

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ANA REYES,

Complainant,

v.

RACHEL BRIDGE CORP,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10119813

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 May 22, 2009, by Thomas J. Marlow, 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 GALEN D. KIRKLAND, 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: **JUN 22 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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

Case No. **10119813**

SUMMARY

Complainant alleged that Respondent discriminated against her because of her age. Because the evidence does not support the allegation, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On August 24, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to housing 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 Thomas J. Marlow, an Administrative Law Judge ("ALJ") of the Division. A public hearing was held on March 16, 2009.

Complainant and Respondent appeared at the hearing. The Division was represented by Jane M. Stack, Esq. Respondent was represented by Tracy William Boshart, Esq.

At the public hearing, on the record, the complaint was amended to reflect the correct name of Respondent: Rachel Bridge Corp.

Permission to file proposed findings of fact and conclusions of law was granted. The Division so filed after the conclusion of the public hearing.

FINDINGS OF FACT

1. Complainant's date of birth is January 15, 1947. (Tr. 67-68)
2. Since 1984, Complainant has been a tenant of Respondent, living in a rented apartment ("the apartment") at 1370 St. Nicholas Avenue, New York, New York ("1370 St. Nicholas Avenue"). (ALJ's Exhibit 1; Tr. 14, 26-30, 43-44, 54, 67-68, 94, 98-100)
3. Respondent prohibits all tenants at 1370 St. Nicholas Avenue from having washing machines in their apartments. (Tr. 118-19)
4. Over the course of Complainant's tenancy in the apartment, Complainant's leases have prohibited a washing machine in the apartment. (Respondent's Exhibits 1, 2; Tr. 85-91, 119-20, 126-34)
5. Complainant had two washing machines in her apartment prior to 1999. Maintenance workers observed these washing machines in Complainant's apartment and informed Complainant that washing machines were prohibited in the apartment. By 2004, Complainant had these washing machines removed from the apartment. (Tr. 14, 16-17, 32, 50-53)
6. In 2004, upon inquiry from Complainant's son, Daniel, Respondent again informed Complainant that a washing machine was prohibited in the apartment. (Tr. 53) Again, in 2007,

upon inquiry from Daniel, Respondent informed Complainant and Daniel that Complainant could not have a washing machine in her apartment. (ALJ's Exhibit 1; Tr. 26-29, 53)

7. Complainant contends that younger tenants have washing machines in their apartments. (ALJ's Exhibit 1; Complainant's Exhibit 3; Tr. 74-78)

8. Any tenant at 1370 St. Nicholas Avenue who has a washing machine in his or her apartment does so without the permission of Respondent and in violation of the abovementioned prohibition. (Tr. 118-20)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an owner of a housing accommodation to discriminate against a person because of her age in the terms, conditions, or privileges of the rental of any housing accommodation.

See Human Rights Law § 296.5(a)(2).

Complainant raised an issue of discrimination in the terms, conditions, and privileges of her rental of a housing accommodation because of her age. Complainant has the burden to establish by a preponderance of the evidence that such discrimination occurred. The evidence establishes that Complainant wants to have a washing machine in her apartment but that Respondent prohibits washing machines in its apartments. Complainant contends that some younger tenants have washing machines in their apartments; however, the credible evidence establishes that Respondent has not given permission to any tenants to have washing machines in their apartments. To meet her burden of proof, Complainant must initially show by a preponderance of the evidence that she experienced an adverse housing action relating to the terms, conditions, or privileges of renting, and that this adverse housing action occurred under

circumstances that give rise to an inference of unlawful discrimination because of her age. *See Hirschmann v. Hassapoyannès*, 11 Misc.3d 265, 811 N.Y.S.2d 870 (N.Y. Sup. Ct. 2005). Since there was no credible evidence presented to establish that Respondent permitted younger tenants to have washing machines in their apartments while prohibiting Complainant from the same benefit, Complainant has failed to prove that Respondent unlawfully discriminated against her.

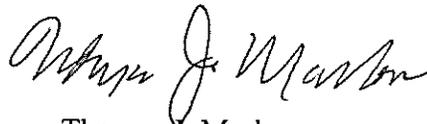
The ultimate burden of proof that Respondent unlawfully discriminated against Complainant is Complainant's burden and Complainant has failed to meet this burden. *Id.* at 269.

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 complaint be, and the same hereby is, dismissed.

DATED: May 22, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge