

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

ROSA JENKINS, CONSTANCE SLEIGH, AS
ADMINISTRATORS FOR THE ESTATE OF
BUNETTA SLEIGH,

Complainant,

v.

ARC XVI INWOOD, INC.,

Respondent.

and CITY OF NEW YORK, HUMAN RESOURCES
ADMINISTRATION, Necessary Parties.

NOTICE AND
FINAL ORDER

Case No. 97439

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 March 25, 2009, by Lilliana Estrella-Castillo, 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: **JUN 01 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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ARC XVI INWOOD, INC.,

Respondent,

**CITY OF NEW YORK, HUMAN
RESOURCES ADMINISTRATION,**

Necessary Party.

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

Case No. 97439

SUMMARY

The Division has not been able to locate Respondent. The Division did not produce evidence to support its position that there is a successor-in-interest to Respondent.

PROCEEDINGS IN THE CASE

On July 10, 1984, 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 Cynthia Gill, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on June 27, 1994; August 25 and 26, 1994; October 12, 1994; and November 28, 1994.

On April 2, 1997, an Order after Hearing was issued by the Commissioner finding that Respondent had discriminated against Complainant, and awarding Complainant back pay and compensatory damages for mental anguish and humiliation. There has been no compliance with the Order after Hearing.

Complainant is now deceased. The administrators of her estate, Rosa Jenkins and Constance Sleigh, have been substituted as Complainants in the instant complaint.

The Division has been unable to locate Respondent, and has asked that Regional Aid for Interim Needs, Inc., (R.A.I.N) be substituted as a successor-in-interest to Respondent.

A compliance hearing was held on July 30, 2008 and September 26, 2008, with ALJ Lilliana Estrella-Castillo presiding. The Division was represented by Toni Ann Hollifield, Senior Attorney, of Counsel. The necessary party appeared at the hearing and was represented by Patrick SooHoo. Regional Aid for Interim Needs, Inc., (R.A.I.N) appeared at the hearing and was represented by Jack A. Adesso. Complainants did not appear, but their absence was excused. Respondent did not appear at the hearing.

At the conclusion of the hearing the parties were given an opportunity to make written submissions in support of their positions. All submissions were timely filed.

FINDINGS OF FACT

1. Complainant was employed by ARC XVI Inwood, Inc., (Respondent), a not-for-profit corporation, which provided programs and activities to senior citizens. (ALJ Exhibit 2)

2. Respondent operated the Inwood Senior Center under a contract with the New York City Human Resources Administration (HRA). HRA provided guidance and funding to Respondent through its Bureau of Purchase and Special Social Services. HRA did not hire Complainant, set Complainant's salary or her work schedule, or evaluate Complainant's work. Therefore, no employment relationship existed between Complainant and HRA. (ALJ Exhibit 2)

3. On July 10, 1984, Complainant filed a verified complaint with the Division charging Respondent with unlawful discriminatory practices relating to employment. (ALJ Exhibit 2)

4. A hearing on the complaint was held, and on August 31, 1995, ALJ Cynthia Gill issued a recommended order. On April 2, 1997, the Commissioner issued an Order after Hearing finding that Respondent had discriminated against Complainant, and awarded Complainant \$5,079.68 in back pay damages, plus nine percent interest from the date of the Order until payment was made by Respondent to Complainant. Complainant was also awarded \$40,000.00 in compensatory damages for mental anguish and humiliation. In addition, Respondent was ordered to offer, in writing, either to reinstate Complainant to her former position of Assistant Director or to offer her another comparable position. (ALJ Exhibit 2)

5. On November 20, 2003, the Division petitioned to enforce the Order after Hearing. (ALJ Exhibit 4)

6. On April 21, 2005, the Supreme Court Appellate Division, First Department, confirmed the award in its entirety. (ALJ Exhibit 4)

7. Complainant is now deceased. The administrators of her estate, Rosa Jenkins and Constance Sleight, have been substituted as Complainants in the instant complaint.

