

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MAUREEN E. FLEMING,

Complainant,

v.

**COUNTY OF NASSAU, NASSAU COUNTY
DEPARTMENT OF SOCIAL SERVICES,**

Respondent.

**and NASSAU COUNTY CIVIL SERVICE
COMMISSION, Necessary Party.**

**NOTICE AND
FINAL ORDER**

Case No. 3508160

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 October 2, 2009, 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: **DEC 15 2009**
Bronx, New York


GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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HUMAN RIGHTS**

on the Complaint of

MAUREEN E. FLEMING,

Complainant,

v.

**COUNTY OF NASSAU, NASSAU COUNTY
DEPARTMENT OF SOCIAL SERVICES,**

Respondent.

and **NASSAU COUNTY CIVIL SERVICE
COMMISSION, Necessary Party.**

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

Case No. 3508160

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her because of her creed. She further alleged that she was discharged from employment because she opposed the unlawful discriminatory acts of her supervisor and coworkers. Because the evidence does not support the allegation, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On July 13, 2004, 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 Margaret A. Jackson, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on January 2-3, 2008 and February 1, 2008.

Complainant and Respondent appeared at the hearing. Complainant was represented by Susan Fagan Britt, Esq. Respondent was represented by Carolyn Cairns Olson, Esq.

Permission to file post-hearing briefs was granted. Both parties filed a post-hearing brief.

FINDINGS OF FACT

1. Complainant identifies herself as an observant Roman Catholic Traditionalist. (Tr. 37-39)
2. On June 28, 2002, Complainant began her employment with Respondent, the Department of Social Services (DSS) Enforcement Unit, as a Child Support Investigator 1. (Tr. 32, ALJ Exhibit 1)
3. In the Spring of 2003, Complainant was transferred into Unit 1764, a pre-litigation Child Support Enforcement Unit. (Tr.299-300, 303)
4. Unit 1764 consisted of four employees. Rhonda Ulrich supervised the unit. Lisa Kuriga and Sharon Jackson were Complainant's coworkers. Complainant was the fourth employee in the unit. (Tr. 32-3, 300)
5. The unit was arranged in an open floor plan which made it possible for supervisors to view the computer screens of each employee. (Tr. 116-17, 160-61, 186, 718-19)

6. Complainant enjoyed the company of Ulrich, Kuriga and Jackson when she first began working with them. (Tr. 312) They asked Complainant questions about her religious beliefs and practices and Complainant answered questions to satisfy their curiosity. (Tr. 312-13)

7. Ulrich, Kuriga and Jackson were good friends as well as colleagues. (Tr. 204, 451-52, 771) They often ridiculed Complainant about fasting and her work habits, such as coming in early in the morning, taking lunch at her desk and working through breaks. (Tr. 310)

8. Complainant's co-workers also called her a "nun" and "a goody two shoes" and teased her about her conservative manner of dress which Complainant described as "modest." (Tr. 38, 120-21, 301-02, 324)

9. Between the Spring of 2003 and October of 2003, Complainant received e-mail messages that contained offensive content about priests and nuns and little girls. Although Complainant initially contended that the e-mail messages were being sent by her co-workers, Complainant recanted her testimony and admitted that the e-mail messages were being sent from addresses that she did not recognize. (Tr. 91-2)

10. Complainant kept rubbing alcohol at her desk in an unlocked drawer for the purpose of cleaning her computer keyboard. In early December of 2003, someone filled her water bottle with rubbing alcohol. Although frightened by this discovery, Complainant did not report this incident to the police or anyone at DSS until late March of 2004, when she spoke with Randolph Williams, an Employees Assistance Program (EAP) counselor. (Tr. 97-99, Complainant's Exhibit 6)

11. Complainant stored her lunch in a communal refrigerator which was used by and accessible to all of the DSS employees that shared the office space with Unit 1764. In the latter part of December 2003, Complainant found "floor sweepings" in her sandwich on three or four

occasions. Complainant ascribed these misdeeds to her co-workers but she did not report any of the incidents to anyone at DSS because her religious beliefs taught her that she should say nothing and “turn the other cheek.” (Tr. 332, 334-36, 339)

