and the beginning of Complainant's hearing, Respondent had no complaints of anyone else falsifying time and attendance records so there is no proof that when Complainant was accused and his hearing was held, he was singled out or unlawfully discriminated against in any way.

Complainant also raised an issue of unlawful discrimination by alleging that Respondent retaliated against him because he opposed unlawful discrimination. There is no causal

connection established between Complainant's complaint of discrimination filed with Respondent's EEO in 2004, or his August of 2006 memo regarding workplace atmosphere, and the termination of his employment or any other behavior of Respondent. All of Complainant's claims of unlawful discrimination are unsubstantiated. Conclusory allegations, unsupported by credible evidence, are insufficient to establish unlawful discrimination. *See Gagliardi v. Trapp*, 221 A.D.2d 315, 633 N.Y.S.2d 387 (2d Dept. 1995). Complainant has the burden to establish by a preponderance of the evidence that discrimination occurred. *See Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003). Since Complainant has failed to meet this burden, the complaint 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 complaint be, and the same hereby is, dismissed.

DATED: January 23, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge