

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**MUZETTE EMILY MORGAN,**

Complainant,

v.

**ZAHARO CAB CORPORATION, ZAHARO CAB  
CORP.,**

Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 10117888

**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 November 14, 2008, 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”) WITH THE FOLLOWING AMENDMENT:**

- The analysis in the Recommended Order is not adopted. The case is hereby dismissed because Complainant failed to present any evidence that she was denied access to Respondent’s taxi, or otherwise treated unlawfully, due to her race or religion. Ultimately, the burden of persuasion of the issue of unlawful

discrimination always remains with the Complainant. *See Stephenson v. Hotel Employees and Restaurant Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 811 N.Y.S.2d 633 (2006). Complainant has failed to meet this burden.

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: **FEB 10 2009**  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER

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**MUZETTE EMILY MORGAN,**

Complainant,

v.

**ZAHARO CAB CORPORATION, ZAHARO  
CAB CORP.,**

Respondents.

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

Case No. 10117888

**SUMMARY**

Complainant alleged that she was denied transportation in a New York City taxi cab on account of her race and religion. However, Complainant has failed to prove her case and the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On May 17, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to public accommodation 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 Robert J. Tuosto, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on June 17, 2008, August 29, 2008 and September 24, 2008.

Complainant and Respondents appeared at the hearing. The Division was represented by Toni Ann Hollifield, Esq. Respondents were represented by Eugene F. Haber, Esq., of the law firm of Cobert, Haber & Haber, Garden City, N.Y.

Permission to file post-hearing briefs was granted and Respondent's counsel filed Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. Complainant, an African-American, Christian female, alleged that she was denied transportation in a New York City taxi cab on account of her race and religion. (ALJ Exh. 1: Tr. 11, 21)

2. Respondents denied unlawful discrimination in their verified Answer. Respondents lease a medallion cab to an independent driver pursuant to a written agreement. (ALJ Exh. 4; Respondent's Exh. 2)

3. On the evening of April 20, 2007, Complainant and her daughter attempted to enter Respondents' taxi while two passengers were in the process of leaving the same cab. Complainant, unlike her daughter, moved to the rear, driver's side passenger door and placed one leg inside the vehicle. The vehicle started to accelerate with its original passengers after the driver said something to the passenger seated on the rear passenger side; in response, that passenger put her leg back in the cab and closed her door. Complainant was then thrown to the ground and injured after the cab accelerated. (Complainant's Exh. 2; Respondent's Exh. 3; Tr.

11-18, 33, 34, 41, 78-79, 81-82, 85, 87, 116, 121-122, 144, 176-83, 186-187, 192, 194, 250-60, 264, 266, 277-279, 281, 284, 289, 291, 294-295)

4. At the time of this incident the cab was stopped in traffic, with a red light at the corner, and was double-parked on 6<sup>th</sup> Avenue between 44<sup>th</sup> and 45<sup>th</sup> Streets. The driver had directed the original passengers, who had not fully exited the cab, to close the doors as it was his intention to drop them off at the curb on the corner of 6<sup>th</sup> Avenue and 45<sup>th</sup> Street. (Tr. 74, 77, 85, 127-28, 131, 176-83, 192, 194, 203, 216, 226, 229, 268, 310-311)

5. Complainant's daughter credibly testified that the driver never looked over his left shoulder in the direction of where Complainant was standing. (Tr. 297, 314-15)

6. Complainant conceded that the driver could not have known her religious affiliation. Complainant also conceded that the driver was not able to see her when she moved to the driver's side passenger door, and may not have known that she was attempting to enter the cab. (Tr. 94-95, 123)

### OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for "...any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation...because of the race [and ]creed...of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof...or that the patronage or custom thereat of any person of or purporting to be of any particular race [or] creed...is unwelcome, objectionable or not acceptable, desired or solicited." Human Rights Law §296.2.(a).

The term "place of public accommodation" includes, in pertinent part, "all public

conveyances operated on land..." Human Rights Law §292.9.

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 based upon public accommodation discrimination, a complainant must show: 1) membership in a protected class; 2) that she was qualified to use the public accommodation; and 3) that she was denied the opportunity to use the public accommodation; and 4) that the public accommodation remained available thereafter. *See e.g., Broome v. Biondi*, 17 F. Supp.2d 211 (1997)(similar prima facie case elements used in case alleging violation of Human Rights Law involving a public accommodation).

First, Respondent's taxi cab was a "public accommodation", as that term is used in the Human Rights Law.

Second, the record shows that Complainant made out a prima facie case. Complainant was clearly a member of several protected classes based on her race and religion, was qualified to use Respondent's taxi cab and was denied the opportunity to do so, and the taxi cab subsequently remained available for others to use.

However, Respondent's legitimate, nondiscriminatory reason for the action of its driver,

namely, that he pulled away to drop off his original passengers in a more appropriate location, was un rebutted. Further, Respondent's driver was likely unaware of Complainant's presence given that she was attempting to enter the taxi directly behind him rather than on the other side of the vehicle. Likewise as to religious discrimination, Complainant's conceded that Respondent's driver could not have known of her particular religious affiliation. Nothing in the record suggests that, in the few moments Complainant was standing with her daughter, Respondent's driver observed any outward manifestation of Complainant's religion.

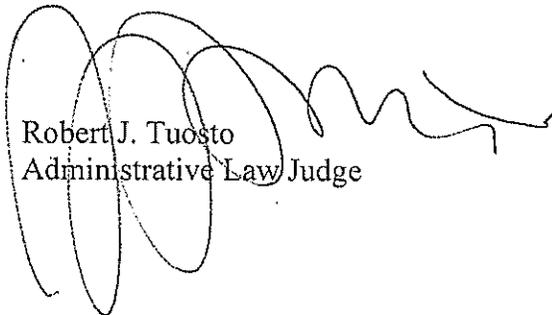
Therefore, the complaint must be dismissed.

**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: November 14, 2008  
Bronx, New York

  
Robert J. Tuosto  
Administrative Law Judge