12. In January of 2004, Complainant attempted to speak with Ullrich several times about her coworkers’ mocking comments. Complainant did not mention to Ullrich that she had discovered rubbing alcohol in her water bottle or floor sweepings in her food. Ullrich advised her to ignore her coworkers’ comments. (Tr. 46, 98,116, 335, 445, ALJ’s Exh. 1)

13. In February of 2004, Complainant began keeping a journal in which she recorded the harassment she was experiencing. (Tr. 325-31) The journal entries that were contemporaneous with the observance of the Catholic Holiday of Lent, indicated that Ullrich and her coworkers’ teasing had become more frequent and was related to Complainant’s fasting and the prohibition against eating meat on Fridays. (Tr. 88-91, 301-02, 323-24, 345-46, 348)

14. Complainant failed to produce the journal as evidence at the public hearing. Instead, Complainant provided a summary of selected journal entries, which she prepared on May 19, 2004 for Human Resources at DSS. (Tr. 326-27, 437-439, Respondent’s Exhibit I)

15. In sum and substance, Complainant’s journal summary tells the story of a tense and distasteful work environment. Complainant wrote about finding rubbing alcohol in her water bottle and debris in her food, and about how personal and work-related items on her desk were tampered with. Complainant also noted that coworkers called her an “asshole” and an “idiot” a number of times with impunity; that Kuriga prank called Complainant on the job; that Ullrich, Kuriga and Jackson excluded Complainant from their friendship; and that Ullrich told her that

she was the “outsider;” and that Ullrich wanted nothing to do with Complainant and the EAP.
(Tr:438, Respondent’s Exhibit I)

16. Complainant’s journal summary further described a situation in which Kuriga refused to share chocolate truffles with Complainant on April 27, 2004. With regard to this incident, Complainant testified at the hearing that Kuriga said, “don’t offer the nun” and “too bad the nun can’t have any.” (Tr. 457) However, in Complainant’s May 19, 2004 excerpted journal summary, she wrote that “[Kuriga made] a big show of offering everyone around [Complainant] ‘very special chocolate’, finishing up by leaning over [Complainant’s] desk and saying, ‘I’m not wasting any on the Asshole.’” To which Ullrich replied, “Good, Lisa!” (Respondent’s Exhibit I)

17. Complainant’s journal summary does not contain any specific instances where Ullrich, Kuriga or Jackson discriminated or harassed Complainant on the basis of Complainant’s creed or religious practices. There is no mention of Ullrich, Kuriga or Jackson insulting Complainant about fasting or Lenten practices. (Tr. 331, 324-325, Respondent’s Exhibit I)

18. In late March of 2004, Complainant sought help from the EAP, and began receiving weekly counseling from Williams for several months. (Tr.101-04, 119, 255, Complainant’s Exhibit 6)

19. In April of 2004, Complainant’s Mass cards were left in a heap on her desk and that her blessed palm-cross was destroyed. (Tr. 99, 373) However, the record established that Complainant’s Mass cards were moved in September of 2003 after another DSS employee who worked for units other than Unit 1764 occupied her desk. (Tr. 363-65, 372)

20. Complainant told Williams about finding rubbing alcohol in her water bottle and feeling stressed and harassed. Williams advised Complainant to meet with Ullrich and discuss the problems she was having in the office and to file complaints with the Department of labor and

with the Division. (Tr. 252-53, 103) Williams corroborated Complainant's allegations that her coworkers had questioned whether Complainant was really taking leave to attend Mass and had commented about Complainant's work habits. Williams' counseling notes do not make any reference to harassment or discrimination specific to Complainant's religious beliefs or practices. (Complainant's Exhibit 6)

21. On April 12, 2004, Complainant met with Ullrich and complained about not having friends or anyone to go to lunch with at work. (Tr. 823)

22. On April 15, 2004, Complainant reported to Williams that Ullrich "wanted nothing to due (sic) with the E.A.P." (Complainant's Exhibit 6) Williams then attempted to speak with Ullrich by phone but Ullrich was dismissive, and claimed she was unaware of any problems within her unit. (Tr. 253-54, 284, 734)

