

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

JENNIE SWAILS,

Complainant,

v.

**CLASSIC FASHION RESOURCES, INC., D/B/A
PITTSFORD PENDLETON SHOP,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10115313

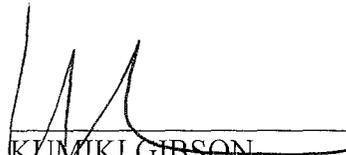
PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 9, 2008, by Christine Marbach Kellett, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity 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 6th day of February, 2008.



KUMIKI GIBSON
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

JENNIE SWAILS,

Complainant,

v.

**CLASSIC FASHION RESOURCES, INC.,
D/B/A PITTSFORD PENDLETON SHOP,**

Respondent.

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

Case No. 10115313

SUMMARY

Complainant charged Respondent with discriminatory practices in connection with public accommodation when Respondent asked her to leave the store. Respondent admitted asking Complainant to leave based on her conduct and denied discrimination. Complainant established that Respondent's explanation is a pretext for illegal discrimination. Complainant is entitled to damages.

PROCEEDINGS IN THE CASE

On December 29, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to public accommodation 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 Christine Marbach Kellett, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on October 16, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Neil L. Zions. Respondent was represented by Debra A. Martin, Esq.

Permission was given to submit post-hearing proposed findings of fact. Respondent submitted proposed findings of fact.

FINDINGS OF FACT

1. Complainant charged Respondent with discriminatory practices in public accommodation when Respondent asked Complainant and her daughter to leave the store. (ALJ’s Exhibits 1,3)
2. Respondent admitted asking Complainant and her daughter to leave the store but denied the charge of discrimination. (ALJ’s Exhibits 5, 6)
3. Complainant is African American. (ALJ’s Exh. 1)
4. Respondent is a small retail store carrying “better traditional sportswear”. (Tr. 71)
5. Respondent is a place of public accommodation as defined under Human Rights Law §296.2(a).
6. Sara Cronin (“Cronin”) is Respondent’s co-owner. (Tr. 62)
7. Cronin had twelve years of retail experience as a buyer, with training in loss prevention at a major retailer in Rochester. (Tr. 62-68)

17. Complainant's daughter called Complainant over to her and told Complainant that Cronin had called the police and told the police she had shoplifters in the store. (Tr. 42)

18. Complainant testified she hadn't really had a chance to look at the clothes along the wall as everything took place very quickly. (Tr. 34-36, 38-40)

19. Complainant's daughter then approached Cronin asking why she was on the phone, calling them shoplifters, and calling the police. (Tr. 43,)

20. Cronin then asked the two to leave. (Respondent's Exh. 2; Tr. 93-94)

21. Complainant and her daughter left the premises and went across the street.(Tr. 30)

22. Complainant reported she "felt very bad because I know I'm not a shoplifter.....I feel very bad as there was no reason to treat a human being like that." (Tr. 32) Complainant described being really hurt, damaged, and disappointed. (Tr. 60)

OPINION AND DECISION

Human Rights Law §296.2 (a) states in pertinent part: "It shall be an unlawful discriminatory practice for any person, being the owner... [or] proprietor...of any place of public accommodation, because of the race....color, directly or indirectly, to deny to such person any of the accommodations, advantages, facilities or privileges thereof...or that the patronage or custom ...of any person...is unwelcome..." NY Executive Law §296.2(a).

Complainant charged Respondent with violating Human Rights Law §296.2(a) when its owner Cronin characterized Complainant and her daughter to the police as shoplifters, and asked them to leave her store.

Respondent claimed the owner had a legitimate reason for both calling the police and asking Complainant to leave as in the owner's experience and view Complainant's conduct was suspiciously like that of a shoplifter. Further, Respondent argued that in calling the police and

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 Respondent shall cease and desist from discriminating in public accommodation; and

IT IS FURTHER ORDERED that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative actions to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

1. Within sixty days of the date of a final Commissioner Order, Respondent shall pay to Complainant compensatory damages in the amount of \$7000 for emotional pain and suffering.
2. The aforesaid payment shall be made by Respondent in the form of a certified check made payable to the order of the Complainant, Jennie Swails, and delivered by certified mail, return receipt request, to the New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Interest shall accrue at a rate of nine per cent per annum from the date of the Commissioner's final order until the date payment is made.
3. Respondent shall simultaneously furnish written proof of the aforesaid payments to New York State Division of Human Rights, Office of General Counsel, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of its compliance with the directives contained in this Order.
4. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: December 31, 2007
Bronx, New York

A handwritten signature in cursive script that reads "Christine Marbach Kellett". The signature is written in black ink and is positioned above the printed name.

Christine Marbach Kellett
Administrative Law Judge