

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

TERRY MACK HUNTER,

Complainant,

v.

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10116079

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 May 2, 2008, by Thomas J. Marlow, 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, ACTING 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: 6/17/08


GALEN D. KIRKLAND
ACTING COMMISSIONER

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

Case No. 10116079

SUMMARY

Complainant alleged that Respondent discriminated against her because of her race, sex, color, national origin, and because she opposed unlawful discrimination. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On February 9, 2007, 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 Thomas J. Marlow, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on December 17, 18, and 21, 2007 and January 18, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Bellew S. McManus. Respondent was represented by Donna M. Murphy, Esq. and Jeffrey Niederhoffer, Esq.

Permission to file proposed findings of fact and conclusions of law was granted. Respondent so filed after the conclusion of the public hearing.

FINDINGS OF FACT

1. Complainant is a black American female. (ALJ’s Exhibit 1)
2. Complainant began her employment with Respondent in 2000 as a Construction Project Manager (“CPM”), with the designation CPM II. (Tr. 61-63, 258)
3. Throughout her employment with Respondent, Complainant lived in Teaneck, New Jersey. (Tr. 65-66)
4. From 2000 to May of 2005, Complainant, as a CPM, performed the duties of a Field Supervisor for Respondent at two locations in Manhattan. (Tr. 64-82)
5. In 2004, Respondent reorganized the way it handled construction project management and Complainant became a CPM with the designation of CPM III and a salary increase of \$1,000.00. (Tr. 264-65, 350-51, 382-84) As part of this reorganization, Respondent also created the position of Project Administrator (“PA”) with the responsibility of running a project from beginning to the end. (Tr. 488-90) Complainant testified that some people were getting salary increases from \$10,000.00 to \$30,000.00. (Tr. 384-85) Complainant expressed desire to work in

Respondent's central office at 90 Church Street, New York, New York, and applied for a PA's position but did not get it. (Tr. 100-02, 666-68) In 2004, Aisha Coleman, an African-American woman and Lisa Roberts ("Roberts"), a woman, became PAs. (Tr. 769-70)

6. Complainant thinks that she did not get the PA's position because one of her supervisors, Farhan Syed ("Syed"), said negative things about her to those who were making the hiring decisions. (Tr. 101-02) Syed was never asked for his opinion regarding Complainant when she applied for the PA's position. (Tr. 770-72) In Complainant's probationary reports due February 25 and May 25, 2005, Syed indicated that Complainant had the ability for promotion. (Complainant's Exhibits 2, 3)

7. In May of 2005, knowing Complainant's desire to work at the central office, Respondent assigned Complainant to fill in at the central office, as an Acting PA, filling in for Roberts who was on sick leave. (Tr. 82, 273, 494-95, 666-669) Complainant filled in for Roberts for approximately two months until Roberts returned approximately July 7, 2005. (Tr. 670-71)

8. After Roberts returned to work in July of 2005, Complainant was assigned to work with Roberts as her Contract Manager ("CM"). (Tr. 673-74) Complainant indicated her displeasure with that position and, in approximately one month, was assigned to work as a CM with another PA, Abdul Khalid ("Khalid") in the central office. (Tr. 674-81)

9. In September of 2005, after applying for positions as PA and Project Coordinator ("PC") and being denied those positions, Complainant filed a complaint with Respondent's Department of Equal Opportunity ("Equal Opportunity") alleging that she did not get the positions because of racial discrimination. (Complainant's Exhibit 5)

10. From approximately September of 2005 to approximately February of 2007, Complainant worked as a CM with Khalid (Tr. 114-15, 681, 833-58) Complainant testified that,

during this time, co-workers stopped talking to her, that she was being isolated, and that her work load was reduced substantially. (Tr. 127, 132, 402) She thought she was not being invited to staff meetings. (ALJ's Exhibit 1)

11. Before filing her complaint with Equal Opportunity, Complainant didn't mingle much with other employees and that did not change after the complaint was filed. (Tr. 738-40) After filing her complaint, Complainant stopped speaking to people associated with the complaint. (Tr. 738) While working with Khalid, Complainant had her own cubicle of standard size on the same floor as Khalid, was given appropriate assignments for her position, had a substantial work load, and was not intentionally excluded from any meetings. (Tr. 706-09, 838-42, 858-59)

12. In 2006, Louis Rueda ("Rueda") became Deputy General Manager for Capital Projects for Respondent. (Tr. 503) In late 2006, Rueda instituted a policy that all construction projects must have a CPM on site. (Tr. 504-12, 685-88) Pursuant to Rueda's new policy, several CPMs with the designation of CPM III were assigned to construction projects. (Tr. 525-31) It is not uncommon for the office of a CPM on site to be in a trailer. (Tr. 808-09)

13. Approximately January 31, 2007, pursuant to Rueda's new policy, Complainant was assigned as CPM for two sites in Brooklyn (Tr. 849-51) but never worked at the sites because she claimed, among other things, that the travel would create a hardship for her. (Complainant's Exhibit 9) In February of 2007, she was reassigned to be the CPM for the construction project known as the Washington Heights Rehab ("Washington Heights") which was closer to her home as it was in upper Manhattan near the George Washington Bridge. (Tr. 151, 524, 689-91) To get to Washington Heights, Complainant takes a bus straight from Teaneck, along Route 4, to the George Washington Bridge. (Tr. 186-87)

