

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MOISES ORTEGA,

Complainant,

v.

**NEW YORK UNIVERSITY COLLEGE OF
DENTISTRY,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10106214

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Matthew Menes, Adjudication Counsel, as designated by Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before Thomas Protano, 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.

DATED: November 8, 2007
Bronx, New York

Matthew Menes
Adjudication Counsel

TO:

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New York University College of Dentistry
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New York, NY 10011

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
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Thomas Protano
ALJ

**STATE OF NEW YORK
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**NEW YORK UNIVERSITY COLLEGE OF
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Respondent.

SUMMARY

Complainant, who is hearing impaired, alleged that Respondent discriminated against him by failing to provide him with a sign language interpreter when he sought dental treatment. Respondent did not discriminate against Complainant, and, therefore, the case is dismissed.

PROCEEDINGS IN THE CASE

On June 13, 2005, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with an unlawful discriminatory practice 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 Respondent had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on

July 23 and 24, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Sandra S. Thomas, Esq. Respondent was represented by Stephanie Vullo, Esq.

Permission to file post-hearing briefs was granted. Respondent's counsel filed a timely brief.

On September 28, 2007, ALJ Protano issued a recommended Findings of Fact, Decision and Opinion, and Order ("Recommended Order"). Objections to the Recommended Order were received by the Commissioner's Order Preparation Unit from Complainant on November 5, 2007.

FINDINGS OF FACT

1. Complainant is hearing impaired. (Tr. 13)
2. Complainant does not read lips and communicates via sign language. He does read and write in English, but with difficulty. (Tr. 14, 19, 24)
3. Beginning in 2002, Complainant had been seen and/or treated by Respondent, off and on, and was aware of Respondent's protocol for treating patients with hearing impairments. Specifically, Respondent collaborates with New York School for the Deaf to provide sign language interpreters when necessary. The protocol asks that "requests for an interpreter be made two weeks in advance whenever possible." (Complainant's Exhibit 4; Tr. 218, 242, 248) Respondent averages about 18 visits per month from hearing impaired patients who require sign language interpreters. (Tr. 245-46)
4. On October 18, 2004, Complainant went to Respondent because he was experiencing pain in his mouth. He did not make an appointment prior to his visit. (Tr. 29, 151) At that time, Complainant had not used Respondent's services since June of 2002. (Complainant's Exhibit 1)

Complainant brought a friend, Lakeysha Harris, with him to the October 18 visit. (Tr. 30) No interpreter was provided. Instead, communication with Complainant and Harris was accomplished by writing notes. (Tr. 30)

5. Harris remembers that there was no sign language interpreter available, but that there was someone who could finger spell. (Tr. 58) She stated that she told someone at Respondent's facility that she and Complainant needed an interpreter. She does not remember how she communicated that information or to whom she spoke. (Tr. 75-78)

6. Complainant had a tooth extracted that day. He signed a consent form agreeing to the treatment. (Complainant's Exhibit 1)

7. Complainant does not remember making any appointments or appearing at Respondent's facility after October 18, 2004. (Tr. 156-165)

OPINION AND DECISION

Complainant, who has a hearing impairment, alleged that Respondent discriminated against him by failing to provide him with a sign language interpreter when he sought dental treatment on October 18, 2004. Respondent did not discriminate against Complainant, and, therefore, the case is dismissed.

Human Rights Law § 296.2(a) 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, resort or amusement, because of the . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof." However, there is no evidence that Respondent ever denied Complainant dental services because of his disability. Indeed, the evidence proffered makes clear that Complainant was treated when he sought dental services.

To the extent Complainant is arguing Respondent had an affirmative duty to accommodate his disability, such accommodation is not required where the lack of accommodation does not rise to the level of or result in the denial of services. *See Blum v. New York Stock Exchange, Inc.*, 298 A.D.2d 343, 751 N.Y.S.2d 202 (2d Dept. 2002); *Eastern Paralyzed Veterans Assoc, Inc. v. Metropolitan Trans. Auth.*, 79 A.D.2d 516, 433 N.Y.S.2d 461 (1st Dept. 1980). Such is the case here. Complainant was never denied services because of his hearing impairment. As such, Respondent has not discriminated against Complainant for failing to provide him a sign language interpreter on his October 18, 2004 visit. The case is, therefore, dismissed.

ORDER

Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Matthew Menes has been designated by the Commissioner, Kumiki Gibson, to issue this Final Order. The Adjudication Counsel has not taken any part in 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, it is hereby

ORDERED, that the case be, and the same hereby is, dismissed.

DATED: November 8, 2007
Bronx, New York

MATTHEW MENES
Adjudication Counsel