



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**DONNA PALLINI,**

Complainant,

v.

**LUCKY STAR CCT INC.,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10202589

Federal Charge No. 16GB904241

**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 April 5, 2021, by Margaret A. Jackson, 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.


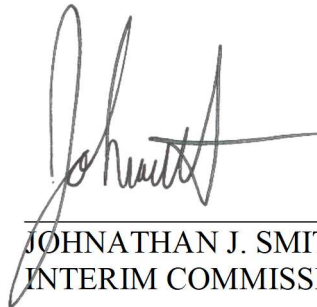
**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).** In accordance with the Division's Rules of Practice, a copy of this Order 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: **June 15, 2021**  
Bronx, New York



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JOHNATHAN J. SMITH  
INTERIM COMMISSIONER



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on the Complaint of

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v.

**LUCKY STAR CCT INC.,**

Respondent.

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

Case No. **10202589**

Federal Charge No. 16GB904241

**SUMMARY**

Complainant alleged that Respondent discriminated against her based on her age.

Because the record does not support Complainant's allegations, the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On August 2, 2019, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent 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 Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

On December 23, 2019, pursuant to the Human Rights Law the caption was amended from Donna Pallini v. Delta Cleaners Lucky Star to Donna Pallini v. Lucky Star CCT Inc. (ALJ Exhibit 1)

After due notice, the case came on for hearing before Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. A virtual public hearing session was held on November 16, 2020.

Complainant and Respondent appeared at the hearing. The Division was represented by Senior attorney Michael Adeyemi, Esq. Respondent was represented by Kevin Kerveng Tung, P.C., Daniel Murphy, Esq., of counsel.

Permission to file post-hearing memoranda was granted. Respondent filed a post-hearing memorandum of law, which was considered and, where appropriate, adopted. Neither Complainant nor Division counsel filed a post-hearing memorandum of law.

### **FINDINGS OF FACT**

1. Complainant was born on December 3, 1961. (Tr. 18)
2. Respondent operates a dry-cleaning business for clothing. (Tr. 23)
3. Kelly Chen and Ben Li own Respondent’s business. (Tr. 23, 71, 75)
4. Respondent had video cameras throughout the premises that automatically run 24 hours a day. The video cameras covered the front of the cleaners as well as the registers. The surveillance cameras do not cover the rear of the premises where the safe containing the daily receipts were kept. (Tr. 65, 80)
5. Complainant began working for Respondent in January 2015 as a “computer clerk salesperson.” (Tr. 19)

6. Complainant worked on Sunday 9:00 a.m. to 1:00 p.m., Monday through Thursday, 3:00 p.m. to 7:00 p.m. on Friday and on Saturday 10:00 a.m. to 6:00 p.m. (Tr. 20)

7. Complainant was responsible for taking clothes from customers for cleaning. In exchange, she would give them a receipt. Complainant would take their money in exchange for the cleaned clothing when they returned. (Tr. 19-20)

8. There were other employees who worked for Respondent performing a similar job as Complainant. On Sundays Complainant worked by herself at the register. (Tr. 74-75).

9. Complainant worked slowly when completing her tasks. Chen explained that she described Complainant as slow to describe Complainant's personality. (Tr. 65, 74)

10. Chen was fine with Complainant working slowly. Chen could not tolerate stealing. (Tr. 71-72).

11. The money that Complainant accepted from the customers was placed in a cash register. (Tr. 20)

12. Complainant counted the daily cash receipts at the end of every shift that she worked. (Tr. 20, 36)

13. On the days that Complainant did not work another employee or Chen would count the daily receipts. (Tr. 50-51, 72)

14. Sometime in 2018, Li told Complainant that "at [sic] age 55 in China, they (sic) stay home and take care of their family." (Tr. 59)

15. Complainant, who was over 55 years of age, understood Li's statement to mean that she was old and should retire. (Tr. 27)

16. Complainant did not tell anyone or complain about Li's statement. (Tr. 27)

17. Chen and Li reviewed the surveillance tapes and counted the money in the “safe box” every morning when they returned to the cleaners. (Tr. 72)

18. On July 20, 2018, and on August 5, 2018, Chen noticed that money was missing. Complainant and another employee had worked those days and Chen had no surveillance tape as proof of who took the money, so she did not accuse anyone of taking money on those days. (Tr. 67-69, 85-86)

19. On Sunday, March 3, 2019, Complainant was the only employee working at the register. (Tr. 38)

20. After closing the business, Complainant proceeded to count the money from the register. Complainant wrote the amount in a logbook used to record the daily receipts. (Tr. 28)

21. After counting the money, Complainant put the money back in the register. She then made a second count of the money and carried the money to a “safe box” in the back of the cleaners. (Tr. 49, 82)

