

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**MARTHA HOOD,**

Complainant,

v.

**JUAN GUERRERO, LANDLORD,**

Respondent.

**NOTICE OF FINAL  
ORDER AFTER HEARING**

Case No. 10107097

**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 February 23, 2007, by Thomas S. Protano, 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 12th day of April, 2007.



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KUMIKI GIBSON  
COMMISSIONER

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STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS  
on the Complaint of

MARTHA HOOD,

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Respondent.

RECOMMENDED FINDINGS OF  
FACT, DECISION AND OPINION,  
AND ORDER

Case No. 10107097

PROCEEDINGS IN THE CASE

On August 3, 2005, Complainant filed a verified complaint with the State Division of Human Rights (Division), charging Respondent with unlawful discriminatory practices relating to housing 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 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 (A.L.J.) of the Division. Public hearing sessions were held on September 12, 2006, September 13, 2006, October 24, 2006 and October 25, 2006.

Complainant and Respondent appeared at the hearing. The Division was represented by former General Counsel, Gina Lopez Summa, by Veanka S. McKenzie, Esq., of counsel.

Respondent was represented by Dean Emmanuelli, Esq.

Permission to file post-hearing briefs was granted. Both Division Counsel and Counsel for Respondent filed timely briefs.

### FINDINGS OF FACT

Complainant is black. From June of 1998 until July 14, 2006, Complainant lived at 2025 Morris Avenue, Bronx, NY. (ALJ Exhibit II; Tr. 8, 89) Respondent is the owner of the Building. He bought the building on January 13, 1995. (Tr. 45, 227)

Complainant alleges that Respondent harassed her while she was his tenant and, ultimately, had her evicted because she is Black. (ALJ Exhibit II) She asserts that Respondent, who immigrated to the United States from Ecuador 18 years ago, moved black tenants out of the building in order to replace them with "Spanish people." (Tr. 18, 19, 36, 120, 121-124) Complainant and her witness, Rever Griffin, a black tenant at 2025 Morris Avenue, who also filed a complaint against Respondent, both alleged that Respondent told them he was going to remove all the black tenants from the building. According to Complainant, Respondent told her "black people don't believe in paying rent." Ms. Griffin alleged Respondent said he wanted "to get all your black ass out of here." (Complainant's Exhibit 2; Tr. 11, 163, 175)

Respondent denies making any of those comments. (Tr. 357, 360) He said he never refused to rent to black tenants and cited Donna Phillips, Lisa Holmes and David Gumbs as examples of black tenants who moved into the building after he bought it. (Tr. 356, 357) Ms. Phillips testified that Respondent "was nice and he welcomed me to the apartment." (Tr. 407) She moved into the building in March of 2006. (Tr. 412) Mr. Gumbs moved into the building in April of 2006. (Tr. 414) The building superintendent rented Mr. Gumbs a room without telling Respondent, which made Respondent angry. Respondent did not ask Mr. Gumbs to leave, however, and he still lives there today. Mr. Gumbs has not had any problems with Respondent. (Tr. 415-417) Complainant also asserted that Respondent called the police in

order to have Goodie Samuels, another black tenant, removed from his building. Respondent denied that claim and stated that Mr. Samuels moved voluntarily. (Respondent's Exhibit V; Tr. 120, 343)

When Respondent bought the building, Complainant occupied the apartment on the third floor. (Tr. 97) Respondent had gone to the building once before he bought it in order to see the condition of the building. At that time, Complainant refused to let him enter her apartment. (Tr. 227-228) After he bought the building, Respondent alleges that Complainant laughed at him and made fun of his limited English speaking abilities. (Tr. 231-232)

Complainant did not have a good relationship with Respondent while she was his tenant. Complainant's apartment was in a state of disrepair and she alleges that Respondent refused to make repairs. (Tr. 20) Respondent denied this. He tried to make repairs, but Complainant would not let him into her apartment to make the repairs. He wrote Complainant numerous letters attempting to gain access to the apartment so that repairs could be made. (Respondent's Exhibits J, K, L, M, N & O; Tr. 239) For a short time, while Respondent was Complainant's landlord, the front door lock did not work. Complainant accused Respondent of tampering with the lock, but she did not specifically see Respondent tampering with it. She was unable to get into the building for a while, but said Respondent "must have done something because the key started working again." When the lock was inoperable, the front door was left open. (Tr. 24, 111-112) Complainant offered no evidence to support her claim that Respondent tampered with the locks in order to harass her other than her assertion that she saw him "working on the locks" from the stairway in front of her third floor apartment. (Tr. 114)

