



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

BRYANT MATHIS,

Complainant,

v.

FAMILY NURTURING CENTER OF CNY, INC.,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10151113

Federal Charge No. 16GB200074

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 February 28, 2013, 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.

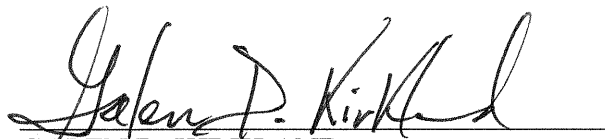
PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory 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:

5/9/2013

Bronx, New York

A handwritten signature in black ink, appearing to read "Galen D. Kirkland", written over a horizontal line.

GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

BRYANT MATHIS,

Complainant,

v.

**FAMILY NURTURING CENTER OF CNY,
INC.,**

Respondent.

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

Case No. **10151113**

SUMMARY

Complainant charges that Respondent unlawfully discriminated against him in employment because of his sex, disability, and marital status, and that Respondent retaliated against him because he opposed discrimination in the workplace. Respondent denies the allegations. Complainant has failed to sustain his burden of proof, and the complaint is dismissed.

PROCEEDINGS IN THE CASE

On October 6, 2011, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent Family Nurturing Center with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15

("Human Rights Law"). On October 24, 2011, the complaint was amended to reflect Respondent's name as "Family Nurturing Center of CNY, Inc." On January 24th, 2012, the complaint was again amended to add a charge of discrimination based on opposed discrimination/retaliation.

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 Michael T. Groben, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on November 7 and 8, 2012.

Complainant and Respondent appeared at the hearing. The Division was represented by Senior Attorney Richard J. Van Coevering. Respondent was represented by Martin & Rayhill, P.C., Kevin G. Martin, Esq., of counsel.

FINDINGS OF FACT

1. Respondent provides parenting education and a variety of supportive services for families and caregivers with children. (Tr. 202)
2. Complainant was initially hired by Respondent in 2007 as a fatherhood advocate, at Respondent's Utica, New York, office. Annette Phillips ("Phillips") was a member of the working committee which approved his hiring. (Tr. 17, 18, 47, 63-64, 71, 155-56, 218-19)
3. Sandy Brant ("Brant"), deceased, was Complainant's supervisor. She passed away in 2011. (Tr. 15-16, 20, 27-28)¹

¹ Brant's name is misspelled as "Brandt" throughout the transcript. (Respondent's Exhibit 7)

4. Phillips, Respondent's program director, was Brant's supervisor. (Tr. 19, 21, 148, 217-18)
5. Donna Elefante ("Elefante"), deceased, was Respondent's executive director, and Phillip's supervisor, at all times relevant to the complaint. She passed away in October, 2012. (Tr. 133, 199)
6. Rose Cotrich-Perez ("Cotrich-Perez") was employed by Respondent as a family support worker ("FSW") from 2008 until her employment was terminated in July, 2010. (Tr. 14-15, 17, 35-36)
7. The majority of Respondent's funding comes from grants from cities and from the State of New York. (Tr. 38, 207)
8. In order to continue receiving its grants, Respondent is required to report its activities and performance, including those of the FSW program, to the state via annual, quarterly, and monthly reports. (Tr. 163-164, 205-06) If Respondent does not meet state performance standards, as required, its funding can be reduced. (Tr. 206-07)
9. Colleen Cavallo ("Cavallo") is Respondent's program planner, grant writer, and, as of October 2012, Respondent's associate director. (Tr. 199-200)
10. At all times relevant to the complaint, Cavallo's duties included program development, grant writing, and signing off on Respondent's monthly reports. (Tr. 200) During the period February 2011 to July 2011, Cavallo was also responsible for data entry. (Tr. 185, 199-202)

2009-Complainant is Employed as a Fatherhood Advocate

11. At all times relevant to the complaint, Complainant lived with a woman "Jenn." He was not married to her, but frequently referred to her as his wife or fiancée. (Tr. 176-77)

