

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**IBIRONKE O. ESHILOKUN,**

Complainant,

v.

**INFINITY SECURITY INC. AND TITUS  
OSAYOMI (INDIVIDUALLY AND AS  
PRESIDENT),**

Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 7943990

**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, 2007, by Lilliana Estrella-Castillo, 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 KUMIKI GIBSON, 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**, this 15th day of August , 2007.



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KUMIKI GIBSON  
COMMISSIONER

TO:  
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Respondent  
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Adjudication Counsel

Matthew Menes  
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**NEW YORK STATE  
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**v.**

**INFINITY SECURITY COMPANY, INC., and TITUS  
OSAYOMI (Individually and as President),**

**Respondents.**

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

**CASE NO: 7943990**

**SUMMARY**

Complainant alleged that Respondent Titus Osayomi created a hostile work environment and terminated her employment with Respondent Infinity Security Company, Inc., because she refused to consent to his sexual advances. Respondents denied sexual harassment. For the reasons set forth below, Complainant failed to meet her burden of proof because she engaged in a consensual relationship with Osayomi, and filed a discrimination complaint after the relationship ended. Therefore, the complaint is hereby dismissed.

**PROCEEDINGS IN THE CASE**

On February 6, 2004, Complainant filed a verified complaint with the State Division of Human Rights (Division) charging Respondents with an unlawful employment discriminatory practice in violation of the Human Rights Law of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Lilliana Estrella-Castillo, an Administrative Law Judge of the Division. Public hearing sessions were held on November 15, 2006, November 16, 2006 and December 18, 2006. The Division was represented by Caroline J. Downey, Acting General Counsel, by Christopher R. Knauth, of Counsel. Respondents were represented by Richard M. Duignan.

Complainant failed to appear on December 18, 2006, the date set aside for her rebuttal testimony.

Permission to file post-hearing briefs was granted. Respondents filed a timely post-hearing brief.

#### **FINDINGS OF FACT**

1. Complainant alleges that she was subjected to sexual harassment by Respondents (ALJ I).
2. Respondents deny sexual harassment (ALJ IV).
3. Infinity Security Company, Inc., (Infinity) became incorporated in the State of New York to engage in the business of watch guard security service on October 2, 1999 (Tr. 386; Complainant Exhibit 1). Titus Osayomi is the president and sole shareholder of Infinity (Tr. 387).
4. Infinity is an active corporation (Tr. 386-388).
5. Complainant became employed by Infinity on October 29, 2001, earning \$6.00 per hour as a security guard (Tr. 20).
6. According to Complainant towards the end of 2002, Osayomi asked her to be his girl friend (Tr. 35-36).

7. Complainant testified that she refused Osayomi's offer because he was a married man and because she only dated women (Tr. 37-39).

8. Nevertheless, Complainant continued to be employed by Respondents, and in February 2003, Complainant was promoted to secretary/receptionist (Tr. 21). As a result, her salary was increased to \$8.00 per hour (Tr. 22).

9. After the promotion Complainant started to work in the office with Osayomi (Tr. 327).

10. Complainant has tattoos "all over" her body, some of which are plainly visible (Tr. 58).

11. Complainant testified that Osayomi would compliment her tattoos and on one occasion tried to touch her (Tr. 58, 164, 168).

12. Complainant alleged that she was terminated on January 3, 2004, after she refused Osayomi's sexual advances (Tr. 79).

13. Kolawola Sowunni testified on behalf of Respondents.

14. Sowunni was familiar with Complainant and Osayomi, and had observed them together (Tr. 234).

15. Sowunni knew that Complainant and Osayomi had a relationship, because Osayomi told him that Complainant was his girlfriend (Tr. 235-236).

16. Complainant told Sowunni about the engagement ring that Osayomi purchased for her and about the engagement party that she planned (Tr. 238-240, 269-270).

17. Osayomi took Complainant to Macy's Department Store to purchase a diamond engagement ring on December 17, 2003 (Tr. 148, 361-362; Respondent Exhibits A, B).

18. Complainant paid for the diamond ring on her personal credit card and Osayomi reimbursed her with a check the following day (Tr. 151; Respondent Exhibit A).

19. There was an engagement party on Friday, December 19, 2003, to celebrate the engagement (Tr. 363). Osayomi also testified that on Sunday, December 21, 2003, he and Complainant went out for dinner to Jimmy's Café on Fordham Road, and then to the Holiday Inn Hotel for the evening (Tr. 364-365).

20. Complainant acknowledged that she purchased the engagement ring and that Osayomi reimbursed her for it, but denied that it was her engagement ring (Tr. 148-151). She testified that she purchased the ring for Osayomi as a gift to take to Africa (Tr. 148-151). However, Osayomi traveled to Africa in the beginning of 2003, and the engagement ring was purchased on December 17, 2003 (Tr. 32, 191).