23. Williams did not try to contact Ullrich again, nor did he contact anyone else at DSS regarding Complainant's claims. (Tr. 254, 916)

24. Nonetheless, Ullrich followed up by questioning Kuriga and Jackson about their relationship with Complainant and inquiring as to whether there were problems within the unit. Ullrich determined that Complainant's claims were unfounded. (Tr. 915)

25. Complainant received anonymous telephone calls that were not religious in nature. Complainant alleged that it was Kuriga who was making the prank calls, and that by May 19, 2004, Kuriga was prank calling her every afternoon, sometimes more than once a day. (Tr. 89, 121-22, 443-46, 449) On May 19, 2004, Complainant left Kuriga a note warning her that the County had a record of Kuriga's calls and defied her to "keep calling." Thereafter, the calls stopped. (Tr. 121-22)

26. Complainant alleged that Jackson and Kuriga made a death threat against her. (Tr. 459-60) Jackson swiped the back of Complainant's neck with a ballpoint pen while Complainant was sitting at her desk. (Respondent's Exhibit I) Kuriga then asked Jackson if she "... [knew] that you can really hurt someone, maybe even kill them, with a ballpoint pen?" (Tr. 460) To which Jackson replied, "Really? I hope so." (Tr. 461) Complainant felt threatened and frightened by this exchange. (Tr. 461, Respondent's Exhibit 1)

27. Complainant's excerpted journal summary did not characterize this incident as a death threat or contain any indication that Complainant felt threatened and afraid. Complainant could not recall when this incident occurred, and did not report it to the police or anyone at DSS. (Tr. 459-61) Complainant averred that she told Williams about this incident. (Tr. 461) However, Williams' counseling notes do not contain this allegation. (Complainant's Exhibit 6)

28. On May 4, 2004, Ullrich sent Complainant a counseling memo regarding several cases which she had improperly handled. (Tr. 379, 381, 800, 806, Respondent's Exhibit C) Complainant disagreed with Ullrich's assessments of the cases in question and responded in writing on the same day. (Tr. 806, Respondent's Exhibit D)

29. Complainant alleged that Ullrich wrote this memo in retaliation for Complainant speaking to Williams and using the EAP. (Tr. 386-87)

30. On May 11, 2004, Ullrich sent Complainant a counseling memo regarding behaviors that constituted abuse of time by Complainant leaving her desk prior to quitting time on twelve of fourteen occasions between March 16, 2004 and May 10, 2004 and observations of Complainant playing games on her computer. (Tr. 406-08, 808-811, Respondent's Exhibit E)

31. On May 12, 2004, Complainant sent Ullrich a rebuttal memo addressing the time abuses cited in Ullrich's May 11th memo. Complainant copied Charles Joyce, Director of Child Support, and Jane Huber, Assistant Director of Child Support, and Nancy Klei, an administrative assistant from the Human Resources Department, on this memo. (Respondent's Exhibit F)

32. On May 13, 2004, the exchanges between Ullrich and Complainant regarding the May 11th memo ended with Ullrich threatening to have Complainant fired and threatening to see to it that Complainant would never get another job. (Tr. 426, Respondent's Exhibits E, F, G, H)

33. On May 13, 2004, Complainant asked Joyce to transfer her out of Unit 1764. Joyce told Complainant that he would think about it. (Tr. 106, 111-12)

34. On May 13, 2004, Complainant also wrote a memo to Matthew Koras in the Human Resources Department at DSS. She copied Williams on this memo. Complainant reported that Ullrich threatened her, and that Jackson told her "she was going to wish she was dead." Complainant averred that she spoke to Williams about this. (Tr. 425-27, Respondent's Exhibit H) Williams' counseling notes do not evince that Complainant and Williams met or spoke at any time between April 15 and May 27, 2004, or contain any reference to these allegations. (Complainant's Exhibit 6)

35. By the middle of May 2004, relations between Complainant and Ullrich, Kuriga and Jackson had become very strained. (Tr. 119-20, 224-25, 395-97, 451-52, 768-69) Verbal communication and eye contact between Complainant and the other members of Unit 1764 had effectively ceased, and Complainant only communicated with them in writing. (Tr. 122-23, 403-04, 416)