12. Complainant's first child was born July 21, 2009. (Tr. 184) Prior to that date, Phillips, who was aware of Complainant's domestic arrangements, asked Complainant why he did not marry his fiancée, and opined that if he did not, the child would be born a "bastard." (Tr. 83-84, 183-84, 234-36, 237-38, 246)

13. Phillips testified that she did not recall using the word "bastard" in that conversation. (Tr. 234, 235, 240, 306) Based on the behavior and demeanor of the witnesses at the hearing, I find that Phillips did use that word as alleged by Complainant.

14. Complainant then invited Phillips to his child's baby shower. He did not remonstrate with Phillips regarding her use of the word "bastard" until nearly two years after the incident, shortly before he left Respondent's employ. Phillips then apologized. (Tr. 184-85, 236, 239-41, 244-46)

15. Complainant testified that Phillips again used that term in reference to the pending birth of his second child in 2010. (Tr. 183-85) Based on the Complainant's behavior and demeanor, I found that this testimony was not credible.

16. Complainant was laid off in January 2010 due to a funding shortage. (Tr. 19-20, 45, 156, 204, 221-23)²

2010-Complainant is Re-hired as a Family Support Worker

17. Funding was restored, and Complainant was rehired in September 2010, this time as an FSW. Not all employees who had been laid off were rehired. (Tr. 18, 47-48, 63, 66, 136, 156, 204-05)

18. When asked at the public hearing how he had been rehired, Complainant claimed that he had "never left," and that he had appeared "every other day" for nine months at Respondent's

² On one occasion, the transcript erroneously attributes the testimony of witness Phillips to Respondent's attorney. (Tr. 221, lines 18-25, and 222, lines 1-6)

office in order to receive an assignment. (Tr. 156) Complainant's testimony on this issue was not credible.

19. Complainant was not rehired as a fatherhood advocate, because the funding for that position was no longer available, and because Respondent needed an FSW. (Tr. 226-27)

20. Complainant was rehired at Phillips' request. (Tr. 225-27) Brant was Complainant's supervisor. (Tr. 66-67, 147)

Alleged Sex Discrimination

21. Complainant testified that after he was rehired in September of 2010, he heard Phillips say that a man could not do the job of an FSW as effectively as a woman. (Tr. 85-87) Phillips credibly denied making this remark. (Tr. 233-34)

22. I do not credit the testimony of Complainant's witness Heather Mizerak, a former FSW, that she had heard Phillips make this remark, in late 2010, when Complainant was present. (Tr. 339-40) Mizerak left Respondent's employ in July of 2010, before Complainant returned to work, and so could not have been present. (Tr. 343-44)

23. FSW's made home visits to families (referred to as "clients") in order to provide family support services. (Tr. 17, 40-41)

24. Complainant testified that as a result of Phillips' prejudice against male FSW's, he was not assigned as many client families headed by single women as other FSW's. However, Complainant was assigned a number of such client families, and he failed to produce any proof that he was assigned different clients because of his sex. (Tr. 90-91, 305-06)

25. Phillips candidly admitted in her testimony that she did have concerns that either a female or male FSW might be more appropriate depending on the composition of the client family. However, she observed that Complainant's sex did not detract from his ability to work

with clients, and found that Complainant's sex could be of benefit to his job performance, particularly where he could be of help in getting fathers involved in solving family problems. (Tr. 229-30, 232-34, 263-64, 303-05)

Complainant's Job Performance

26. As an FSW, Complainant's duties required much more paperwork, a more structured schedule, and twice as many clients as he had as a fatherhood advocate. In an effort to help Complainant get off to a good start in his new position, Brant and Phillips met with Complainant and reviewed his new responsibilities with him. (Tr. 64, 157, 159, 220-21, 228)