Complainant and Respondent had other areas of disagreement in addition to those mentioned above. For about a month in May of 2005, Complainant's toilet did not work. She

had to defecate onto newspapers or go down the block to a local McDonald's restaurant to use their bathroom. (Tr. 23) She alleged that she told Respondent and reported the problem to New York City Housing authorities, who fixed the toilet. (Tr. 94, 103) Respondent said he was unaware of any problems with Complainant's toilet. (Tr. 240) Complainant also accused Respondent of telling her to get rid of her dog. She said he told her she wasn't supposed to have a dog, but he allowed "the two Spanish men that moved into the basement" to have dogs. (Tr. 35-36) Respondent said he is a dog lover and denied telling Complainant to get rid of her dog. (Tr. 260) Complainant kept her dog until she vacated the apartment, even though dogs were not allowed in the building, according to the terms of her lease. (Respondent's Exhibit Q; Tr. 89)

In June of 2005, the electricity in Complainant's apartment went out. She tried to go into the basement to trip the circuit breaker, but the door was locked and the superintendent, Jesus Bonilla, would not let her in the basement. (Tr. 25) Complainant said she called the police. When they arrived, Complainant said "the super lied," saying he had no key. She alleged the police forced the super to open the door and the lights were then turned on. (Tr. 26)

Following that, Mr. Bonilla told Respondent that Complainant and her daughter had broken into the basement. As a result, Respondent reported the incident to the police, who arrested Complainant and her daughter. (Tr. 27, 84, 372) On the day of her arrest, Complainant alleges that Respondent pushed her to the ground but, despite that, she was the one arrested. (Tr. 29) The charges were eventually dropped. (Complainant's Exhibit 1) Complainant asserts they were dropped because Mr. Bonilla admitted to an investigator that he had lied about the incident. (Tr. 35) Respondent said he told the prosecutors he didn't wish to press the charges. (Tr. 380)

The Complainant said that on the date of the incident, June 27, 2005, her daughter was six months pregnant. She alleges that the stress of the arrest and subsequent court appearances caused her to give birth prematurely on September 28, 2005. (Tr. 84) Complainant asserted that when her daughter gave birth "she was seven [months] and something" pregnant even though three months had passed since her arrest when she was six months pregnant. (Tr. 85)

Respondent's version of this incident is somewhat different. He was told by Mr. Bonilla that Complainant and her daughter had broken into the basement. Because he did not feel they had a reason to go into the basement, he called the police. The police then arrested Complainant and her daughter. (Tr. 372-373, 378) He stated that he never assaulted Complainant. Instead, he alleges Complainant "threw herself on the ground and her daughters started screaming" that Respondent had hit her. (Tr. 377) The police on the scene questioned Respondent but did not arrest him. (Tr. 378)

Mr. Bonilla no longer works or lives in Respondent's building. Mr. Bonilla "had a problem with his wife and...a problem with drugs and things." (Tr. 372) He was arrested for domestic violence in 2006. (Tr. 424)

On June 22, 2005, Respondent sought to evict Complainant. He brought a holdover petition in Civil Court, Bronx County. (Respondent's Exhibit C) Complainant's lease had expired on May 31, 2005. (Respondent's Exhibit Q; Tr. 311) Complainant alleges Respondent told her he was evicting her because he wanted the apartment for his family, but Respondent denies this. Respondent evicted Complainant because her lease had expired and she had made numerous complaints to the city and because she did not pay her portion of the rent. (Tr. 36, 338, 358) In fact, although the bulk of the rent for Complainant's apartment was subsidized by a federal housing program, Complainant did not pay her share of the rent. She admitted that the

rent, which had previously been sent to her landlord directly from her public assistance grant, did not get to Respondent. (Tr. 107) Complainant never arranged for that portion of her rent, \$156.00 per month, to be sent to Respondent. (Respondent's Exhibit D & R; Tr. 338) She eventually owed Respondent \$2520.00. (Tr. 339)

According to Complainant, this was the second time Respondent tried to evict her. She alleged that Respondent brought eviction proceedings against her in 2004, before he bought the building. Respondent denies this and Complainant did not present any evidence to corroborate this claim. (Tr. 48, 229, 288-289) I cannot credit Complainant's assertion that Respondent had taken her to court before he even owned the building.

