

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MICHELE A. PETRONIO,

Complainant,

v.

**JASON A. RICHMAN, ESQ., JAMES J. MORAN,
ESQ. AND MORAN & KUFTA, P.C.,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10106086

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 Robert J. Tuosto, 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: January 14, 2008
Bronx, New York

PETER G. BUCHENHOLZ
Adjudication Counsel

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Respondents.

Complainant alleges that Respondents subjected her to sexual harassment and terminated her employment in retaliation for her complaint. Because the allegations against Respondents James J. Moran, Esq. and Moran and Kufta, P.C. have been settled and there is no basis to hold Respondent Jason A. Richman, Esq. liable, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On June 22, 2005, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On August 4, 2006, the complaint was amended to read “Jason A. Richman, Esq., James J. Moran, Esq., and Moran and Kufta, P.C.” as Respondents.

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 referred the case to public hearing.

On or about October 1, 2007, Complainant and Respondents James J. Moran, Esq. and Moran & Kufta, P.C. entered into a stipulation of settlement.

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 in Rochester, New York on October 15 and 16, 2007.

Respondents James J. Moran, Esq. and Moran & Kufta, P.C. did not appear at the hearing. Complainant and Respondent Jason A. Richman, Esq. appeared at the hearing. Complainant was represented by Michael P. Leone, Esq., of the law firm Harris, Chesworth, O’Brien, Johnstone, Welch & Leone, L.L.P. Respondent Richman appeared pro se.

Complainant’s counsel and Respondent Richman filed timely post-hearing submissions.

On December 7, 2007, ALJ Tuosto issued a recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”). The Commissioner’s Order Preparation Unit received Objections to the Recommended Order from Complainant’s counsel and from Respondent Richman.

FINDINGS OF FACT

1. During the period relevant to this complaint, Respondent Moran and Kufta, P.C. was a law firm. Respondents Richman and Moran were both employed by the firm as attorneys; Respondent Moran was a named partner and a principal owner of the firm. (Tr. 154, 291) Respondent Richman served as an associate in the law firm, and there is no evidence that he had any ownership interest in the firm. (Tr. 119-20)
2. On November 18, 2004, Complainant was hired by Respondent Moran and Kufka, P.C. as a secretary/legal assistant. (Complainant’s Exhibit 3; Tr. 89, 224, 229)
3. Debbie Scott was Respondent Moran & Kufta, P.C.’s office manager. (Tr. 202) Scott, along with Respondent Moran, interviewed and made the decision to hire Complainant. (Tr. 120-21, 200, 202, 232). Scott was Complainant’s direct supervisor. (Tr. 202) On occasions

when Complainant performed secretarial work for Richman, he directed her in relation to performing the tasks required. (Tr. 122-23, 225) Richman, however, was not Complainant's supervisor. (Tr. 202-05) Richman had no input into the decisions to hire or fire Complainant or with regard to her salary or raises. (Tr. 141, 200-01, 205) Richman, furthermore, had his own designated secretary, Angela Chase. (Tr. 203) And, because of the manner in which the office was managed, Scott, not Richman, was also Chase's direct supervisor. (Tr. 203).

4. After this matter was scheduled for hearing, but prior to the commencement of the hearing, Complainant released Respondents Moran and Moran and Kufta, P.C. from this claim through a stipulation of settlement. (ALJ's Exhibit 6)

OPINION AND DECISION

Because Complainant entered into a settlement agreement releasing Respondents Moran and Moran and Kufta, P.C. from all claims prior to the commencement of the hearing in this matter, Complainant's claims against them are dismissed as moot.

Complainant's remaining charge against Respondent Richman is likewise dismissed. A corporate employee who "has not been shown to have any ownership interest or power to do more than carry out personnel decisions made by others is not individually subject to suit" under the Human Rights Law. *Patrowich v. Chemical Bank*, 63 N.Y.2d 541, 483 N.Y.S.2d 659 (1984).

In the instant case, Respondent Moran was the principal and owner of Respondent Moran and Kufka, P.C. There is no evidence that Respondent Richman had any ownership interest in the firm or the ability to do more than carry out personnel decisions made by others.

In light of the foregoing, 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 the prior proceedings with respect to this case.

On the basis of the forgoing Findings of Fact, Opinion and Decision, and the laws applicable to this case, it is hereby

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

DATED:
Bronx, New York

NYS DIVISION OF HUMAN RIGHTS

PETER G. BUCHENHOLZ
Adjudication Counsel