27. Respondent maintains policies regarding its work hours and work schedules, which include requirements that employees maintain regular office hours, schedule their out-of-office visits in advance, and receive approval from their supervisor for any deviation from schedule. These policies were in place for the orderly performance of Respondent's work and for the safety of its employees. Complainant received training on these policies and was familiar with them. (Tr. 138-43, 145-47, 258-62, 277-80; Respondent's Exhibits 2 and 3)

28. FSW's were required to sign in and out on a board posted at Respondent's office. If an employee called in from the field, his supervisor could sign him in on the board. (Tr. 24-25, 50-51)

29. FSW's were required to keep regular hours, and when not visiting clients, were required to be in the office in order to complete paperwork. (Tr. 42) Complainant, contradicting his own witness Cotrich-Perez, testified that FSW's were not required to come into the office to do paperwork, and that not doing so was a common practice. (Tr. 102-09) Complainant's testimony on this issue was not credible.

30. Each FSW had an itinerary of his scheduled weekly visits, set forth in a "data book," listing the time and place of anticipated visits to each client, as well as a "curriculum" to be offered to the client during a scheduled visit. This itinerary would be made known to the FSW's supervisor so that she would know where the FSW would be at all times. (Tr. 41-42)

31. While in the field, FSW's were required to call in to advise their supervisors of any change in their schedule of visits, and to call in at the end of the day, if it was not feasible for them to return to the office that day. (Tr. 42-44, 51-55, 57, 72)

32. FSW's were required to document their visits at each client's home in the data book, including notes regarding the subject of the visit, the curriculum offered to the client, and plans for the next visit. (Tr. 22)

33. Each FSW would review the data book with his supervisor on a scheduled weekly basis. The supervisor would evaluate the work done with each client, verify that progress was satisfactory, and order the FSW to complete missing work as necessary. (Tr. 21, 24-25, 32-33, 37, 39, 40, 52-53, 160-61)

34. Each month, the data book was to be turned in to the supervisor so that the data could be compiled and submitted in a report to the state. (Tr. 22-24)

35. Cavallo would receive the data books and enter this information in Respondent's computer database, for use in Respondent's reports, which would be audited by the state. (Tr. 185-86)

36. FSW's, including Complainant, were made aware that completion of this documentation was necessary in order for Respondent to report its activities to the state and continue to receive its funding. (Tr. 38-39)

37. Complainant was frequently late in submitting his data books, a matter of concern to both Cavallo and Brant. Both Brant and Cavallo discussed the matter with Complainant, in an effort to get him to submit his data books on time. (Tr. 186, 207-09, 322)

38. All FSW's, including Complainant, were regularly issued documents known as "ticklers," reminding them of work that had not yet been completed pursuant to schedule. Complainant generated some work in response to these, but nevertheless failed to complete other work on time. (Tr. 300-02, 320-321)

39. In testimony at the public hearing, Complainant denied that he had received criticism of his work performance from Brant, insisting that the only issues that had arisen regarding his performance were minor paperwork issues that were "not under (my) control." In April 2011, Complainant received a written counseling from Brant regarding his continuing failure to fill in his itinerary, report to the office at the beginning of the day, and keep his supervisor aware of his whereabouts during the workday. (Tr. 66-68, 99-100, 127-32, 135-34; Respondent's Exhibit 1) Accordingly, I do not credit Complainant's denial that Brant criticized his work performance.

40. Upon receiving this counseling, Complainant became angry and threatened to quit. Elefante convinced him to stay. (Tr. 132-34)

41. In March 2011, after complaints from Brant regarding Complainant's performance, Phillips began keeping a written record documenting numerous deficiencies in Complainant's performance regarding his itinerary, failure to complete data reports, attendance in the office and at Respondent's events, failure to attend scheduled meetings with his supervisor, and failure to notify his supervisor of his whereabouts during the workday. (Tr. 162-63, 167, 249-50, 309; Respondent's Exhibit 7)

42. Both Brant and Phillips counseled Complainant regarding his habit of missing scheduled client visits. After such counseling, Complainant's performance would briefly improve, and then again decline. (Tr. 328-29)

