

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS  
on the Complaint of

TRACY GRAY,

Complainant,

v.

COUNTY OF NASSAU; NASSAU COUNTY  
SHERIFF'S DEPT.,

Respondent.

**NOTICE OF FINAL  
ORDER AFTER HEARING**

Case No. 3506592

**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 March 28, 2007, by Lilliana Estrella-Castillo, an Administrative Law Judge of the New York State Division of Human Rights (“Division”).

**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 25th day of April, 2007.



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KUMIKI GIBSON  
COMMISSIONER

TO:

Complainant

Tracy Gray  
7903 Indian Head Highway, Apt. #511C  
Oxon Hill, MD 20745

Respondent

Nassau County, Sherrif's Department  
Attn: Edward Reilly (Sheriff)  
100 Carman Avenue  
East Meadow, NY 11554

Respondent Attorney

Damon S. Levenstien, Esq., Deputy County Attorney  
Nassau County, County Attorney's Office  
One West Street  
Mineola, NY 11501-4820

Hon. Andrew Cuomo, Attorney General  
Attn: Civil Rights Bureau  
120 Broadway  
New York, New York 10271



State Division of Human Rights  
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One Fordham Plaza, 4th Floor  
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Trevor G. Usher  
Chief Calendar Clerk



STATE OF NEW YORK  
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS  
On The Complaint Of

TRACY GRAY,

Complainant,

-against-

COUNTY OF NASSAU, NASSAU COUNTY  
SHERIFF'S DEPARTMENT,

Respondents.

RECOMMENDED FINDINGS OF  
FACT, DECISION AND OPINION,  
AND ORDER

CASE NO: 3506592

PROCEEDINGS IN THE CASE

On February 4, 2002, Tracy Gray (Complainant) filed a verified complaint with the State Division of Human Rights (Division) charging County of Nassau, Nassau County Sheriff's Department (Respondents) with an unlawful discriminatory practice in violation of the Human Rights Law (Executive Law, Article 15) 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. Thereafter, the Division 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.

Complainant failed to appear at the initial preliminary conference and then failed to appear at the hearing. Complainant was advised that failure to cooperate with the Division in the prosecution of his complaint would result in a dismissal. It is therefore recommended that the Division dismiss the complaint with prejudice for complainant's failure to appear at the hearing.



## FINDINGS OF FACT

On March 30, 2005, the Calendar Unit served the parties with a Notice of Hearing. The Notice advised the parties that a preliminary conference was scheduled for May 31, 2005, at 10:00 a.m. The Notice was mailed to complainant at his last known address, 8314 Indian Head Highway, Apartment 2B, Fort Washington, MD 20744 (ALJ Exhibit V). The Notice was not returned by the United States Postal Service.

On May 31, 2005, a preliminary conference was held. The Division was represented by Gina M. Lopez Summa, former General Counsel, by Marilyn Balcacer, of Counsel. Respondents participated in the preliminary conference, and were represented by the Office of the Nassau County Attorney, by Damon Levenstein, Deputy County Attorney. Complainant failed to appear. Ms. Balcacer was granted a continuation to attempt to locate complainant and ascertain his intentions regarding the prosecution of his complaint. A telephone conference was scheduled for January 3, 2006 (Tr. 11).

During the telephone conference on January 3, 2006, Ms. Balcacer advised that she located complainant at a different address, 2256 N. Beau Regard Street, Number 12, Alexandria, VA 22311, and telephone number (703) 379-2712, and that he wished to proceed with his complaint. New dates were selected for the preliminary conference and the hearing. Complainant participated by telephone in the status conferences which were held to discuss discovery and scheduling the public hearing. As the result of complainant moving again, without notice to the Division, and a conflict with the hearing dates, the hearing was re-scheduled to commence on August 22, 2006, at 10:00 a.m. (Tr. 13). Complainant confirmed to Mr. Zions that he was available to participate in the hearing on August 22, 2006.



The parties received notice of the new hearing dates by mail dated July 5, 2006 (ALJ Exhibit VI). The letter was mailed to complainant's last known address, 7903 Indian Head Highway, Apartment No. 511C, Oxon Hill, Maryland 20745, which was the address that complainant provided to the Division on April 15, 2006 (Tr. 9; ALJ Exhibit VI, XIV). The letter to complainant was not returned to the Division by the United States Postal Service, and is presumed received (Tr. 6).

On August 22, 2006, a hearing was held. The Division was represented by Gina M. Lopez Summa, former General Counsel, by Neil Zions, of Counsel. Respondents were represented by the Office of the Nassau County Attorney, by Damon Levenstein, Deputy County Attorney. Complainant failed to appear.

The record was opened at 11:20 a.m. and complainant's failure to appear was noted. Mr. Zions noted for the record the attempts he made to communicate with complainant in order to prepare for the hearing and to confirm his attendance at the hearing. Mr. Zions stated that although he placed several calls to complainant, and left detailed voicemails on complainant's voicemail, complainant did not return any of his telephone calls (Tr. 10, 15). Mr. Zions offered that the last time he called complainant was on the morning of the hearing, and had not yet received a call back at the time the hearing was commenced at 11:20 a.m.

#### **DECISION AND OPINION**

Complainant did not cooperate with Mr. Zions in the preparation of the hearing and did not communicate to Mr. Zions his intentions not to appear at the hearing. Complainant failed to appear at the hearing and as of the date of this recommended order has not provided any excuse for his absence. Therefore, respondent's oral application to dismiss the complaint should be granted.



Complainant was afforded every opportunity to contact the Division and cooperate with the prosecution of the complaint. When complainant did not appear at the preliminary conference, the proceedings were adjourned to ensure that he was properly noticed and advised of the repercussions of his failure to cooperate. Complainant was consulted on the selection of the hearing dates to accommodate his travel to New York City. Complainant did not indicate during any of the conferences that he had a problem traveling to New York City for the hearing. Complainant was provided with every opportunity to participate in the hearing, even after he continuously ignored the Division's directive to keep the Division abreast of any change of address.

It is therefore recommended that based on the above and in the interest of administrative economy that the complaint in this matter be dismissed for complainant's failure to cooperate with the Division in the prosecution of the complaint and for his unexcused failure to attend the hearing.

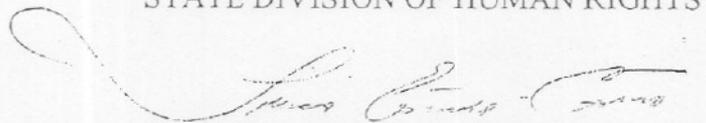
**ORDER**

Based on the foregoing Findings of Fact, Decision and Opinion, and pursuant to the provisions of the Human Rights Law, it is

**ORDERED**, that the complaint be, and the same hereby is dismissed with prejudice.

Dated: March 28, 2007  
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS



Lilliana Estrella-Castillo  
Administrative Law Judge