14. On February 9, 2007, Complainant filed her complaint with the Division, alleging that she had been subject to discriminatory actions because she filed her complaint with Equal Opportunity. (ALJ's Exhibit 1) In particular, Complainant cited the assignment to the Brooklyn sites. (ALJ's Exhibit 1) After she was reassigned to Washington Heights, she amended her complaint to include this assignment as an act of retaliation. (ALJ's Exhibit 1)

15. In a letter dated February 22, 2007, Complainant was informed that Equal Opportunity determined that there was no probable cause to believe that she was denied positions for which she applied because of racial discrimination. (Complainant's Exhibit 12)

16. As CPM at Washington Heights, Complainant is Respondent's representative at the project and is responsible for insuring that the work is done properly. (Tr. 521-22, 692-93) Respondent has never complained about the quality of Complainant's work at Washington Heights. (Tr. 484)

17. Complainant testified that her assignment at Washington Heights is a demotion, that she has no authority at her work site, that her responsibilities are not appropriate for someone with the designation of CPM III, that she doesn't have the necessary resources to do her work, that she has to share the trailer with men, that the bathroom in the trailer where she works is unclean, and that her computer should be linked to Respondent's network but is not. (Tr. 152, 155, 161, 172) However, the assignment of Complainant to Washington Heights is not a demotion, she continues at the same salary as a CPM III, the responsibilities are significant, the work is appropriate for someone with the designation of CPM III, she has the necessary resources to do her work, she does not need to have computer access to Respondent's network to fulfill her responsibilities, other CPMs at work sites have computers that are not linked to Respondent's network, the work conditions at her trailer are not uncommon for such work sites, and she has

access to other bathroom facilities if she chooses not to utilize the bathroom in the trailer.
(Tr. 291-92, 525, 598-99, 612-15, 691, 700, 793, 809).

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 race, sex, color, national origin, or to retaliate against an individual in the terms, conditions, or privileges of employment because that individual opposed unlawful discrimination. *See* Human Rights Law §§ 296.1(a), 296.7.

Complainant raised an issue of retaliation in the terms, conditions, and privileges of employment because she opposed unlawful discrimination. Complainant has the burden to establish by a preponderance of the evidence that such retaliation occurred. The evidence establishes that, in September of 2005, in a complaint to Equal Opportunity, Complainant alleged that she did not get a PA or PC position because of racial discrimination. Thereafter, Complainant experienced changes in her work responsibilities and location. After she filed her complaint, Complainant thought that co-workers stopped talking to her, that she was being isolated, that her work load was reduced substantially, and that she was not being invited to staff meetings. Complainant also feels that her work conditions were inappropriate, that she had been demoted, and that she had lost authority.

To meet her burden to establish that discrimination occurred, Complainant must initially show that she has engaged in protected activity, that her employer was aware that she engaged in the protected activity, that she suffered an adverse employment action based on her activity, and that there is a causal connection between the protected activity and the adverse action. *See*

Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004). The credible evidence does not support the contention that Complainant suffered any adverse employment action. I find the evidence credible that, after she filed her complaint, Complainant, who didn't mingle much with other employees before she filed her complaint, continued not to mingle and even stopped speaking to people associated with the complaint. I also find credible the evidence that, after she filed her complaint, Complainant was given appropriate assignments for her position, had a substantial work load, and was not intentionally excluded from any meetings. Further, the record shows that, after Complainant filed her complaint, Respondent appointed a new Deputy General Manager for Capital Projects who established a new policy requiring that all construction projects must have a CPM on site. Pursuant to that policy, the credible evidence shows that Complainant was properly assigned as a CPM, first for two sites in Brooklyn, and, thereafter, to accommodate her, for the Washington Heights construction site which was closer to her home as it was in upper Manhattan near the George Washington Bridge. In addition, the record establishes that the assignment of Complainant to Washington Heights was not a demotion as she continued as a CPM III at the same salary, the responsibilities Complainant has there are significant, the work is appropriate for someone with the designation of CPM III, she has the necessary resources to do her work, and the work conditions at her trailer are not uncommon for such work sites. Since Complainant fails to show that an adverse employment action occurred, the complaint that she has experienced retaliation in the terms, conditions, and privileges of employment because she opposed unlawful discrimination must be dismissed. See *Mittl v. New York State Div. of Human Rights*, 100N.Y.2d 326, 763 N.Y.S.2d 518 (2003)

Complainant also raised issues of discrimination in the terms, conditions, and privileges of employment because of her race, sex, color, and national origin. Any complaint filed with the

Division must be filed within one year after the alleged unlawful discriminatory practice. *See* Human Rights Law § 297.5. Again, there is no credible evidence to show that any adverse employment action occurred; in fact, the record shows that one employment action by Respondent, the assignment of Complainant to the Washington Heights site, was done to accommodate her so that she could be closer to her home. Therefore, since Complainant fails to show that an adverse employment action occurred, the complaint that she has experienced unlawful discrimination in the terms, conditions, and privileges of employment because of her race, sex, color, and national origin also must be dismissed. *Id.* at 131.

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: May 2, 2008
Bronx, New York

A handwritten signature in cursive script that reads "Thomas J. Marlow". The signature is written in black ink and is positioned above the printed name and title.

Thomas J. Marlow
Administrative Law Judge