36. On May 21, 2004, Respondent DSS placed Complainant on administrative leave for nine days and imposed a \$100.00 fine, demotion in step and reprimand for, among other things, following Ullrich around the office and intentionally bumping into her. (Tr. 464, 481, Respondent's Exhibit J and K)

37. On June 3, 2004, during Complainant's administrative leave, Complainant filed a complaint with the Nassau County Equal Employment Opportunity office (EEO). In this complaint, Complainant did not allege harassment or discrimination on the basis of her creed. (Tr. 490, Respondent's Exhibit L)

38. On June 16, 2004, Ullrich later included the time abuses from the May 11 memo seeking discipline against Complainant. (Respondent's Exhibit J) Complainant grieved the memos. The grievance was heard by an arbitrator pursuant to the collective bargaining agreement. The arbitrator determined that it was improper for Ullrich to "seek to discipline Fleming for occurrences which were summarized in a non-disciplinary counseling memo which warned of discipline for recurrences." Respondent withdrew the charges related to time abuse and made Complainant whole in all regards to those charges. (ALJ Exhibit 3)

39. Complainant's May 21, 2004, suspension and other proposed penalties were again adjudicated at arbitration. Pursuant to the outcome of that arbitration, Complainant's nine-day suspension was upheld, but the \$100.00 fine, demotion in step and reprimand were rescinded. It was further ordered that Complainant's step be "immediately and retroactively" restored and Complainant be made whole. (ALJ Exhibit 3)

40. On June 21, 2004, DSS Human Resources ordered Complainant to return to work immediately and reassigned her to Family Court under a different supervisor. (Tr. 129-30, 137)

41. On February 4, 2005, Complainant was given a Notice of Personnel Action for misconduct. On March 10, 2005, Complainant was summoned to a meeting to discuss the issues. (Respondent's Q)

42. On July 25, 2005, Jean Taylor, Complainant's supervisor in Family Court, wrote Complainant a memo regarding her behavior in the workplace. Specifically, Taylor addressed a complaint she received from Ann Fields, Complainant's former coworker, regarding two occasions on which Complainant pushed Fields, and one occasion on which Complainant threw a wastebasket at the desk where Fields was sitting. Taylor counseled Complainant that this behavior was unacceptable and that penalties may result. (Respondent's Exhibit Y) Complainant averred that she had never heard any of these allegations until her attorney informed her in January of 2008, during preparation for her public hearing before the Division. (Tr. 540-41)

43. Complainant averred that she did not know why Respondent terminated her employment until her attorney informed her of Respondent's reason in January 2008, during preparation for her public hearing before the Division. (Tr. 139-40, 537, 626) In support of her contention Complainant offered a document which she claimed was her original performance evaluation. (Tr. 66-7, Complainant's Exhibit 2B) Complainant denied that she altered the document. (Tr. 72) However, this document has all indicia of an altered document. Complainant's Exhibit 2B is a poor photocopy. It contains obvious indications that particular lines were "whited-out" and hand drawn. Typed letters were traced over by hand, and the handwriting is inconsistent. (Tr. 66-79) Ullrich did not recognize the handwriting in Complainant's Exhibit 2B to be her own. (Tr. 893) Ullrich credibly denied that Complainant's

Exhibit 2B was the document she gave Complainant in January of 2004. (Tr. 892-93, 942, Complainant's Exhibit 2A)

44. In July of 2005, Complainant was sent a letter of termination. However, she did not receive notification of the charges on which DSS based the termination of her employment because DSS mailed it to the wrong address. (Tr. 554)

45. The February 4, 2005 and the July 29, 2005 termination were arbitrated and the parties agreed to a Consent Award settlement. In accordance with the terms of the settlement, Complainant voluntarily resigned from her employment on December 16, 2005 and Respondent withdrew the February 4, 2005 and March 10, 2005 disciplines and the July 29, 2005 termination, compensated Complainant for back pay owed to her, and made Complainant whole with regard to a demotion in step and leave entitlements. (Tr. 141, 627-28, Respondent's Exhibit W)

46. Complainant posited that in acts of continuing retaliation, Respondent imposed disciplines on her on February 4, 2005, and forced her out of her employment on July 29, 2005. (Tr. 521, 533, Respondent's P, Q, R, S, T)

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 creed. *See* Human Rights Law § 296.1(a).

