



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

LEIDA L. MEJIA,

Complainant,

v.

EL CARAMELO COFFE SHOP, RAMONA
SIERRA A/K/A RAMONA O'CONNOR,
ARCOYRIS COFFEE RESTAURANT CORP.,
Respondents.

NOTICE AND
FINAL ORDER

Case No. 10149998

Federal Charge No. 16GB104151

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 4, 2012, by Robert J. Tuosto, 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: 1/14/2013
Bronx, New York


GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
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**EL CARAMELO COFFEE SHOP, RAMONA
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**REVISED
RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10149998**

SUMMARY

Complainant alleged that she was unlawfully discriminated against on the basis of her age when she was terminated from her employment. However, Complainant has failed to prove her case and the complaint is hereby dismissed.

PROCEEDINGS IN THE CASE

On July 18, 2011, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents El Caramelo Coffee Shop and Ramona Sierra 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 Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

On May 9, 2012 the above-captioned complaint was amended to add Arcoyris Coffee Restaurant Corp. as a respondent. (ALJ Exh. 1)

After due notice, the case came on for hearing before Katherine B. Huang, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on May 16, 2012.

Complainant and Respondents appeared at the hearing. The Division was represented by Robert Alan Meisels, Esq., Senior Attorney. Respondents appeared by Ramona Sierra, Respondent ‘pro se.’

This case was subsequently reassigned to ALJ Robert J. Tuosto pursuant to N.Y.C.R.R. § 465.12 (d)(2).

FINDINGS OF FACT

1. Complainant was born on June 4, 1951. (Tr. 15)
2. Respondent El Caramelo Coffee Shop Corp. (“El Caramelo”) is a bar and restaurant located in Queens, New York. Respondent Ramona Sierra was the owner of El Caramelo while Complainant was employed there. (Complainant’s Exh. 3; Tr. 74, 81)
3. On January 15, 2006 Complainant started working at El Caramelo. (Tr. 15-18, 23, 64)
4. Complainant testified that was told not to return to work in June, 2011 when, in opposition to her superior’s wishes, she closed El Caramelo while a patron “with a lot of money” was still there and wanted to continue to purchase alcoholic beverages. (Tr. 31-36)

5. Complainant was replaced by a younger employee. (Tr. 40)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer, "...because of an individual's...age...to discriminate against such individual in compensation or in terms, conditions or privileges of employment." Human Rights Law § 296.1 (a).

In discrimination cases a complainant has the burden of proof and must initially establish a prima facie case of unlawful discrimination. Once a complainant establishes a prima facie case of unlawful discrimination, a respondent must produce evidence showing that its action was legitimate and nondiscriminatory. Should a respondent articulate a legitimate and nondiscriminatory reason for its action, a complainant must then show that the proffered reason is pretextual. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). The burden of proof always remains with a complainant and conclusory allegations of discrimination are insufficient to meet this burden. *Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3d Dep't., 1999).

In order to establish a prima facie case of employment discrimination based on protected class membership such as age, a complainant must show: 1) membership in a protected class; 2) that she was qualified for the position; 3) an adverse employment action; and 4) that the adverse employment action occurred under circumstances giving rise to an inference of discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004).

Here, Complainant makes out a prima facie case. The record shows that Complainant was within the protected class due to her age. Second, Complainant was qualified for the position she held given her more than five year work tenure at Respondent El Carmelo. Third,

Complainant suffered an adverse employment action when her employment was terminated. Finally, Complainant's employment termination inferred unlawful discrimination given that she was replaced by a younger employee.

However, as per Complainant's own testimony, Respondent had a legitimate, nondiscriminatory reason for its employment action which was both un rebutted and unrelated to her age: Complainant's employment was terminated because, in opposition to her superior's wishes, she closed El Carmelo while a patron was still there and wanted to continue to purchase alcoholic beverages.

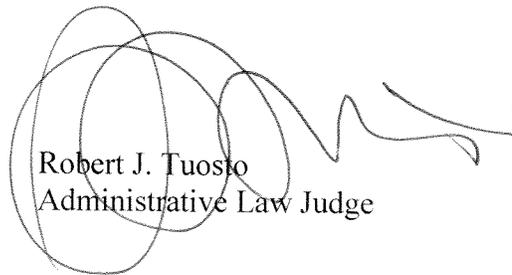
Therefore, the complaint must be dismissed.

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 the same hereby is, dismissed.

DATED: December 4, 2012
Bronx, New York


Robert J. Tuosto
Administrative Law Judge