43. FSW's were directed to maintain a professional distance between themselves and client families, and to refrain from excessive involvement in the personal affairs of clients. Respondent referred to this practice as maintaining "boundaries." During the spring and early summer of 2011, both Phillips and Brant found it necessary to counsel Complainant regarding the excessive amount of time spent on certain clients, and the irregular and unscheduled nature of his contacts with clients. (Tr. 56-57, 269-74; Respondent's Exhibit 3)

44. In late May 2011, Brant became ill, and Phillips replaced her as Complainant's supervisor. (Tr. 187, 207, 291-92, 321-22, 324)

45. In May or early June 2011, Cavallo became concerned that she had not received any data from Complainant regarding his May activities. This was of particular concern, because all data for a particular month had to be entered by the 10th day of the following month. Complainant did not hand in his data book until June 10, and Cavallo and Phillips were forced to stay at work until nearly midnight that day in order to enter the data on time. (Tr. 209-10, 320-21, 324)

46. Phillips expressed her dismay to Complainant; his response was that he was "too busy." (Tr. 80-82, 323-24)

47. Complainant testified that he had not handed in his data book because he had no supervisor after Brant left, because another supervisor, Charity Leslie, took his data book for several days, and because he attempted to give the book to Cavallo and was unable to do so because she was out sick. (Tr. 74-78, 98) However, in Brant's absence, either Phillips or another

supervisor would be available. (Tr. 30, 148) Complainant's testimony on this issue was not credible.

48. Complainant missed a number of supervision meetings during 2011 due to cancellation or nonappearance. Phillips had reason to believe that a number of these were a deliberate effort on Complainant's part to avoid the meetings. (Tr. 291-94, 313, 316-20, 331-32; Respondent's Exhibit 9)

49. Respondent had a dress code, requiring professional and appropriate attire for both male and female FSW's. In June 2011, in defiance of this policy, and despite reminders from Phillips, Complainant wore shorts and T-shirts to work. On one occasion, Complainant announced on his Facebook page that he would wear a kilt to the office, in protest of the dress code. He did so. (Tr. 265-69)

50. Elefante directed Phillips to report on Complainant's performance. On June 7, 2011, Phillips responded with an e-mail documenting numerous deficiencies in Complainant's attendance and other aspects of his performance. (Tr. 286-89, 309-12, 325-27; Respondent's Exhibit 8)

51. In the latter part of June, 2011, Complainant went on vacation for 11 or 12 days. (Tr. 77-79) Phillips had not authorized the vacation, and after several days she called Complainant to find out where he was. (Tr. 150-51, 153-54) Complainant returned to the office, and, from his own files, gave Phillips an unsigned vacation request, which she then signed. (Tr. 151-55, 280-83, 316, 325-26)

52. Complainant testified that he "believed" that Brant had signed a vacation request form, which she showed to him, but which he could not produce at the hearing. (Tr. 79-80, 151-52)

Phillips credibly testified that prior to calling Complainant she had verified that there was no vacation request on file. (Tr. 281-83) Complainant's testimony was not credible.

Complainant is Injured

53. On the evening of July 12, 2011, Complainant called in to Phillips to say that he was done for the day. He then made an after-hours visit to the home of a client. Upon leaving the client's house, he slipped and fell, injuring his wrist. (Tr. 94, 294-95)

54. At the public hearing, Complainant testified that he had been at the client's house, and was about to leave when the family showed up and asked him to complete the home visit. (Tr. 92-94, 167-69, 179) However, a letter which Complainant wrote after this incident makes clear that he had not been present at the home when the family arrived, and that they had summoned him to the house by telephone call. When questioned about this discrepancy, Complainant claimed that the letter had been typed by someone else, that he had reviewed the letter "somewhat" before sending it, and also that he had not reviewed the letter at all. (Tr. 172-74, 175, 177, 188-89; Respondent's Exhibit 6) Complainant's testimony was evasive and not credible.