Complainant alleged that Respondent subjected her to a hostile work environment based on her creed as a Roman Catholic Traditionalist. In order to sustain such a claim, Complainant

must demonstrate that she was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Cmty. Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 51, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. app. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant alleged that Ullrich, Kuriga and Jackson directed insults, ridicule and mockery at her on a regular basis beginning in August 2003. However, the record does not support this allegation. When Complainant sought counseling from Williams at the EAP in March of 2004, she never alleged unlawful discrimination on the basis of her creed or religious practices. Complainant also never mentioned unlawful discrimination on the basis of her religion in her journal summary, purportedly prepared for Human Resources on May 19, 2004, for the purposes of reporting the harassment and abuse that was the subject of this public hearing. It is reasonable to conclude that such serious misconduct, including threats to Complainant's personal safety, which Complainant alleged was occurring regularly for at least nine months, would be included in Complainant's own journal summary.

Moreover, Complainant's various memos to her supervisor, the Director of Child Support, Human Resources personnel, and her coworkers never once addressed the issue of harassment and unlawful discrimination on the basis of her creed or religious practices. Although Complainant sought the assistance of the EAP regarding problems she was having in her office, Williams' counseling notes do not contain any indication that Complainant complained of harassment and unlawful discrimination related to her religion. In fact, the record

establishes that the first time Complainant alleged religious discrimination and harassment on the basis of her creed was in her July 13, 2004, complainant to the Division.

Complainant further alleged that in December 2003 and January 2004, her food and water were tampered with on several occasions. Although Complainant claimed to have feared for her personal safety, she did not report these incidents to her supervisor, the director, the police, the Human Resources department or her union, despite the severity of the alleged incidents. Complainant reported the water bottle incident for the first time in March of 2004, three months after it allegedly occurred. Complainant did not produce any evidence to corroborate these otherwise conclusory allegations. When questioned as to why Complainant did not report this conduct, Complainant said that her religion required her to "turn the other cheek." In contrast however, Complainant immediately vocalized her objections in September 2003 when someone used her desk and moved her Maas cards around.

Complainant also alleged that in May of 2004, Kuriga threatened her life when she swiped the back of Complainant's neck with a ball point pen. Although Complainant averred that she felt threatened and frightened by this exchange, Complainant could not recall when this incident occurred and did not report it to the police or anyone at DSS. Complainant averred that she told Williams about this incident, but Williams' counseling notes do not contain this allegation or any other allegation of physical threats by Kuriga, Jackson or Ullrich. It is reasonable to conclude that if Complainant actually perceived danger to her person during this alleged incident, she would have reported it to Williams since she was, by her own admission, receiving counseling from him at that time.

In addition, Complainant's credibility was significantly impeached at the public hearing. Complainant proffered a performance review dated January 4, 2004, which she alleged Ullrich

altered as part of her plan to harm Complainant. The document that Complainant claimed was the original was obviously an altered, poorly photocopied version of the true original.

Accordingly, the Division concludes that Complainant was not a credible witness regarding the alleged ongoing harassment on the basis of her creed, the food and water bottle incidents, and other incidents which Complainant claimed were a threat to her safety.

The record does establish that Jackson doubted the legitimacy of Complainant's reason for taking leave on August 30, 2003. The record further established that Jackson and Kuriga called Complainant insulting names with impunity on more than one occasion and delighted in Complainant's embarrassment at their mockery of other employees. Although it is uncertain whether Kuriga prank called Complainant, it is clear that she refused to share her truffles with Complainant in April and May of 2004. Finally, the record established that on May 13, 2004, Ullrich threatened Complainant's job security following a series of written and verbal exchanges stemming from Ullrich's May 11 counseling memo. However, the record does not establish that these insults and incidents were in any way related to Complainant's creed or religious practices or motivated by discriminatory animus for Complainant's creed or religious practices.

