

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**  
on the Complaint of

**BIANCA A. MAPP and CHRISTINE R. TAYLOR,**  
Complainant,

v.

**RALPH CRAWFORD, DBA CRAWFORD  
ENTERPRISES, DBA MCDONALD'S  
RESTAURANT,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case Nos. 10122408 and  
10122407

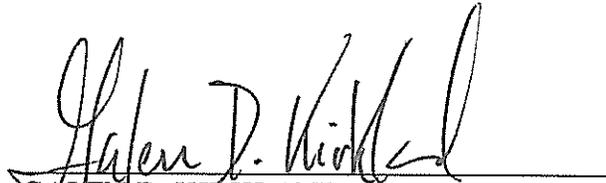
**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on April 20, 2009, by Michael T. Groben, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was 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 30 2009**  
Bronx, New York

  
GALEN D. KIRKLAND  
COMMISSIONER

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TAYLOR,**

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**RALPH CRAWFORD, dba CRAWFORD  
ENTERPRISES, dba MCDONALD'S  
RESTAURANT,**

Respondent.

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

Case Nos. **10122408** and **10122407**

**SUMMARY**

Complainant Mapp, a gay woman, alleges that she was constructively terminated from her employment by Respondent because of her sexual orientation. Complainant Taylor, also a gay woman, alleges that she was fired from her job by Respondent because of her sexual orientation. Respondent did not answer or otherwise oppose Complainants' allegations. However, because neither Complainant presented a prima facie case of discrimination, the complaints are dismissed.

**PROCEEDINGS IN THE CASE**

On December 27, 2007, Complainants each filed separate verified complaints with the New York State Division of Human Rights ("Division"), charging McDonald's Restaurant, as Respondent, with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law"). On February 21, 2008, both verified complaints were

amended to name Ralph Crawford, dba Crawford Enterprises, dba McDonald's Restaurant as Respondent.

After investigation, the Division found that it had jurisdiction over both complaints and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred both cases to public hearing.

After due notice, these cases came on for hearing before Michael T. Groben, an Administrative Law Judge ("ALJ") of the Division. The public hearing session for both matters was held on March 18, 2009.

Both Complainants appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq. Respondent did not file an answer to either complaint and did not appear at the public hearing, despite being served with several Notices of Hearing. ALJ Groben declared a default and proceeded to hear evidence in support of the complaints. Complainants' application to supplement their proof regarding damages and dates of employment by submitting documents post-hearing was granted by ALJ Groben. Pursuant to said ruling, the Division attorney submitted an additional document on March 27, 2009, which was received in evidence as Complainants' Exhibit 4.

Permission to file post-hearing briefs was granted, and the Division attorney filed proposed findings of fact and conclusions of law on behalf of both Complainants.

### **FINDINGS OF FACT**

1. Complainant Mapp and Complainant Taylor are gay women who live together. (ALJ's Exhibits 1, 5; Tr. 15, 37)

2. Respondent is the owner of a McDonald's restaurant in Liverpool, New York, which at the time relevant to the complaints, employed more than four persons. (ALJ's Exhibits 1, 5; Tr. 19, 31)

3. Respondent failed to file an answer to either verified complaint. Despite being served with the Closing Statements and several Notices of Hearing in each Complainant's case, Respondent did not appear at the public hearing. (ALJ's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9; Complainant's Exhibits 1, 2, 3; Tr. 5-12)

4. Complainant Mapp began work as a cashier at Respondent's McDonald's restaurant in December 2007. (ALJ's Exhibit 1; Tr. 15, 19)

5. In early December, Respondent's manager "Ron" asked Mapp if she was gay, and she replied in the affirmative. (Tr. 22-24)

6. Job training was provided to Respondent's employees who Mapp believed to be heterosexual, but was not provided to Mapp. Mapp felt that she was not being treated as part of the "team" of employees. (Tr. 24-25)

7. In or about December 2007 or early January 2008, Mapp began calling the restaurant to inquire about her scheduled hours of work, and spoke to Ron. Mapp was not assigned any work, however. (Tr. 17-20, 25-26) During her last call, Ron told her not to call any more. (Tr. 20-21)

8. In early January 2008, Mapp stopped calling, and went to Respondent's restaurant to speak with Ron in person. (Tr. 26-27) Ron refused to schedule Mapp for work. (Tr. 27) Ron also refused to explain why, and stated that he did not have to do so because Mapp had "called (him) seven goddamn times." Mapp then left Respondent's restaurant. (Tr. 26-27, 30-31)

9. Mapp testified that she then began employment with KFC, another restaurant, in February 2008. (Tr. 28) However, Mapp also testified that her last day of work at Respondent's

restaurant had been in June. (Tr. 31-32) In addition, Mapp testified that she had been out of work for “like six months” after leaving employment at Respondent’s restaurant. (Tr. 31) I found Mapp’s testimony to be contradictory and unreliable.