55. Complainant called Phillips and spoke to her several times that evening, advising her that he was at the hospital, that he had injured his hand, and that surgery would be required. Phillips advised Complainant that he would need to produce documentation regarding his medical condition, and how long he thought he might be out of work. (Tr. 94-95, 180-82, 295-97)

56. Complainant sustained an injury to his wrist, with eventual partial loss of use of that wrist. (Tr. 124, 182)

57. Complainant did not request leave time for his injury, nor did he ever produce any medical documentation regarding the nature of his injury. Complainant did not inform Respondent how long he anticipated being absent from work. (Tr. 111-13, 298, 329-30)

58. At the time of his injury, Complainant had no accrued vacation or sick time. (Tr. 298)

59. Elefante, concluding that Complainant was once again absent without leave, determined that his employment should be terminated due to Complainant's poor job performance, including extended time away from work, late and incomplete documentation, and absence from scheduled supervision meetings. (Tr. 298-300, 328, 330-31; Complainant's Exhibit 2)

60. Complainant then received a termination letter, effective July 15, 2011. (Tr. 62, 91-92; Complainant's Exhibit 2)

61. After Complainant's employment was terminated, he was replaced by a male FSW. (Tr. 275-76)

Complainant's Credibility

62. Complainant's testimony was occasionally vague, contradictory, or evasive. (Tr. 87, 106-10, 127-32, 140-41, 156, 165, 172-73; Respondent's Exhibit 1, Respondent's Exhibit 6) I did not find Complainant to be a credible witness.

OPINION AND DECISION

The Human Rights Law provides that "(a)ny complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice." N.Y. Exec. Law, art. 15 (Human Rights Law) § 297.5. This provision acts as a mandatory statute of limitations in these proceedings. *Queensborough Community College v. State Human Rights App. Bd.*, 41 N.Y.2d 926, 394 N.Y.S.2d 625 (1977).

The instant complaint was filed October 6, 2011, and thus events occurring on or after October 6, 2010, are within the statute of limitations.

Claims regarding events which occurred prior to one year of the filing of the complaint are only viable to the extent that complainant can demonstrate a continuing violation.

9 N.Y.C.R.R. § 465.3 (e). A continuing violation may be found where there is proof of specific ongoing discriminatory policies or practices, or where specific and related instances of discrimination are permitted by the employer to continue unremitting for so long as to amount to a discriminatory policy or practice. *Clark v. State of New York*, 302 A.D.2d 942, 754 N.Y.S.2d 814 (4th Dept. 2003).

Human Rights Law § 296.1 (a) makes it an unlawful discriminatory practice for an employer "because of an individual's ... sex, disability... (or)... marital status... to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

To establish a prima facie case of unlawful discrimination under the Human Rights Law, a complainant must show that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he 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.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004).

If a complainant makes out a prima facie case of discrimination, the burden shifts to the respondent to present a legitimate, nondiscriminatory reason for its action. If the respondent does so, the complainant must show that the reasons presented were merely a pretext for discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390

(2004). The ultimate burden of proof always remains with the complainant. *Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 630, 665 N.Y.S.2d 25, 29 (1997).

Marital Status Discrimination

Complainant's supervisor was aware that he was not married to his fiancée. On one occasion, Complainant's supervisor employed the insulting term "bastard" with reference to the pending birth of Complainant's first child. This occurred in 2009, well beyond the one-year statute of limitations, and so is useful only as background. Complainant submitted no other evidence of marital status discrimination at the hearing, and this charge must be dismissed.

Sex Discrimination

Complainant is male, and so is a member of a protected class. He was qualified for his position as an FSW, and he suffered an adverse employment action when his employment was terminated. Complainant alleged that his supervisor, Phillips, indicated that she disfavored male employees, and that she altered his job assignments and caused his termination, because of his sex. With respect to his charge of sex discrimination, Complainant has established a prima facie case, a burden which has been described as *de minimis*. *Schwaller v. Squire Sanders & Dempsey*, 249 A.D.2d 195, 671 N.Y.S.2d 759 (1st Dept. 1998).

