

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**BARBARA GUTHRIE,**

Complainant,

v.

**TOWN/VILLAGE OF HARRISON, NEW YORK;  
STEVEN J. SURACE, FIRE MARSHALL,  
HARRISON FIRE DEPARTMENT, AS AIDER AND  
ABETTOR,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 7942845

**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 20, 2007, 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 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:

Complainant

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Complainant Attorney

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Respondent

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Respondent Secondary Address

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MARSHALL, HARRISON FIRE  
DEPARTMENT, AS AIDER AND ABETTOR,**  
Respondent.

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

Case No. 7942845

**SUMMARY**

Complainant alleged that she was sexually harassed by alleged aider and abettor, Steven J. Surace, while she worked for the Town/Village of Harrison from November of 1999 until September of 2000. She asserts that she was forced to leave Respondent's employ because of the harassment. Surace denied the allegations. Complainant's allegations were not found to be credible and, therefore, the case must be dismissed.

**PROCEEDINGS IN THE CASE**

On April 6, 2001, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents 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 an unlawful discriminatory practice. 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 May 30, 2007 and May 31, 2007.

Complainant and Respondent appeared at the hearing. Complainant was represented by Law Offices of James J. Killerlane, by Jyotsna Gorti, Esq. Respondents were represented by Friedman, Harfenist & Langer, by Steven Harfenist, Esq.

Permission to file post-hearing briefs was granted. Counsels for both parties filed timely briefs.

#### **FINDINGS OF FACT**

1. Complainant worked for Respondent in its Bureau of Fire Prevention as a secretary from November 9, 1999 until August 30, 2000. She was, at that time, a 24 year old single mother with a four year old son. (Respondent's Exhibit C; Tr. 17, 19) Respondent is a coterminous town/village in Westchester County.

2. Steven J. Surace is the Respondent's fire inspector. He interviewed and hired Complainant despite the fact that he did not think she was qualified to handle the job. (Tr. 19, 156) He hired Complainant because he had no other candidates and he knew Complainant's mother, Maryann Guthrie, who also worked for Respondent. Maryann Guthrie spoke to Surace "numerous times" to lobby Surace to hire Complainant. (Tr. 137, 155, 157)

3. Complainant alleged that she was alone in the office when she arrived on her first day of work and that on that day she found a note Surace had written to her predecessor, Kathleen Chrzanowski. The note outlined her predecessor's duties and responsibilities. Complainant gave the note to Surace, who threw it away. (Tr. 24, 166)

4. Complainant alleged that Surace wrote in the note that he "missed holding" Chrzanowski. Complainant implied that Surace had a personal relationship with Chrzanowski. (Tr. 24)

5. Surace denied that there were any references to holding Chrzanowski. Surace threw the note away because Chrzanowski "was already gone," and he did not think there was any significance to the letter. The letter, in fact, discussed Chrzanowski's status as a provisional employee under civil service rules. (Tr. 165-166, 214)

6. Surace said he was in the office on Complainant's first day. On that day, Complainant had not yet been issued a key and would not have been able to get into the office without Surace. (Tr. 159) Complainant said she could not remember how she got into the office that day. (Tr. 23)

7. Complainant claimed she called Maryann Guthrie and asked her what she should do with the note. According to Complainant, Maryann Guthrie told Complainant to give the note to Surace. (Tr. 25) Maryann Guthrie recalled being told about the note, but did not remember advising Complainant to give the note to Surace. (Tr. 128)

8. Complainant and her mother were very close. While Complainant worked for Respondent, she and her young son lived with Maryann Guthrie. Complainant and Maryann Guthrie drove to work together; they went home for lunch together every day. Maryann Guthrie considers herself to be Complainant's confidante. (Tr. 137-139)

9. Surace found Complainant's performance to be below par. Complainant did not write letters the way Surace wanted them to be written and she spent too much time socializing with others when she took her smoking breaks. (Tr. 163) When Complainant was hired, her office was in the firehouse. After five months, the office was moved to Town Hall. Surace told Complainant that she spent too much time socializing at both locations. (Tr. 163, 169)

10. In response to Complainant's sub par work performance, Surace yelled at Complainant and called her "stupid." (Tr. 169) Initially, Complainant did not make any formal complaints about Surace's behavior, but she told her mother that Surace was yelling at her and being "nasty." (Tr. 129)

11. On June 5, 2000, Complainant applied for a reclassification of her position. She was seeking to have her salary upgraded, and applied to the Westchester County Department of Civil Service. Surace approved the application. (Complainant's Exhibit 1; Tr. 172)

12. After reviewing her duties and conducting a desk audit, the county denied the application for an upgrade. (Tr. 174)

13. The following month, Complainant made a formal complaint of sexual harassment against Surace with Ronald Bianchi, Respondent's Mayor. (Complainant's Exhibit 4)

