

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

NICOLE O'RAY,

Complainant,

v.

**SECOND GENERATION REALTY, OWNER;
BETTINA EQUITIES COMPANY, MANAGING
AGENT,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 2304119

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Peter G. Buchenholz, Adjudication Counsel, as designated by the Honorable Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before David Wm. Bowden, an Administrative Law Judge of the Division. 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, this 19 day of October, 2007.

PETER G. BUCHENHOLZ
Adjudication Counsel

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Case No. **2304119**

Complainant alleged that Respondents discriminated against her by denying her services because of her race and that their superintendent harassed her. Because the record does not support her allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On March 10, 1995, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents with unlawful discriminatory practices related to housing, in violation of the N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After an 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 a public hearing.

After due notice, this case came on for hearing before Ronald A. Gregg, an Administrative Law Judge (“ALJ”) of the Division. ALJ Gregg presided over the hearing which was held on February 17, March 23, April 1, May 27, September 8 and 12, 2005, and November 2, 2006.

The Division was represented by Christopher Knauth, Esq. and Matthew Menes, Esq., of counsel. Respondents were represented by the law firm of Kucker & Bruh, LLP, by Nativ Winiarsky, Esq., of counsel.

Subsequent to the hearing, ALJ Gregg left State service. The case was reassigned to ALJ David Wm. Bowden who issued a recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”) on September 4, 2007.

FINDINGS OF FACT

1. Complainant alleged that in 1989, she moved into Apartment 6A on Respondents’ property at 105-107 Lexington Avenue, in Manhattan. (Tr. 64, 68)

2. Complainant, who is African-American, alleged that in 1994, because of her race, Respondents refused to repair: the blinds on her windows; leaks in several of her rooms; brown water in her toilet and coming from her faucets; and a broken air condition. She alleged that Respondents further failed to address a mice infestation. She asserted that she complained immediately and no action was taken. (Tr. 164-65, 167-71)

3. Complainant alleged that her wood floors required refinishing and that Respondent refused to do so, but did do so for a Caucasian tenant. Complainant could not, however, recall the name of the alleged Caucasian tenant nor whether the alleged Caucasian tenant had arranged to have his or her floors refinished at his or her own expense. (Tr. 366-68)

4. Complainant also alleged that Respondents’ superintendent pushed her up against a wall and photographed her. (Tr. 164, 186-87).

5. Complainant alleged that at some unspecified time, the landlord’s daughter was standing outside of Complainant’s door and Complainant overheard her through the door say, “I

want that voodoo bitch out of my apartment.” She also alleged that she referred to Complainant as a “black bitch.” (Tr. 189)

6. Complainant alleged that she was the only African-American tenant in the building and that no other tenants were treated in the same matter, though she offered nothing to substantiate this claim nor did she reveal how she knew how other tenants were treated. (Tr. 194)

DECISION AND OPINION

Complainant alleged that Respondents discriminated against her based on her race when they failed to provide her with certain services and when the superintendent harassed her. Because the evidence does not support Complainant’s allegations, the complaint is dismissed.

The Human Rights Law makes it an unlawful discriminatory practice for “the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation . . . or any agent or employee thereof: . . . [t]o discriminate against any person because of race . . . in the terms and conditions of the sale, rental or lease of such housing accommodation or in the furnishing of facilities or services in connection therewith.” Human Rights Law § 296.5(2).

Complainant alleged that Respondents refused her services, specifically repairs to her apartment, because of her race. She has offered no proof connecting the alleged denial of services to her race other than her conclusory statements that she was the only black tenant and the only tenant treated in such matter. She offered no proof substantiating those statements. The burden of proof always remains with the complainant and conclusory allegations of discrimination are insufficient to meet this burden. *See Pace College v. Commissioner on Human Rights of the City of New York*, 38 N.Y.2d 28, 377 N.Y.S.2d 471 (1975); *see also Gagliardi v. Trapp*, 221

A.D.2d 315, 316, 633 N.Y.S.2d 387, 388 (2d Dept. 1995). Furthermore, there is no evidence as to when the landlord's daughter referred to her in a racially disparaging manner as Complainant alleged. Lastly, there is no evidence connecting Complainant's allegation that the superintendent photographed her with her membership in a protected class.

Accordingly, because the record does not support the allegations in the complaint, the complaint is dismissed.

ORDER

Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Peter G. Buchenholz has been designated by Commissioner Kumiki Gibson to issue this Final Order. The Adjudication Counsel has not taken part in any of the prior proceedings with respect to this case.

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: October 19, 2007
 Bronx, New York

STATE DIVISION OF HUMAN RIGHTS

PETER G. BUCHENHOLZ
Adjudication Counsel