

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

GINA L. LABOY,

Complainant,

v.

JIMMY JAZZ, INC.,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10110195

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 6, 2008, by Rosalie Wohlstatter, 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.

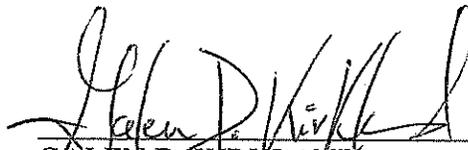
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **SEP - 9 2008**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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JIMMY JAZZ, INC.

Respondent.

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

Case No. **10110195**

SUMMARY

Complainant alleged that she was given an undesirable job transfer and was forced to stop working for Respondent because she is Puerto Rican. However, the record does not support her allegation. The complaint is therefore dismissed.

PROCEEDINGS IN THE CASE

On February 13, 2006, 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 Rosalie Wohlstatter, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on April 9, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondent was represented by Jeffrey S. Dweck, Esq. At the beginning of the hearing, the Division moved to amend the complaint and caption in order to correct the Respondent's name. This motion was granted. Accordingly, the complaint and caption are hereby amended to reflect Respondent's proper name: Jimmy Jazz, Inc.

Permission to file post-hearing briefs was granted. Respondent's counsel filed a post-hearing brief.

FINDINGS OF FACT

1. Complainant is from Puerto Rico. (ALJ Exh. 1; Tr. 10)
2. In late November of 2005, "Mohammed," Respondent's manager at one of its stores on 125th Street, in Manhattan, hired Complainant to be a sales representative. (Tr. 10-11)
3. After a few weeks, a new manager, Imran Kahn, who is Pakistani, replaced Mohammed as manager of the store. (Tr. 11-12, 37, 51)
4. Kahn was happy with Complainant's work; he and Complainant got along. (Tr. 16, 67)
5. After Christmas, business was slow at the store where Kahn and Complainant worked. (Tr. 55)
6. Sometime in January of 2006, Kahn asked Complainant not to come to work. He told her to call him in a week for her new schedule. Complainant called Kahn many times; however, Kahn did not give her any more days to work. (Tr.17)
7. About a month later, Complainant, accompanied by her cousin, Priscilla Rodriguez, went to talk to Kahn at the store. Kahn told Complainant that she was not fired; however, he said work was slow. Kahn stated that everyone's hours were being cut. Kahn offered Complainant a transfer to another store. (Tr.17-19, 66)

8. Complainant testified that Kahn had offered her a transfer to Brooklyn, which was far from her home and school. Kahn did not offer her any more hours at the 125th Street store where she had been working. Complainant's last week of work for Respondent was the week of January 2, 2006. (Complainant's Exh. 1; Tr. 19)

9. Kahn testified that he had offered Complainant a position at another store on 125th Street with the same hours that she was already working. However, he claimed that Complainant did not want to work at the other store on 125th Street because she did not get along well with the manager there. These statements are not consistent with the statements in Respondent's answer and are therefore not credited. (ALJ's Exh. 4; Tr. 58, 75-76)

10. Complainant testified that another employee of Respondent, "Lizette," who is from the Dominican Republic, told her that Kahn had said he was going to fire the two Puerto Ricans. Complainant does not know Lizette's last name; nor has Complainant attempted to find Lizette for the purposes of this hearing. (Tr. 40-41, 46)

11. Complainant knew of only one other Puerto Rican working at the store. (Tr. 16)

12. Kahn was not aware that Complainant was Puerto Rican until she filed her complaint with the Division. (Tr. 59)

OPINION AND DECISION

Complainant alleged that Respondent discriminated against her based on her national origin. Such discrimination is prohibited by Human Rights Law §296.1 (a). The burden of establishing a prima facie case of unlawful discrimination rests with Complainant. To establish a prima facie case, Complainant must show that she is a member of a protected group, that she was qualified for the position she held, that she suffered an adverse-employment action, and that Respondent's actions occurred under circumstances giving rise to an inference of discrimination.

See Ferrante v. American Lung Ass'n, 90 N.Y.2d 623, 665 N.Y.S. 2d 25 (1997).

Complainant has failed to meet her burden because the circumstances under which her employment ended do not give rise to an inference of discrimination. The only evidence presented with respect to national origin discrimination was Lizette's purported statement to Complainant. Lizette, herself, neither testified nor provided an affidavit. Even her last name is unknown. This evidence is of little weight and thus fails to provide a factual basis from which to infer discriminatory intent. Complainant has therefore not established all the elements of a prima facie case of 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 complaint be, and the same hereby is, dismissed.

DATED: August 6, 2008
Bronx, New York


Rosalie Wohlstatter
Administrative Law Judge