

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

EMMA LUKASHEVSKAYA,

Complainant,

v.

STONY BROOK UNIVERSITY HOSPITAL,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10106190

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 April 11, 2008, by Margaret A. Jackson, 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,

JUN 20 2000


GALEN D. KIRKLAND
ACTING COMMISSIONER

**NEW YORK STATE
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on the Complaint of

EMMA LUKASHEVSKAYA,

Complainant,

v.

STONY BROOK UNIVERSITY HOSPITAL,

Respondent.

**RECOMMENDED ORDER
OF DISMISSAL**

Case No. **10106190**

SUMMARY

Complainant, a Ukrainian Jewish female, alleged that respondent discriminated against her by terminating her employment because of her National Origin and creed. Complainant who was a probationary employee, failed to prove her claim. Therefore, her case is dismissed.

PROCEEDINGS IN THE CASE

On On June 9, 2005, 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.

The case was assigned to Margaret A. Jackson, an Administrative Law Judge ("ALJ") of the Division. Complainant was represented by Sharifov & Russell, LLP. Respondent was represented by Michele J. Le Moal-Gray, Esq.

FINDINGS OF FACT

1. On March 8, 2004, Complainant, who is a Ukrainian Jewish female, was hired to work for Respondent as a floater in the housekeeping department of Stony brook University Hospital. (Tr. 8, 14 -21)

2. When Complainant was hired, she was told that she was subject to a one year probationary period and knew that as a probationary employee her employment was subject to termination. (Tr. 107)

3. Complainant worked from 7A.M. to 3:30 P.M. (Tr. 342)

4. Margaret Bryan supervised Complainant and managed the entire housekeeping department. (Tr. 283)

5. Complainant alleged that Respondent was aware of her nationality and faith because she had an accent and wore a star of David necklace visibly displayed on her neck. (Tr. 3-12, 398)

6. On March 10, 2004, Complainant was trained in step based cleaning as part of her orientation. (Tr. 366)

7. On September 2, 2004, Complainant was retrained in step based cleaning. (Tr. 367)

8. On October 28, 2004, Bryan gave Complainant a verbal counseling, which was reduced to writing, for failing to clean a patient's room in accordance with Respondent's step based cleaning procedures. (Complainant's Exhibit 1)

9. On December 8, 2004, Bryan gave Complainant a second verbal counseling which was also reduced to writing. The second counseling concerned Complainant's failure to clean the X-ray area and elevator doors properly. (Tr. 304, Complainant's Exhibit 5)

10. On another occasion, dirty water was discovered spilled on the floor in radiology. (Tr. 97-8)

11. Lastly, Complainant was discovered on an unauthorized break. On a floor that she was not assigned to clean. Complainant stated that she was actually looking for cleaning supplies.

(Tr. 64)

12. Effective January 26, 2005, Complainant's employment was terminated. (Tr. 12, 18)

OPINION AND DECISION

To make out a prima facie case of unlawful discrimination under the Human Rights Law, a complainant must show (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d28, 39-40, 377 N.Y.S.2d 471, 479, 339 N.E.2d 880, 885-886 (1975), citing, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

If Complainant establishes a *prima facie* case of discrimination, Respondent must articulate a legitimate, non-discriminatory business reason for its actions. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 120 S.Ct. 2097, 147 L.Ed. 105_(2000).

Complainant, a Ukranian Jewish female is a member of a protected class who was qualified to hold her position. Her employment was terminated while she was a probationary employee. She has established a prima facie case. However, by Complainant's own admission, she had received several verbal counseling memos and knew that as a probationary employee her employment was subject to termination. As a result of the verbal counseling given to Complainant, Respondent terminated her employment. This was sufficient to establish a legitimate, nondiscriminatory explanation for her termination. Complainant has not shown that

Respondent's action was pretextual and her assertion that her work was criticized because she wore a star of David necklace which was visible to her supervisor has no basis in fact. Accordingly, Complainant has not succeeded in proving her claim of unlawful discrimination against Respondent.

Complainant's assertions that her employment was terminated because of her national origin and creed are baseless and unsubstantiated. Despite her allegations, Complainant has failed to show that Respondent had any discriminatory motive toward her or that Respondent violated the Human Rights Law.

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 case be dismissed.

DATED: April 11, 2008
Bronx, New York

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

Margaret A. Jackson
Administrative Law Judge