



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**CLARENCE HORTON,**

Complainant,

v.

**SALT CITY TAXI AND TRANSPORT, INC.,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10149268

Federal Charge No. 16GB103638

**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 August 24, 2012, by Robert J. Tuosto, 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: *11/13/2012*  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

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**SALT CITY TAXI AND TRANSPORT, INC.,**

Respondent.

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

Case No. **10149268**

**SUMMARY**

Complainant alleged that Respondent, his employer, retaliated against him by terminating his employment. However, Complainant has failed to prove his case and the complaint is hereby dismissed.

**PROCEEDINGS IN THE CASE**

On June 22, 2011, 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 Michael Groben, an Administrative Law Judge (“ALJ”) of the Division. On April 18, 2012 a public hearing session was held in Syracuse, New York.

Complainant and Respondent appeared at the hearing. The Division was represented by Rosalind M. Polanowski, Esq., Senior Attorney. Respondent was represented by John L. Valentino, Esq. of the law firm Bousquet Holstein, P.L.L.C.

On August 6, 2012 ALJ Robert J. Tuosto was reassigned to this case pursuant to N.Y.C.R.R. § 465.12 (d)(2).

### **FINDINGS OF FACT**

1. Complainant alleged that Respondent, his employer, retaliated against him by terminating his employment. (ALJ Exh.1)
2. Respondent denied unlawful discrimination in its verified Answer. (ALJ Exh. 5)
3. In November, 2010 Complainant was hired by Respondent as a part-time medical transportation driver. (Tr. 12-13, 18, 33-34)
4. Respondent is a medical transportation company with approximately sixteen drivers. (Tr. 99, 151)
5. Respondent’s drivers were expected to exhibit professionalism while engaging in their job duties. Complainant signed Respondent’s ‘Company Policy’ form which was provided to all employees and which required, among other things, that drivers “...must be professional with all customers that are riding in the vehicles with you.” (Respondent’s Exh.1; Tr. 31, 86, 145)

6. In April, 2011 Complainant filed a complaint with the Division alleging unlawful discrimination on the basis of his African-American race. Respondent was aware of this complaint. (ALJ Exh. 6; Tr. 26, 36, 42, 89)

7. An African-American client of Respondent, Lillian Barnes, used its services two or three times per week. (Tr. 42-43, 98, 129-30, 138)

8. During several of Complainant's rides with Barnes, he told her that Respondent's Caucasian supervisor, Michael Rydelek, and his family were racists, that he was going to sue the company, and that Rydelek was a "cracker" (*sic*). Rydelek's daughter worked for Respondent as the office manager. (Tr. 100, 132-34, 141, 144)

9. Barnes related Complainant's comments to Respondent's personnel. Because of the comments Barnes also requested that Complainant no longer be her driver. (Tr. 100-102, 131-36)

10. On June 13, 2011 Rydelek had a meeting with Complainant concerning his comments to Barnes. Complainant admitted that he made the comments and, as a result, his employment was immediately terminated. (Tr. 47-48, 58, 74-76, 103-07)

### **OPINION AND DECISION**

The Human Rights Law makes it an unlawful discriminatory practice for an employer to, "...discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article." Human Rights Law § 296.1.(e).

In discrimination cases a complainant has the burden of proof and must initially establish a prima facie case of unlawful discrimination. Once a complainant establishes a prima facie case

of unlawful discrimination, a respondent must produce evidence showing that its action was legitimate and nondiscriminatory. Should a respondent articulate a legitimate and nondiscriminatory reason for its action, a complainant must then show that the proffered reason is pretextual. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). The burden of proof always remains with a complainant and conclusory allegations of discrimination are insufficient to meet this burden. *Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3d Dept. 1999).

In order to make out a prima facie case of retaliation, a complainant must show: 1) he engaged in protected activity; 2) the respondent was aware that he engaged in protected activity; 3) an adverse employment action; and 4) a causal connection between the protected activity and the adverse employment action. *Id.* at 223-24.

Here, Complainant has made out a prima facie case of retaliation. The record showed that Complainant engaged in protected activity of which Respondent was aware when he filed his previous Division complaint alleging race discrimination. Further, Complainant suffered an adverse employment action when his employment was terminated just two months after this complaint was filed.

However, Respondent provided a legitimate, nondiscriminatory reason for its employment action which went un rebutted: Complainant admittedly violated the professionalism requirement of Respondent's company policy when telling a passenger on several occasions that both his superior and his superior's family were racist, that he was going to sue the company, and that his superior was a "cracker." These comments made his passenger so uncomfortable that she was moved to inform Respondent's personnel, and to ask that Complainant no longer be her driver. In response, Respondent immediately terminated Complainant's employment. The record is devoid of any evidence which would suggest that there was another reason for

Respondent's employment action.

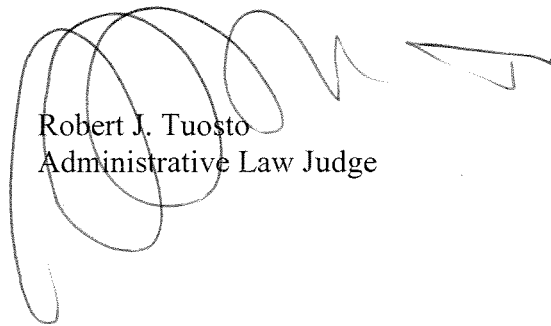
Therefore, the complaint must be dismissed.

**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 hereby

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

DATED: August 24, 2012  
Bronx, New York



Robert J. Tuosto  
Administrative Law Judge