On March 1, 2006, Complainant and Respondent entered into an agreement whereby Complainant agreed to vacate the apartment by June 30, 2006. (Respondent's Exhibits D & R) Although she had an attorney representing her, Complainant, who has a seventh grade education, said she did not understand the agreement. She thought she would be able to get an extension if she did not find an apartment by June 30, 2006. (Tr. 142)

Complainant did not get an extension. There is no evidence that she sought one. She vacated the apartment on July 14, 2006. (Tr. 135)

### OPINION AND DECISION

In order to prevail, Complainant must first make out a prima facie case of housing discrimination. To do so, she must allege that she was a member of a protected class, she was qualified to rent the premises, and that she was asked to vacate the premises "under circumstances that would give rise to an inference of unlawful discrimination." *Dunleavy v. Hilton Hall Apartments Co., LLC, et al.*, 14 A.D.3d 479, 480, 789 N.Y.S.2d 164, 165 (2<sup>nd</sup> Dept.,

2005). Respondent then has the burden of rebutting any inference of housing discrimination by articulating a legitimate, non-discriminatory reason for her actions. If he does that, the burden shifts to Complainant to show that the articulated reason was a pretext for housing discrimination. *Broome v. Biondi*, 17 F.Supp.2d 211, 217 (S.D.N.Y. 1997), citing, *Soules v. United States Department of Housing & Urban Development*, 967 F.2d 817 (2<sup>nd</sup> Cir. 1992).

Complainant in the instant case has made allegations that are sufficient to establish a prima facie case. She was a member of a protected group, she had been living in the premises for several years and she was asked to vacate the premises by a landlord who, she asserts, sought to replace her and the other black tenants with Hispanic tenants. Respondent has countered with an assertion that he evicted Complainant because her lease expired and she owed him rent. The reasons Respondent gave for his actions are true, and cannot be considered pretextual.

Respondent was not paid the rent agreed to by Complainant. When her lease expired, Respondent sought to evict her. Complainant was represented by counsel in that proceeding and signed an agreement to vacate the premises. The fact that she may not have fully understood the nature of the agreement is not grounds for finding that Respondent acted with discriminatory intent.

The only connection Complainant makes between the eviction and her race are her allegations (and those of Ms. Griffin) that Respondent made statements about the rent paying habits of black people and her assertion that Respondent wanted Hispanics in his building. But Respondent has denied making the comments attributed to him and he has shown that he has rented to black tenants, who testified that they have had a good relationship with him. He has effectively refuted the claims of Complainant.

Complainant has also alleged Respondent harassed her in an effort to get her out of the

building. To prevail on a hostile environment housing theory, Complainant must show that she was a member of a protected class, she was subjected to harassment based upon her race and that the harassment affected a term condition or privilege of housing. *Matter of State Division of Human Rights v. Stoute*, 826 N.Y.S. 2d 122, 2006 App. Div. LEXIS 14350 \*17 (2<sup>nd</sup> Dept., November 28, 2006).

Complainant, who alleged Respondent harassed her in an attempt to get her out of the building, has not made such a showing. The allegations that Respondent failed to keep Complainant's apartment in good repair have been refuted by Respondent's testimony and the letters he sent to Complainant seeking access to her apartment. Respondent tried to make repairs but could not get into the apartment. The claim that Respondent told Complainant to get rid of her dog has been denied by Respondent and Complainant never was forced to remove her dog from the apartment. Complainant's arrest, according to both Complainant's and Respondent's testimony, was triggered after Mr. Bonilla told Respondent that Complainant broke into the basement. The police investigated the incident, including the allegation that Respondent struck Complainant, and arrested only the Complainant. The broken lock affected all the tenants, not just Complainant. And Respondent was unaware of the problems with Complainant's toilet. There is no evidence that these incidents were part of a concerted effort to harass Complainant because of her race.

Respondent and Complainant clearly did not get along. Their relationship as a landlord and a tenant can be considered toxic. But the record does not show that Respondent discriminated against Complainant because of race. Complainant failed to pay her full rent and allowed her lease to expire. Respondent exercised his right to remove a tenant who was not paying her share of the rent. This is not unlawful discrimination.

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 case be, and the same hereby is, dismissed.

DATED: February 23, 2007  
Bronx, New York



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THOMAS S. PROTANO  
Administrative Law Judge