10. Complainant Taylor was hired to work in Respondent's restaurant as a grill cook on or about December 9, 2007. She was hired by an employee known to her as “Edna.” (ALJ’s Exhibit 5; Tr. 36-37, 43)

11. “Gen”, a supervisor at Respondent's restaurant, had known Mapp previous to her employment at Respondent's restaurant. Gen disliked Mapp because she had “bumped heads” with Mapp in the past. Gen also knew that Taylor and Mapp were involved in a gay relationship. (Tr. 37-38)

12. On or about December 10, 2007, Taylor remarked to Gen that a young man in the store was attractive. Gen told her to go talk to him, because “he’s looking for a girlfriend”. Taylor was offended by this, and rebuked Gen for this remark. After that, Gen was not friendly to Taylor. (Tr. 39-42)

13. Ron asked Taylor whether Mapp was her girlfriend, and she stated that she was. Ron responded that there was “nothing wrong with that.” (Tr. 38-39)

14. Taylor testified that she was not treated differently than other employees of Respondent. (Tr. 40)

15. Respondent's daughter “Beraka” was employed at the restaurant. Previous to her employment at Respondent's restaurant, Taylor had been acquainted with Beraka, and Beraka was aware of Taylor's sexual orientation. Baraka trained Taylor for her job at Respondent's restaurant, and joked about Taylor's sexual orientation on at least one occasion, in a manner which was not offensive to Taylor. (Tr. 47-48, 50-52)

16. On or about December 10, 2007, Taylor bought a meal at work to eat on her lunch break. A fellow employee rang the meal up for her and advised that an employee discount was available. Taylor did not request a discount. The meal, approximately four dollars and change in value, was rung up for \$1.97. Edna then examined Taylor's receipt, and ordered Taylor and the employee who had rung up her meal to go home. She also advised Taylor to return the next day for work. (Tr. 41-44, 46)

17. Taylor returned to work the next day, and was advised by Gen that she had been fired for stealing food. (Tr. 41, 44-45)

18. Taylor testified at the public hearing that one of Respondent's employees, "Joseph", then told her that she had been fired because she was gay. Joseph did not state any basis to Taylor for this assertion. Joseph did not appear at the public hearing. (Tr. 48-50)

19. Taylor's son Rashad Felder called Respondent's restaurant the next day, and was advised by Beraka that Taylor had been terminated for stealing food. (Tr. 47, 54-56)

### **OPINION AND DECISION**

It is unlawful for an employer to discriminate against an employee on the basis of sexual orientation. Human Rights Law § 296.1 (a) The term "sexual orientation" is defined to include homosexuality. Human Rights Law § 292.27

To make an 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.

*Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997); *Forrest v.*

*Jewish Guild for the Blind*, 3 N.Y.2d 295, 305, 786 N.Y.S.2d 382, 390 (2004).

Both Complainants are gay women, and thus are members of a protected class. Both appear to have been qualified for their positions, having been hired by Respondent. *See Slattery v. Swiss Reinsurance America Corp.*, 248 F.3d 87, 90-91 (2<sup>nd</sup> Cir. 2001). Both presented evidence that they had been subjected to adverse employment actions: Mapp was denied further scheduled work hours, and Taylor was formally terminated from her employment.

However, although both Complainants made their homosexuality known to Respondent's supervisory personnel, neither Complainant presented evidence which would justify an inference of discrimination. Mapp testified that training was provided to heterosexual employees (who she did not identify), but not to her. She supplied no evidence that she was eligible for the training, what form it took, or how she had been able to determine the sexual orientation of the employees who were provided with this training. She failed to provide any evidence of discriminatory animus by Respondent, and provided nothing linking her treatment by Respondent with her sexual orientation. The fact that Respondent's manager refused to provide her with a work schedule when she requested same, and refused to explain why, does not bridge this gap. Finally, Mapp's testimony was vague, and even contradictory, regarding some of the basic circumstances of her employment. Her testimony was not credible, and did not provide a sufficient basis for a finding of discrimination.

Taylor candidly acknowledged that she had not been treated differently than other employees because of her sexual orientation. Although it can be concluded from her testimony that Respondent's supervisory employee Gen bore animus towards both Complainants, there was once again no evidence that would link this to Taylor's or Mapp's homosexuality, or to Respondent's treatment of them. Respondent's daughter (and supervisory employee) Beraka had

been aware of Taylor's sexual orientation before she was hired, a fact which hardly supports Taylor's allegation that she was fired for discriminatory reasons. Finally, it is clear from the record that Taylor was fired because, after only two days of work, she had been involved in a minor theft of Respondent's property. The record certainly did not establish that Taylor was a knowing participant in the scheme, and I credit her testimony that she was not. However, the fact that Respondent's termination of Taylor was in error does not, in and of itself, support a conclusion that she was terminated because of her sexual orientation.

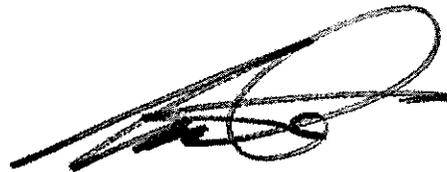
The Complainants have failed to establish a prima facie case of illegal discrimination. Therefore, the complaints are dismissed.

**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 both complaints be, and hereby are, dismissed.

DATED: April 20, 2009  
Bronx, New York

A handwritten signature in black ink, appearing to read "Michael T. Groben", written in a cursive style.

Michael T. Groben  
Administrative Law Judge