Rather, the record establishes that Ullrich, Kuriga and Jackson shared a friendship in which Complainant was never included. As time went by, tensions in Unit 1764 grew until Complainant and the other members of the unit were no longer speaking or looking each other in the eye. Civility and professionalism fell to the wayside, and various nasty notes, threats and comments were exchanged between Complainant and Ullrich, Kuriga and Jackson. However, the record does not establish that Complainant experienced discriminatory conduct that rises to the level of objective severity or pervasiveness required to constitute an actionable claim under the Human Rights Law. Accordingly, Complainant's hostile work environment claim must be

dismissed.

Finally, Complainant alleged that Respondents retaliated against her. The Human Rights Law prohibits an employer from retaliating against an employee for having filed a complaint or opposed discriminatory practices. Human Rights Law § 296.7.

Complainant also asserts that Respondent retaliated against her in violation of the Human Rights Law by terminating her employment because she went to an EAP counselor, successfully arbitrated complaints against DSS and filed a verified complaint with the Division and EEOC. Complainant must therefore establish, by a preponderance of the evidence, that she engaged in protected activity, that Respondent was aware that she engaged in the protected activity, that she suffered an adverse employment action, and that there is a causal connection between the protected activity and the adverse action. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 298, 313 (2004). Once Complainant has met this burden, Respondent has the burden of coming forward with legitimate, nondiscriminatory reasons in support of its actions. Complainant then must show that the reasons presented are a pretext for unlawful retaliation. *See Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 104, 692 N.Y.S.2d 220, 223-24 (3d Dept. 1999).

Complainant has failed to establish a prima facie case of retaliation. Complainant alleged that Respondent retaliated against her for speaking to Williams at the EAP by issuing her unsubstantiated disciplines on May 4 and May 11, 2004 and suspending her on May 21, 2004. The record established that Ullrich was dismissive of Complainant's concerns and her dealings with the EAP. However, the May 4 and May 11, 2004 memos were counseling memos and not disciplines, and therefore did not carry any penalties or sanctions. Although Ullrich improperly included the time abuses from the May 11, 2004 counseling memo among the reasons for

suspending Complainant on May 21, 2004 Respondent withdrew the discipline for time abuses and made Complainant whole following arbitration on the matter.

Complainant has failed to meet her burden of showing that the charges related to her May 21, 2004 suspension arose under an inference of discrimination. Instead, the record established that on May 19, 2004, Complainant followed Ullrich around the office and intentionally bumped into her. It is not unreasonable to conclude that this incident was the proverbial last straw in the context of mounting tension and disintegrating relationships between Complainant and the other members of Unit 1764. Moreover, this charge and the relevant penalty were upheld at arbitration on the matter.

Complainant further alleged that on February 4 and March 10, 2005 she was disciplined, and on July 29, 2005 she was terminated from employment, in continuing retaliation for filing complaints with the EEOC and the Division in June and July 2004. At the times these disciplines were issued and Complainant's employment was terminated, Complainant was working in Family Court under a different supervisor, and it had been at least eight months since Complainant worked in Unit 1764 under Ullrich's supervision. Complainant failed to establish any connection between the filing of her complaints and the disciplines and termination of her employment.

Moreover, Complainant once again impeached her own credibility when she averred that she was ignorant of the reasons for the termination of her employment until her attorney disclosed the information to her in January of 2008, in preparation for her public hearing before the Division. The record established that Taylor, Complainant's supervisor in Family Court, confronted Complainant in writing on July 25, 2005, regarding Fields' allegations that Complainant pushed her twice and threw a wastebasket at the desk where Fields was sitting. The

memo further stated that this conduct was unacceptable in the workplace and as a result Complainant may be subject to penalties. Four days later, Respondent terminated Complainant's employment. Finally, the termination of Complainant's employment and the February and March 2005 disciplines were resolved in a Consent Award settlement dated December 16, 2005, according to which Complainant resigned in exchange for Respondents withdrawing the disciplines and making Complainant whole in all relevant regards.

Ultimately, Complainant has the burden to establish by a preponderance of the evidence that unlawful discrimination occurred. *See Stephenson v. Hotel Employees and Restaurant Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 811 N.Y.S.2d 633 (2006) Complainant has failed to meet this burden.

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: October 2, 2009
Hempstead, New York



Margaret A. Jackson
Administrative Law Judge