However, proof at the hearing demonstrated that Phillips had made the decision to rehire Complainant in 2010 as an FSW, and that the true reason for Complainant's discharge was documented poor job performance. Complainant submitted no evidence that Elefante, who made the decision to terminate his employment, exhibited any animus towards him because of his sex. Complainant failed to demonstrate that Respondent's stated reasons for terminating his employment were a pretext. Finally, after the termination of Complainant's employment, Respondent hired a male FSW to replace him. Under these circumstances, an inference of

discrimination is not appropriate. This claim is also dismissed.

Disability Discrimination

A disability as defined under the Human Rights Law as "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques." A disability may also be a record of such impairment or the perception of such impairment. Human Rights Law § 292.21. This definition has been interpreted to include any medical diagnosable impairments and conditions which are merely "diagnosable medical anomalies." *State Division of Human Rights v. Xerox Corp.*, 65 N.Y.2d 213, 219, 491 N.Y.S.2d 106, 109 (1985).

The Human Rights Law provides that it is an unlawful discriminatory practice for an "employer... to refuse to provide reasonable accommodations to the known disabilities of an employee... in connection with a job or occupation sought or held..." Human Rights Law § 296.3 (a).

Forms of reasonable accommodation include, but are not limited to: "making existing facilities more readily accessible to individuals with disabilities; acquisition or modification of equipment; job restructuring; modified work schedules; adjustments to work schedule for treatment or recovery; reassignment to an available position." 9 N.Y.C.R.R. § 466.11 (a) (2). Both the employee and the employer are obligated to engage in an interactive process, which includes the discussion and exchange of pertinent medical information, in order to arrive at a reasonable accommodation which will allow a disabled employee to perform the necessary job requirements. 9 N.Y.C.R.R. § 466.11 (j), (k).

Complainant's testimony at the public hearing, unopposed by Respondent, was that he

had sustained a disability in the form of an injury to, and reduced use of, his wrist. Complainant informed Respondent that he had injured himself. Respondent requested that Complainant supply information as to the nature of his injury, and how long Complainant thought that he might be out from work. Complainant never supplied any medical documentation, and never asked for leave. Complainant had an obligation to participate in the interactive process by supplying this information. He did not do so, and his failure to respond to Respondent's request for additional information caused a breakdown in the interactive process. *Vinikoff v. New York State Division of Human Rights*, 83 A.D.2d 1159, 920 N.Y.S.2d 458 (3d Dept., 2011). Complainant's claim of disability discrimination is dismissed.

Retaliation

In order to establish a prima facie case of retaliation, a complainant must show that: (1) he engaged in activity protected by Human Rights Law § 296; (2) the respondent was aware that he participated in the protected activity; (3) he suffered an adverse employment action; and (4) there is a causal connection between the protected activity and the adverse action. *Pace v. Ogden Svcs. Corp.*, 257 A.D.2d 101, 103, 692 N.Y.S.2d 220, 223 (3d Dept. 1999) (citing *Fair v. Guiding Eyes for the Blind*, 742 F. Supp. 151, 154 (S.D.N.Y. 1990); *Matter of Town of Lumberland v. New York State Div. of Human Rights*, 229 A.D.2d 631, 636, 644 N.Y.S.2d 864 (3d Dept. 1996)).

Although Complainant amended his complaint to include a cause of action for retaliation, he did not submit proof at the public hearing of said claim. This claim is 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 the complaint be, and hereby is, dismissed.

DATED: February 28, 2013
Bronx, New York

A handwritten signature in black ink, appearing to read 'Michael T. Groben', with a large, stylized flourish extending from the end of the signature.

Michael T. Groben
Administrative Law Judge