

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**SHANTEL L. SWAILS,**

Complainant,

v.

**CLASSIC FASHION RESOURCES, D/B/A  
PITTSFORD PENDLETON SHOP,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10115317

**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 January 2, 2008, by Christine Marbach Kellett, 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 KUMIKI GIBSON, 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**, this 6th day of February, 2008.



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KUMIKI GIBSON  
COMMISSIONER

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**CLASSIC FASHION RESOURCES, D/B/A  
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Respondent.

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

Case No. 10115317

**SUMMARY**

Complainant charged Respondent with unlawful discriminatory conduct in public accommodation when Respondent's owner asked Complainant to leave the store. Respondent denied the charges. Complainant refused to come to the public hearing, stating she preferred to take the case to another forum. The complaint should be dismissed.

**PROCEEDINGS IN THE CASE**

On January 4, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices 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 Christine Marbach Kellett, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on October 16, 2007.

Complainant refused to appear at the public hearing. Respondent appeared at the hearing. The Division was represented by Neil L. Zions. Respondent was represented by Debra A. Martin, Esq.

### **FINDINGS OF FACT**

1. On January 4, 2007, Complainant filed a complaint with the Division charging Respondent with unlawful discriminatory practice in public accommodation. (ALJ’s Exh. 3)
2. Respondent denied the charge. (ALJ’s Ex. 6)
3. Complainant’s case was joined for public hearing purposes with the companion case, *Jennie Swails v. Classic Fashion Resources, d/b/a Pittsford Pendleton Shop*, DHR Case No. 10115317. (ALJ’s Exhibits 1, 2, 3, 4)
4. Complainant is Jennie Swails’ daughter. (ALJ’s Exhibits 1,3)
5. On October 16, 2007, Complainant failed to appear at the public hearing. (Tr. 7)
6. Division Attorney Neil Zions (“Division Attorney”) reported that Complainant told him that morning that she would be retaining private counsel and would not be appearing. (Tr. 7)
7. At the public hearing the Division Attorney called Complainant and reached her at home on speaker phone. (Tr. 9)
8. Complainant acknowledged receiving notice of the public hearing, participating in the preliminary conference and understanding that the public hearing was scheduled for that day. (Tr. 9-10)

9. Complainant told the ALJ that she understood that the public hearing was scheduled for that morning, that she was contacting private counsel, and that she chose to “go a different route” and “bring it out to the store front.” (Tr. 10-11)

10. After being advised of the implications of not appearing, Complainant restated her intentions of “not cooperating with it at all” and abruptly hung up the phone. (Tr. 12)

11. Complainant’s mother stated Complainant was frustrated. (Tr. 12, 114)

12. Complainant’s default was noted on the record. (Tr. 13)

13. Although Complainant told the ALJ she would be retaining private counsel and would “have him contact someone shortly”, when asked, she did not identify who she had retained, and there has been no subsequent contact from Complainant or on behalf of the Complainant by private counsel. (Tr. 11-12)

### **OPINION AND DECISION**

Complainant was on notice of the scheduled public hearing. Complainant placed on the record her refusal to attend the public hearing and her decision to seek redress by another route. Although Complainant expressed a vague intent to hire private counsel, she did not identify the attorney when asked, and no appearance on her behalf has been received.

Complainants have an obligation to cooperate with the Division in the prosecution of their complaints. Complainant asserted her intent not to cooperate with the process. The complaint should be dismissed based upon Complainant’s default in appearance at the public hearing and her stated refusal to cooperate with the public hearing process. *See: Cuyler v. Searle Building, Inc. et al*, DHR Case No. 10113871 (November 14, 2007).

**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: December 31, 2007  
Bronx, New York



Christine Marbach Kellett  
Administrative Law Judge