(Complainant's Exhibits 1 and 2)

8. There has been no compliance with the Order after Hearing. (ALJ Exhibit 5; Complainant's Exhibit 3)

9. The Division has been unable to locate Respondent, and has asked that Regional Aid for Interim Needs, Inc., (R.A.I.N.) be substituted as a successor-in-interest to Respondent. (Complainant's Exhibits 4 and 5)

10. R.A.I.N is a not-for-profit corporation and has been in existence since 1964.

11. On January 22, 1999, R.A.I.N. was assigned Respondent's contract with the City of New York Department for the Aging (NYC DFTA) sponsorship of the Inwood Senior Center, which ran from July 1, 1998 to June 30, 1999. (Complainant's Exhibits 7 and 8)

12. As part of the transfer, R.A.I.N assumed and agreed to comply with all terms, covenants, agreements, provisions and conditions of the contract with NYC DFTA. (Complainant's Exhibit 8)

13. The assignment of the contract did not relieve Respondent of its responsibilities or liabilities to the City for its actions or inactions relating to the contract and occurring prior to the date of assignment. (Complainant's Exhibit 8)

14. R.A.I.N. did not expressly assume or agree to be responsible for the judgment pending against Respondent. (Complainant's Exhibit 8)

15. R.A.I.N. did not impliedly assume or agree to be responsible for Respondent's liabilities. R.A.I.N. relied on the representations made by NYC DFTA that all prior fiscal, program, and legal liability would be the sole responsibility of the former Board. (Respondent's Exhibit 2)

16. As part of the assignment, R.A.I.N. agreed that it would maintain the Inwood Senior Center at its then current location. (Complainant's Exhibit 8)

17. R.A.I.N. negotiated and entered into a new lease for the senior center in 1999 with Mt. Washington Presbyterian Church, the landlord. The term of the lease was from February 1, 1999 to January 31, 2009. (Respondents' Exhibits 2 and 3)

18. R.A.I.N. did not continue the employment of Respondent's employees. The employees that were interested in continued employment with R.A.I.N. had to apply for employment and those that applied and received employment were placed on three month probation.

(Complainant's Exhibits 2 and 13)

19. R.A.I.N. did not continue the employment of Respondent's Executive Director, nor was employment offered. (Respondents' Exhibit 2)

20. The sponsorship contract which was in effect at the time of Respondent's unlawful discrimination against Complainant was between Respondent and HRA. (ALJ Exhibit 2; Respondents' Exhibit 1) That contract was for the period 1982 to 1984. (Respondents' Exhibit 1)

21. R.A.I.N. did not assume the sponsorship contract that existed between Respondent and HRA. (Complainant's Exhibit 8)

OPINION AND DECISION

The general rule in New York is that a corporation which acquires the assets of another is not liable for the liabilities of the predecessor unless: (1) it expressly or impliedly assumed the predecessor's tort liability; (2) there was a consolidation or merger of seller and purchaser; (3) the purchasing corporation was a mere continuation of the selling corporation; or (4) the transaction is entered into fraudulently to escape such obligations. *See, Buja v. KCI Konecranes International PLC*, 12 Misc. 3d 859, 862, 815 N.Y.S.2d 412, 414 (2006), citing, *Schumacher v. Richards Sheer Co.*, 59 N.Y.2d 239, 245, 464 N.Y.S.2d 437 (1987).

There is no evidence that R.A.I.N. expressly or impliedly assumed Respondent's liability. On the contrary, R.A.I.N.'s Board meeting minutes, establish that it was not assuming Respondent's liability. There was no consolidation or merger of seller and purchaser, because this was not a sale. There is no evidence that R.A.I.N., which had been in existence since 1964, was a mere continuation of Respondent. R.A.I.N. did not continue the employment of Respondent's Executive Director, and it did not continue the employment of Respondent's employees; all employees had to apply for employment and those that were offered employment were placed on three month probation. It is true that R.A.I.N. continued to operate the senior citizen center from the same location, but that was a requirement imposed by NYC DFTA. There was no allegation of fraud. The record does not contain any allegation that the transfer for the sponsorship contract to R.A.I.N. was intended to commit fraud and/or thwart enforcement of the judgment against Respondent.

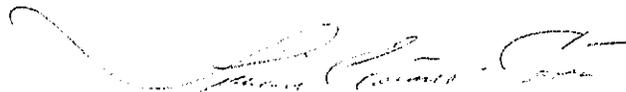
Under the present facts R.A.I.N. is not a successor-in-interest to Respondent.

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 Regional Aid for Interim Needs, Inc., (R.A.I.N.) is not a successor-in-interest to ARC XVI Inwood, Inc.

DATED: March 25, 2009
Bronx, New York



Lilliana Estrella-Castillo
Administrative Law Judge