21. Complainant also acknowledged that there was a party on December 19, 2003, but denied that it was an engagement party (Tr. 153-156). She alleged that it was a party to "thanks [sic] God" because her immigration status was about to change (Tr. 153-156). However, based on her own testimony her immigration status has not change (Tr. 17).

22. Complainant also denied that she had a sexual relationship with Osayomi (Tr. 217).

23. Osayomi recited every address where Complainant has lived and described every bedroom where he had been intimate with Complainant (Tr. 333-334, 340-341, 343, 348-349, 350-355, 356-357, 358-359).

24. On December 27, 2003, Osayomi moved Complainant to an address on Giles Place in the Bronx. At that address, Osayomi helped the superintendent lay out the carpet in Complainant's room (Tr. 359).

25. Complainant agreed that Osayomi helped her move to Giles Place, but denied that he has ever been to any other address (Tr. 130-131, 178).

26. Osayomi, who testified with his wife present, described some of Complainant's tattoos and scars (Tr. 412, 419).

27. Osayomi described Complainant's tattoo which is located on Complainant's left breast (Tr. 418).

28. Complainant did not rebut Osayomi's testimony regarding the description of her bedrooms, or the description and location of her tattoos or scars.

29. Complainant and Osayomi had a consensual sexual relationship (Tr. 328-329).

30. Osayomi testified that towards the end of 2003, his business was slowing down and he had to lay off some employees and reduce the hours of others. Complainant was not happy that he asked her to reduce her hours (Tr. 373, 416).

31. As a result, Complainant quit after she and Osayomi had an argument in the office over the reduction of her hours (Tr. 383).

32. Complainant filed the sexual harassment complaint with the Division because she felt she "had to do something" after Osayomi told her family, who practices the Islamic faith, that she is a lesbian (Tr. 184).

### **DECISION AND OPINION**

Complainant alleged that Osayomi terminated her employment because she refused to consent to his sexual advances. Osayomi denied sexual harassment, insisting that he and Complainant engaged in a consensual sexual relationship. Complainant filed a discrimination complaint after the relationship was over and she was angry that Osayomi told her family that she is a lesbian.

New York Executive Law, Article 15 (Human Rights Law) §296 (1) (a) makes it an unlawful discriminatory practice for an employer to refuse to hire, to discharge, or to

discriminate in compensation or in terms, conditions or privileges of employment because of, as must present evidence that she was subjected to unwelcome sexual conduct and that the reaction to that conduct was then used as a basis for decisions, either actual or threaten, affecting compensation, terms conditions or privileges of employment. (see, *Karibian v. Columbia University, supra* at 777; *Matter of Bartle v. Mercado*, 235 AD2d 651, 653; *Matter of Father Belle Community Center v. New York State Division of Human Rights*, 221 AD2d 44, 50). “The relevant inquiry in a quid pro quo case is whether the [employer] has linked tangible job benefits to the acceptance or rejection of sexual advances” *Karibian v. Columbia University, supra* at 778.

Complainant’s testimony was full of inconsistencies. Complainant also admitted to having lied to Osayomi and others. The most troubling inconsistency was Complainant’s testimony that Osayomi had purchased the diamond ring to take on his trip to Africa and that it was not an engagement ring for her. However, both Complainant and Osayomi testified that Osayomi traveled to Africa in the beginning of 2003. The evidence produced indicated that the diamond ring was purchased on December 17, 2003; about nine months after Osayomi’s trip to Africa. Complainant was also not credible when she testified that the December 2003 party was not an engagement party, but a party to “thanks [sic] God.” The timing of the party appeared more consistent with Osayomi’s version of events as compared with Complainant’s convoluted

story. Moreover, all inconsistencies laid aside, Complainant was offered the opportunity to rebut Osayomi's testimony regarding their relationship, but did not do so. Complainant failed to appear on the date scheduled for her to offer rebuttal testimony, therefore allowing Osayomi's testimony, including the description and location of her tattoos and scars, to go unchallenged.

Complainant, whose testimony was riddled with lies and inconsistencies, failed to meet her burden of proof. Complainant identified witnesses who she alleged would support her complaint, but she failed to produce them at the hearing (Tr. 213-215). Complainant's only witness, Toyin Onogwu (Adeyeye), who is Complainant's best friend, offered absolutely no corroborative evidence.

It is clear that Complainant filed a sexual harassment complaint because she was upset with Osayomi, and not because she was sexually harassed.

As to Complainant's other allegations, I find those to be without merit.

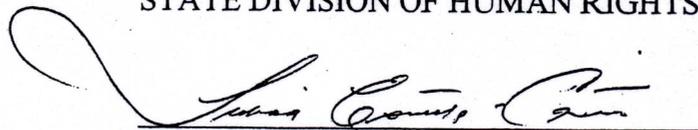
**ORDER**

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, 2007  
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS



Lilliana Estrella-Castillo  
Administrative Law Judge