14. Complainant alleged, among other things, that Surace had rubbed her thighs, commented on her body and patted her on the buttocks. (Complainant's Exhibits 4 & 5; Tr. 31-32) At the public hearing, Complainant said Surace would often put his leg between her legs when she made entries in his inspection calendar and kept pornography in the office. (Tr. 27, 38-39)

15. Surace had a motorcycle calendar in his office that had women in swimsuits sitting on the motorcycles. He denied harassing Complainant and denied keeping pornography in his

office. He also said the Complainant did not make entries in his inspection calendar unless he was out of the office. (Tr. 196-97)

16. Complainant also complained that Surace was moody, yelled at her often and called her stupid. Complainant had told her mother about Surace's moody nature and his penchant for yelling at her, but Complainant never told her mother that Surace had slapped her on the buttocks or that he was sexually harassing her. (Tr. 41, 139)

17. Complainant claims she told two of her friends about the harassment, Tracy Arace and Janice. Neither Janice, who now lives in New Mexico, nor Tracy Arace, who lives in Harrison, New York, testified at the hearing. (Tr. 42)

18. Complainant called her mother just before she made her complaint of sexual harassment to the mayor. She told her mother she couldn't take working with Surace anymore, but, even then, did not tell her mother about the alleged sexual harassment. Maryann Guthrie called Complainant's union representatives and Complainant made her formal complaint to the mayor. (Tr. 142)

19. Respondent's Town Attorney, Marc Tolchin, investigated the complaint and determined that he could not substantiate the allegations. Tolchin interviewed Surace and witnesses identified by Complainant. (Respondent's Exhibit F) While the complaint was being investigated, Complainant was temporarily transferred to another department. (Tr. 182)

20. When the investigation was completed, Complainant returned to the fire marshal's office. After she returned, Surace noticed that a portion of his database had been deleted. Surace noted that Complainant was the only one working on the program other than himself. Surace said that the files were deleted during a period of time in which Complainant was the only one

working on the system. He believes that Complainant deliberately deleted the files.

(Respondent's Exhibit 2; Tr. 184)

21. After that incident, Surace locked Complainant out of the system and changed the passwords to his voice mail. (Complainant's Exhibits 6 & 7; Tr. 54, 185)

22. On July 24, 2000, Complainant resigned her position with Respondent. She took a job with the Harrison Central School District as a health assistant. (Complainant's Exhibit 2; Tr. 16-17)

### OPINION AND DECISION

In order to sustain a claim of sexual harassment based on a hostile work environment, Complainant must demonstrate that she was subjected to conduct that produced 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 Community Ctr. v. N.Y. State Division of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4<sup>th</sup> Dept. 1996), *lv. app. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant's story is inconsistent and not believable. It is contradicted by Surace's testimony and her own mother's testimony. Most troubling is the fact she failed to tell her mother anything about the alleged incidences of sexual harassment. She told her mother that Surace was yelling at her, but did not tell her about harassment. When Complainant decided to make a complaint, she called Maryann Guthrie, who calls herself Complainant's confidante, and who, as an employee of Respondent, knew exactly what to do. Even then, when she was ready to file an internal complaint about Surace, she did not tell her mother she was being sexually

harassed. Complainant states that she told others about the sexual harassment, but the only person she presented at the hearing was Maryann Guthrie, who knew nothing about the sexual harassment. Complainant also claims to have asked her mother for advice about Surace's letter to Chrzanowski, but her mother did not recall ever having been asked for advice. A similar scenario occurred when Tolchin investigated Complainant's internal complaint. Tolchin interviewed witnesses identified by Complainant, but they could not substantiate any of Complainant's claims.

Complainant chose to rely on her own testimony, and the testimony of Maryann Guthrie, who could not offer anything to substantiate the claim of sexual harassment. Complainant's testimony was contradicted by Surace's testimony and the investigation conducted by Tolchin. Moreover, Complainant identified other witnesses who, she claimed, could support her complaint, but did not produce them at hearing, even though one of them still lives in Harrison, New York.

Since Complainant's claim of sexual harassment is not found to be credible, her claim of constructive discharge must fail. She has not supported such a claim with any credible testimony that would "compel a finding of deliberate actions...to make her working conditions so intolerable that a reasonable person in her position would feel compelled to resign." *Mountleigh v. The City of New York*, 191 A.D.2d 291, 292, 595 N.Y.S.2d 26, 27 (1<sup>st</sup> Dept. 1993), *leave to appeal denied*, 83 N.Y.2d 753, 612 N.Y.S.2d 108 (1994). Complainant left Respondent's employ of her own volition and took another position.

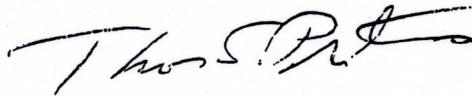
In sum, although Surace may have been a less than ideal supervisor, there is no evidence to support a claim that he sexually harassed Complainant. It is, therefore, recommended that the case against Respondent be dismissed.

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

ORDERED, that the case be, and the same hereby is, dismissed.

DATED: *July 26, 2007*  
Bronx, New York



Thomas S. Protano  
Administrative Law Judge