

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**JON E. PIRES,**

Complainant,

v.

**CITY OF NEW YORK; DEPARTMENT OF  
JUVENILE JUSTICE,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10105230

**PLEASE TAKE NOTICE** that the attached is a true copy of an Order issued by Matthew Menes, 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 Lilliana Estrella-Castillo, 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: March 17, 2008  
Bronx, New York

A handwritten signature in cursive script that reads "Matthew M" followed by a long horizontal flourish.

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MATTHEW MENES  
Adjudication Counsel

**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

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**CITY OF NEW YORK; DEPARTMENT OF  
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Respondent.

**SUMMARY**

Respondent did not retaliate against Complainant for his prior filing of an unlawful discrimination complaint against Respondent, as Complainant has alleged. Therefore, this complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On April 19, 2005, 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.

After due notice, the case came on for hearing before Lilliana Estrella-Castillo, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on November 14 and 15, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Anton Antomattei. Respondent was represented by Christopher A. Seacord, Assistant Corporation Counsel.

On February 22, 2008, ALJ Estrella-Castillo issued a recommended Findings of Fact, Decision and Opinion, and Order ("Recommended Order"). No objections to the Recommended Order were received by the Commissioner's Order Preparation Unit.

### FINDINGS OF FACT

1. Complainant was hired by Respondent in 1985. Since 1996, Complainant has been a Juvenile Counselor. (Tr. 26-28)
2. In 1990, Complainant received a five-day suspension for time and attendance violations. (Tr. 262)
3. In 2001, Complainant received a three-day suspension for unauthorized leave. (Tr. 265; Respondent's Exhibit 2)
4. In February 2002, Complainant was counseled for excessive lateness. Complainant was late eleven times between January 1 and January 31, 2002. (Tr. 269; Respondent's Exhibit 3)
5. In June 2002, Complainant received formal counseling regarding his excessive lateness. Complainant was late 34 times between January and June 2002. (Tr. 269, 273; Respondent's Exhibits 3, 4)
6. Between January 1 and September 17, 2003, Complainant was late 40 times. As a result, he received a five-day suspension. (Tr. 277, 297; Respondent's Exhibits 6, 12)
7. On February 10, 2004, Complainant filed a complaint with the Division against Respondent alleging creed discrimination. (Tr. 53; ALJ's Exhibit 1; Respondent's Exhibit 11) In the complaint, Complainant alleged that Respondent gave him an unfavorable employment

evaluation “predicated entirely on alleged time and attendance violations.” The Division found no probable cause and dismissed the complaint. (Tr. 292-93; Respondent’s Exhibit 11)

8. On June 17, 2004, Complainant reported to work late, and after receiving an assignment to a court that he felt was too cold, informed Respondent that he was not feeling well and left work. (Tr. 186-87; Complainant’s Exhibit 18; Respondent’s Exhibit 20) The following day, Complainant was charged with insubordination for failing to obey the orders of his supervisor. (Tr. 18, 357; Respondent’s Exhibit 20) As a result, Complainant received a three-day suspension. (Complainant’s Exhibit 20)

9. On August 6, 2004, Complainant received a third and final warning for excessive lateness. He was late 21 times between January 1 and August 6, 2004. (Tr. 280-82; Respondent’s Exhibit 9) As a result of his excessive lateness, Complainant was brought up on charges, but there is no evidence that he was ever suspended as a result of those charges. (Complainant’s Exhibit 19)

10. On August 24, 2004, Complainant received a thirty-day suspension without pay after the Department of Investigation, Inspector General Division for the City of New York, and Respondent determined that Complainant had used the agency vehicle inappropriately. (Tr. 137-50, 284-85, 299, 428, 431, 433-37; Complainant’s Exhibits 14, 15, 19)

11. Complainant alleged that Respondent suspended him on two other occasions, a ten-day suspension on March 9, 2005, and a ten-day suspension in April 2005, without any valid explanation. (Tr. 211; ALJ’s Exhibit 1)

12. On April 19, 2005, Complainant filed the instant complaint alleging that prior to filing the February 10, 2004, complaint, he had never been disciplined for time and attendance issues. (Tr. 212, 261-62) Complainant also alleged that other employees - in particular John Cheeks -

with similar time and attendance violations were not similarly disciplined. (Tr. 114, 117, 122, 124, 128, 195, 204)

13. Complainant's overall rating on his performance evaluation for the period of July 1, 2006, through June 30, 2007, was changed from "Very Good" to "Good" due to his 41 absences and 31 incidents of lateness during the evaluation period. (Tr. 55, 57-59, 67, 502-05; Complainant's Exhibits 4, 5)

14. The evidence produced regarding Cheeks indicated that Cheeks had been similarly counseled, warned, and disciplined. (Tr. 332, 340; Complainant's Exhibits 11, 12, 13; Respondent's Exhibits 16, 17, 23)

15. Contrary to Complainant's testimony, he had been counseled, warned, and disciplined repeatedly by Respondent for excessive lateness and absences from work. Respondent disciplined Complainant for time and attendance issues prior to the filing of the initial unlawful discrimination complaint and subsequent to the filing of the complaint. (Tr. 202, 262, 265; Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15)

#### **OPINION AND DECISION**

Human Rights Law § 296.7 makes it is an unlawful discriminatory practice for an employer to retaliate or discriminate against any person because he has filed a complaint under, or otherwise opposed any practices forbidden by, the Human Rights Law.

To make out a prima facie case of retaliatory discrimination, Complainant must show that (1) he engaged in activity protected by the Human Rights Law; (2) Respondent knew that Complainant engaged in protected activity; (3) Complainant suffered an adverse action; and

(4) there was a causal connection between the protected activity and the adverse action. *Pace v. Ogden Servs. Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3d Dept. 1999) (citing *Dortz v. City of New York*, 904 F. Supp. 127, 156 (S.D.N.Y. 1995)).

Here, Complainant filed a prior complaint with the Division, Respondent was aware that Complainant made such complaint, and Complainant suffered adverse employment actions, specifically, his numerous warnings and suspensions after the filing of that complaint. However, Complainant failed to provide any evidence of a causal connection between the filing of his complaint and the adverse actions taken by Respondent. Specifically, Complainant had been suspended at least three times prior to his filing of his discrimination complaint with the Division in 2004. All subsequent actions taken by Respondent have been justified and related to Complainant's misconduct, violations, and/or insubordination. In short, the record is devoid of any evidence to support Complainant's assertion that Respondent acted in retaliation for the filing of the prior complaint.

Furthermore, Complainant's assertion that another employee with similar time and attendance violations was not similarly counseled, warned, and/or disciplined is without merit. Cheeks was warned and also suspended for similar time and attendance violations.

In light of the foregoing, the complaint is dismissed.

### **ORDER**

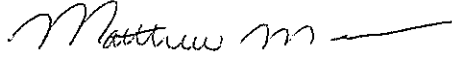
Pursuant to 9 NYCRR § 465.17(c)(3), Commissioner Kumiki Gibson has designated Adjudication Counsel Matthew Menes to issue this Final Order. The Adjudication Counsel has not taken any part in the prior proceedings with respect to this case.

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

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

DATED: March 17, 2008  
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS

A handwritten signature in cursive script, appearing to read "Matthew Menes", followed by a horizontal line.

MATTHEW MENES  
Adjudication Counsel