

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS  
on the Complaint of

LISA LEWIS,

Complainant,

v.

HOME STOCK REALTY CORP., EIAN "DOE" AS  
AIDER AND ABETTOR,

Respondents.

NOTICE AND  
FINAL ORDER

Case No. 10117947

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 December 30, 2008, by Robert M. Vespoli, 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: **MAR 18 2009**  
Bronx, New York

  
GALEN D. KIRKLAND  
COMMISSIONER

**NEW YORK STATE  
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on the Complaint of

**LISA LEWIS,**

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v.

**HOME STOCK REALTY CORP., EIAN  
"DOE" AS AIDER AND ABETTOR,**

Respondents.

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

Case No. 10117947

**SUMMARY**

Complainant alleged that Respondents discriminated against her in the terms of the rental of a housing accommodation because of her sex, sexual orientation, familial status and marital status. Because the evidence does not support Complainant's allegations, the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On May 16, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to housing 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 Respondents 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 July 2, 2008. The case was subsequently reassigned to Robert M. Vespoli, ALJ.

At the public hearing, the presiding ALJ amended the caption to correctly name the corporate Respondent as follows: "Home Stock Realty Corp." (Tr. 4-5)

Complainant and the corporate Respondent appeared at the hearing. The Division was represented by Jane M. Stack, Esq. The corporate Respondent was represented by Dennis Warren, Esq.

#### **FINDINGS OF FACT**

1. Complainant, a female, was looking for an apartment in or about March 2007. (ALJ's Exh. 1) Complainant testified that she observed a Home Stock Realty sign on Merrick Boulevard. Complainant wrote down the telephone number listed, called and left a message. (Tr. 8)

2. Complainant received a telephone call from a man named Eian, last name unknown, who asked Complainant if she wanted to meet him to look for apartments. (Tr. 8) Complainant arranged for Eian to pick her up at a location designated by Complainant. (Tr. 8, 30) Although Complainant testified that she was certain Eian picked her up in a gray Lexus, Complainant specifically described Eian's car as a blue Lexus in the instant complaint. (Tr. 8, 32-33; ALJ's Exh. 1)

3. Eian told Complainant that he worked for "Home Stock" but was not a licensed real estate salesperson. (Tr. 8, 11, 35) He did not provide Complainant with a business card or anything else showing that he worked for the corporate Respondent. (Tr. 30) Although

Complainant testified that she filled out the requisite real estate intake form, she did not produce this document at the hearing. (Tr. 30-31)

4. Complainant testified that she viewed apartments with Eian on approximately 6 occasions during daylight hours, and he always picked her up in the same car. (Tr. 31-33, 43-44) She stated that each time they met, Eian told Complainant that she was attractive, asked her out on dates and asked her to be his girlfriend. (Tr. 8-11, 35-36, 44) Complainant consistently rebuffed Eian's advances. (Tr. 9-11, 44)

5. Complainant continued to view apartments with Eian alone and did not complain about his conduct to a real estate broker, manager or anyone associated with the corporate Respondent. (Tr. 35-36) Complainant stated that she did not make such a complaint because she planned to file a complaint with the Division. (Tr. 36)

6. Complainant liked an apartment Eian showed her on Jamaica Avenue, and she later met Eian at an office on Merrick Boulevard to fill out the necessary paperwork. (Tr. 9, 11-12, 40-42) Complainant stated that a "heavy-set" Caucasian woman was present at this office. (Tr. 12, 42) Complainant testified that she sat with Eian at a desk in the rear of the store, and he continued to make advances toward her. (Tr. 12-13, 42, 44) When she refused his advances, Eian became upset and discontinued the application process. (Tr. 13, 44) Complainant then left the office and ceased working with Eian. (Tr. 44-45)

7. In her testimony, Complainant did not identify the address of the office she visited and did not identify the presence of the corporate Respondent's name at the office. (Tr. 41-42) In the instant complaint, Complainant provided an address for the corporate Respondent that is different than the address identified by the Division for service of process. (ALJ's Exhibits 1, 2)

8. Stuart Paletnick, an investigator for the Division, testified that he never personally visited the place of business of the corporate Respondent. (Tr. 48, 53) He stated that he called “the rental office” once and was told that Eian was not there. (Tr. 49-50) Paletnick did not identify the telephone number he dialed or the individual to whom he spoke. He also testified that a representative of the Division, Caroline Ross, conducted a site visit. (Tr. 48-49) Paletnick did not provide an address for the site visit and confirmed that both he and Ross were unable to substantiate that anyone named Eian worked at the site. (Tr. 53-54)

9. Yvonne Lloyd, the president and sole real estate broker for the corporate Respondent, testified that their office was never located at the address designated by Complainant in the instant complaint. (Tr. 56, 58-59, 73-74) Lloyd stated that the corporate Respondent never employed a worker or sales agent named Eian. (Tr. 58, 73) The corporate Respondent provided a check register from its business account and a printout from the New York State Department of State in support of this testimony. (Respondents’ Exhibits 2, 4)

### OPINION AND DECISION

It is unlawful for any real estate broker, real estate salesperson or employee or agent thereof to refuse to rent, lease or negotiate for the rental or lease of any housing accommodation to a prospective tenant because of that person’s sex, sexual orientation, familial status or marital status. N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.5(c).

The record is devoid of any evidence showing that Respondents discriminated against Complainant because of her sexual orientation, familial status or marital status. Accordingly, those claims are dismissed.

The sole issue in the case at bar is whether Respondents discriminated against

Complainant in the terms of the rental of a housing accommodation because of her sex. The record does not support Complainant's allegations of discrimination.

Complainant has not established that Eian was a real estate broker, salesperson, employee or agent of the corporate Respondent. Complainant exhibited a shaky, inconsistent recollection of the events in issue. Although Complainant testified that Eian picked her up 6 times in the same car during daylight hours, she gave conflicting descriptions of his car. She also provided an incorrect address for the corporate Respondent. Moreover, Complainant did not produce a business card, sales agreement or any other evidence showing that Eian was an agent or representative of the corporate Respondent. When Complainant met Eian at an office, she did not identify the address where the meeting took place or the identity of the entity that owned or operated the office.

Investigator Paletnick did not personally conduct a site visit. He provided an uncorroborated hearsay account of a site visit conducted by Ross, who did not testify at the hearing. Paletnick did not provide an address where the site visit occurred and confirmed that both he and Ross were unable to substantiate that anyone named Eian worked at the site.

Furthermore, the corporate Respondent provided testimony and documentation showing that it did not employ a worker or sales agent named Eian during the relevant time period.

Finally, the record does not establish that Complainant applied for and was qualified to rent a housing accommodation and that Respondents denied this to Complainant because of her membership in a protected class. *See Dunleavy v. Hilton Hall Apartments Co., LLC*, 14 A.D.3d 479, 480, 789 N.Y.S.2d 164, 166 (2d Dept. 2005).

Because there is no finding of liability against the corporate Respondent, the case against the aider and abettor must also fail. *See Murphy v. ERA United Realty*, 251 A.D.2d 469, 472,

674 N.Y.S.2d 415, 417 (2d Dept. 1998).

Accordingly, the complaint is dismissed in its entirety.

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 instant complaint be, and the same hereby is, dismissed.

DATED: December 30, 2008  
Hempstead, New York

A handwritten signature in black ink that reads "Robert M. Vespoli". The signature is written in a cursive style with a large initial 'R'.

Robert M. Vespoli  
Administrative Law Judge