

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**CHRISTINA SENCHACK,**

Complainant,

v.

**AMHERST DIAGNOSTIC IMAGING, PC,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10105825

**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 November 28, 2007, by Robert Tuosto, 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 24th day of December, 2007.

---

KUMIKI GIBSON  
COMMISSIONER

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF  
HUMAN RIGHTS**

on the Complaint of

**CHRISTINA SENCHACK,**

Complainant,

v.

**AMHERST DIAGNOSTIC IMAGING, PC,**

Respondent.

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

Case No. **10105825**

**SUMMARY**

Complainant alleged that she was unlawfully discriminated against on the basis of her sex (pregnancy) when Respondent terminated her employment. However, Complainant failed to prove her claim and her complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On May 23, 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 an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

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 on September 26-27, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Caroline J. Downey, Esq., General Counsel, by Karen J. Draves, Esq. Respondent was represented by Eric A. Bloom, Esq. of the law firm of Bloom, Cole & Shaw, Buffalo, New York.

Permission to file post-hearing briefs was granted. Both sides submitted post-hearing briefs.

### **FINDINGS OF FACT**

1. Complainant, a female, alleged that she was unlawfully discriminated against on the basis of sex (pregnancy) when Respondent terminated her employment. (ALJ’s Exh. 1)
2. In its verified Answer Respondent denied unlawful discrimination. (ALJ’s Exh. 4)
3. In January, 2003, Complainant was hired by Respondent as a receptionist. (Tr. 16, 355)
4. Respondent is a professional medical corporation whose principal shareholder is Dr. Amina Akhtar. At the time of Complainant’s employment Respondent also had another shareholder, Dr. Alan Tolchin. However, Ahkter was responsible for the hiring, firing and disciplining of Respondent’s employees. (Tr. 118, 130, 131, 346, 353, 355, 395)
5. As part of its business Respondent maintained a metal cashbox containing money in an envelope denominated as “petty cash” from which change was made. (Tr. 16-17, 44, 47, 238, 271, 408)
6. Complainant had financial problems which caused her to file a petition for

Chapter 13 bankruptcy on November 13, 2003. On July 13, 2004, Complainant converted her Chapter 13 bankruptcy into a Chapter 7 bankruptcy. (Complainant's Exhs. 6.7; Tr. 146-50)

7. Complainant took money from petty cash approximately five or six times during her employment with Respondent. Complainant placed an 'IOU' in the cashbox during those times. Complainant did not get permission to take money beforehand of either Tolchin or Akhtar. (ALJ's Exhibit 6; Tr. 19, 30, 128, 145-146)

8. Lynn Siegmann, an employee of Respondent who worked from 2000 to 2004, also took money from petty cash approximately two or three times. Siegmann received Tolchin's permission to do this the first time as a one time request. Siegmann, upon continuing to do this, did not subsequently seek permission from either Tolchin or Ahktar. (Tr. 28-29, 43, 47, 48, 57-58, 120)

9. In January, 2005, Complainant disclosed her pregnancy to her coworkers. (Tr. 71, 99, 122)

10. In February, 2005, Complainant asked Ahktar for permission to take \$20 from the cashbox but was specifically told by Ahktar that she was never to do this because, "That money belongs to the business." Instead, Ahktar loaned Complainant \$50 from her own pocket. (Tr. 374-75, 411)

11. On April 8, 2005, Complainant took \$20 from petty cash and left an IOU. Complainant did not ask anyone's permission beforehand. Complainant intended to repay the money on the following Monday. (Tr. 66, 67)

12. On April 9, 2005, Ahktar, who had received the petty cash envelope the previous day, discovered that \$20 was missing. This was the first time that Ahktar had taken the responsibility of reconciling the money in the cashbox. (Tr. 387-88)

13. On April 11, 2005, Complainant was directed by a coworker to immediately replace the missing \$20. (Tr. 68, 237-40)

14. On April 12, 2005, Complainant's employment was terminated by Ahktar for having stolen \$20 from Respondent. At that time Complainant never mentioned that she had permission to take the \$20. (ALJ's Exh. 9; Tr. 68, 142, 240-44, 260, 387, 389-90, 398, 410, 391)

15. On April 12, 2005, Complainant signed a memorandum acknowledging that she was being immediately terminated for taking \$20 without permission. (ALJ's Exh. 9)

16. Respondent employed at least two employees who became pregnant, went out on maternity leave, were paid disability during those leaves, and returned to work. (Tr. 377-779, 383, 405)

### **OPINION AND DECISION**

The Human Rights Law states, in pertinent part, that it shall be an unlawful discriminatory practice, "For an employer...because of the ...sex...of any individual...to discriminate against such individual in compensation or in terms, conditions or privileges of employment." Human Rights Law § 296.1(a).

A complainant, in order to make out a prima facie case of unlawful discrimination based on pregnancy, must show: 1) membership in a protected class; 2) discharge from a position for which he or she was qualified; and 3) and that the discharge occurred under circumstances giving rise to an inference of discrimination. *Mittl v. N.Y. State Div. of Human Rights*, 100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003). Should a complainant make out a prima facie case, the burden of production shifts to the respondent to rebut the prima facie case by articulating a legitimate nondiscriminatory reason for its employment decision. If successful, the burden shifts again to

the complainant to show that the proffered reason was a pretext for unlawful discrimination. *Id.* Note that complainant's burden in establishing a prima facie case has been found to be 'de minimis'. *Schwaller v. Squire, Sanders & Dempsey*, 249 A.D.2d 195, 671 N.Y.S.2d 759 (1<sup>st</sup> Dep't., 1998).

Here, Complainant makes out a prima facie case: she was within the protected class, was discharged from her position, and the discharge came about soon after she had announced to her employer that she was pregnant. The timing of the latter gives rise to an inference of unlawful discrimination.

Respondent articulated a legitimate, nondiscriminatory reason for Complainant's discharge, namely, that she was fired for having stolen money from her employer.

Complainant attempted to show that the proffered reason for firing was a pretext, i.e., that she had permission to take the \$20. However, even assuming that Complainant had permission to take the money in question and that Ahktar was mistaken in firing her for this reason, in order to prevail she would also have to prove that unlawful discrimination was the real reason for Respondent's action. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993). This is belied by several facts. First, Respondent failed to show animus towards two other employees who were pregnant and returned to work after their maternity leaves. Second, the existence of Complainant's written confession that she took the \$20 without permission, and her failure to logically offer any justification in her own defense. Finally, decision maker Ahktar's personal loan in February, 2005 after Complainant disclosed her pregnancy; said loan was made after Complainant was admonished not to take \$20 from the cashbox whose contents was specifically described as containing money belonging to Respondent. Taken together, these facts show that unlawful discrimination was not the real reason for Complainant's discharge.

Therefore, the complaint 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 complaint be, and hereby is, dismissed.

DATED: November 28, 2007  
Bronx, New York

Robert J. Tuosto  
Administrative Law Judge