22. On March 4, 2019, Chen counted the money in the “safe box.” Li also counted the money in the “safe box.” (Tr. 115)

23. Chen and Li watched the surveillance tape from the previous evening, and they saw Complainant count thirteen twenty-dollar bills, however, there were only eleven twenty-dollar bills in the box. Chen also saw Complainant count eleven ten-dollar bills, however, there were only ten ten-dollar bills in the box. (Tr. 65, 102-104)

24. After each count Complainant made an entry in the logbook used to record the daily receipts. The total amount calculated was fifty dollars more than the total cash receipts in the box. (Tr. 67)

25. After reviewing the surveillance tape, Chen and Li asked Complainant to come to the back of the store to talk to them. Complainant was asked why there was a difference between the total cash receipts recorded in the logbook and the total amount of cash on hand. Complainant said that she did not know why. (Tr. 83-84)

26. Chen then accused Complainant of stealing fifty dollars. Complainant was shown the surveillance tape. Li told Complainant, who was described as being slow throughout her employment, that she was “too slow” and she was “fired” immediately for stealing money. (Tr. 22, 50-51, 76, 104)

27. Complainant understood the statement that she was slow to mean that she was old. She did not reply. (Tr. 27)

### **OPINION AND DECISION**

It is unlawful for an employer to discriminate against an employee on the basis of age. N.Y. Exec. Law, art.15 (“Human Rights Law”) § 296.1(a).

Complainant has the burden of establishing a prima facie case by showing that she is a member of a protected group, that she was qualified for the position she held, that she suffered an adverse employment action, and that Respondent’s actions occurred under circumstances giving rise to an inference of unlawful discrimination. Once a prima facie case is established, the burden of production shifts to Respondent to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its employment decision. The burden then shifts to Complainant to show that Respondent’s proffered explanations are a pretext for unlawful discrimination. *See Ferrante v. Am. Lung Ass’n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997).

Complainant was born on December 3, 1961 and is a member of an age protected group. Complainant was qualified for her position as a “computer clerk salesperson” and she held the position over four years. An adverse employment action requires “a materially adverse change in the terms and conditions of employment.” *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 306, 786 N.Y.S.2d 382, 391 (2004). This may be shown by “a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation.” *Id.* (citations and internal quotation marks omitted). Complainant was subjected to an adverse employment action when her employment was terminated. Respondent’s actions also occurred under circumstances giving rise to an inference of unlawful discrimination. In addition to comments that were made by Li to Complainant one year earlier in 2018, on the day that Complainant’s employment terminated, Li said that she was “slow.” Complainant interpreted the “slow” statement to mean old. Based on these facts, Complainant established a prima facie case of age discrimination.

Once Complainant establishes a prima facie case, Respondent must meet its burden of presenting legitimate, nondiscriminatory reasons in support of its decisions. Respondent’s burden here is one of production only; it does not involve any evaluation of credibility. *See Stephenson v. Hotel Employees and Rest. Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 270-71, 811 N.Y.S.2d 633, 636 (2006), citing *Texas Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981).

Chen and Li watched the surveillance tape from the previous evening, and they saw Complainant count thirteen twenty-dollar bills, however, there were only eleven twenty-dollar bills in the box. Chen also saw Complainant count eleven ten-dollar bills, however, there were



only ten ten-dollar bills in the box. They watched as Complainant made an entry in the logbook used to record the daily receipts. The total amount calculated was fifty dollars more than the total cash receipts in the box. Chen and Li concluded that Complainant stole the fifty dollars.

The burden then shifts back to Complainant to show that these reasons are a pretext for unlawful discrimination. To show pretext, it is not enough for Complainant to show that Respondent's explanation is not persuasive. *See Ferrante* at 630, 665 N.Y.S.2d at 29. Complainant must establish that Respondent intentionally discriminated against her because of her protected status. *See id.* Complainant has failed to meet this burden. Complainant was the only employee counting the days receipts on March 3, 2019, Chen and Li counted the money in the "safe box" and compared the amount to what they saw on the video surveillance tape. Chen and Li asked Complainant why the amount in the safe box was less than the day's receipts. Complainant could not explain why. Chen and Li did not want Complainant to continue working for them because they believed that Complainant stole fifty dollars. Complainant did not show that the reasons proffered by Respondent were pretextual.

Respondent's decision to terminate Complainant's employment were nondiscriminatory. The Division may not second guess an employer's unfair but nondiscriminatory action. *See Forrest* at 308, 786 N.Y.S.2d at 392 n.5 (2004).

Accordingly, Complainant's claim of age-based discrimination 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 instant complaint be, and the same hereby is, dismissed.

DATED: April 5, 2021  
Hempstead, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Margaret A. Jackson  
Administrative Law Judge