

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

JANET SHAW,

Complainant,

v.

LAZAR'S AUTO SALES,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 1252662

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 August 15, 2007, by Thomas S. Protano, 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 18th day of October, 2007.

KUMIKI GIBSON
COMMISSIONER

TO:

Complainant

Janet Shaw
P.O BOX 1250
MONTAGUE, NJ 07827

Respondent

Lazar's Automotive, Inc.
Attn: MR. CHARLES CARTALEMI
419 Washington Street
Peekskill, NY 10566

Respondent Secondary Address

Lazar's Automotive, Inc.
c/o Charles Carteleme
3 Cross Road
Cortland, NY 10567

Interested Party

Orange County, Human Rights Commission
Attn: Ian M. Berkowitz, Director
18 Seward Avenue
Middletown, NY 10940

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Thomas S. Protano
Administrative Law Judge

Sara Toll East
Chief, Litigation and Appeals

Caroline J. Downey
General Counsel

Peter G. Buchenholz
Adjudication Counsel

Matthew Menes
Adjudication Counsel

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

Case No. **1252662**

SUMMARY

Complainant worked for Respondent as a sales manager. After approximately seven months, Respondent terminated her employment. She was both hired and fired by Charles Cartalemi, Respondent's owner. The Complainant alleges that Cartalemi fired her because she is a female, but she has failed to prove her claim. Her case must be dismissed.

PROCEEDINGS IN THE CASE

On February 27, 1998, 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 Patricia Moro, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on May 12, 2004 and May 20, 2004. ALJ Moro recused herself from the case and the case was reassigned to Thomas S. Protano. Additional hearing sessions were held on February 7, 2005, February 8, 2005, February 9, 2005, May 3, 2005, March 27, 2007, June 13, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Veanka McKenzie on May 12, 2004, May 20, 2004, , February 7, 2005, February 8, 2005, February 9, 2005, May 3, 2005 and March 27, 2007. Stephen Lee replaced Ms. McKenzie at the June 13, 2007 hearing session. Respondent was represented by William Florence, Esq. at the hearing sessions of May 12, 2004, May 20, 2004, , February 7, 2005, February 8, 2005, February 9, 2005, and May 3, 2005. Thereafter, Mr. Florence withdrew from the case and Respondent was given an opportunity to retain another attorney. Respondent did not retain another attorney.

Permission to file post-hearing briefs was granted. No briefs were received.

FINDINGS OF FACT

1. Complainant began working for Respondent on October 31, 1996 as a general sales manager. (Tr. 5; Complainant’s Exhibit 2)
2. Respondent was a car dealership, owned by Charles Cartalemi. Cartalemi hired Complainant. (Tr. 12)
3. When Complainant began working for Respondent on October 31, 1996, it was her third tenure of employment with Respondent. She had previously worked for Respondent in 1987 for about eight to ten months and was fired by Cartalemi. Thereafter, Cartalemi asked

Complainant to come back and work at a different location. Complainant agreed and stayed for less than a year before she quit. (Tr. 101-102)

4. In the fall of 1996, “stopped in to say hello.” When Complainant spoke to Mr. Cartalemi, he offered her a job. Complainant accepted the offer. (Tr. 102, 106, 107)

5. As a general sales manager, Complainant was responsible for overseeing the operation of the sales department. She was Respondent’s only female sales manager. (Tr. 7-8)

6. After she began working for Respondent, Complainant alleges that Respondent did not give her an office and cut her advertising space in the local Penny Saver. She claims that the previous general sales manager, who was male, had an office and a bigger advertising budget. (Complainant’s Exhibit’s 4 & 6; Tr. 16, 18, 22)

7. In fact, advertising expenditures during Complainant’s seven month tenure with Respondent were \$8,500.00 greater than they were in previous years. (Respondent’s Exhibit Q; Tr. 282-283)

8. Complainant also had an office. Edward Gary, a salesperson for Respondent, described the layout of the showroom and indicated that Complainant had the use of two offices that were opposite the “pen,” which was the area in which the salespersons sat. (Respondent’s Exhibit X; Tr. 371, 384)

9. Complainant further alleges that Stuart Greenblatt, service director, interfered with the sales department’s ability to make sales by failing to transfer sales call to the sales department. She stated that he was hostile towards female employees. (Tr. 41)

10. In January of 1997, Greenblatt was promoted and became Respondent’s operations manager. (Tr. 400) He became Complainant’s superior at that point, although he did not oversee the sales department very closely. (Tr. 407, 431)

11. Greenblatt's relationship with Respondent's employees was generally good, and he denied exhibiting any hostility towards women. (Tr. 432) Greenblatt and Complainant did not get along, however, and "there was a good deal of animosity between them" according to Gary. (Tr. 373) Although Greenblatt "could be annoying," his relationship with female salespersons was no different than his relationship with male salespersons. (Tr. 373)

12. Between October 31, 1996 and May 27, 1997, Complainant was absent from work for several weeks during late January and early February of 1997. First, Complainant had to care for her mother, who had gotten the flu. Complainant then contracted the flu. This caused Complainant to miss a large portion of January 1997. (Tr. 166) Complainant's mother subsequently died and Complainant took a week to ten days off after that. (Tr. 131-133)

13. Complainant's employment with Respondent was terminated on May 27, 1997. Complainant said the reason "was a lack of sales, that sales were down." (Tr. 51) As a result of poor sales Complainant's employment with Respondent was terminated by Mr. Cartalemi. (Tr. 51-52)

14. Complainant asserted that after she was fired by Respondent, she was denied commissions she had earned. (ALJ Exhibit I) Respondent refuted that claim. (Respondent's Exhibits H, I, J,K, L, M, N; Tr. 173, 246-260)

OPINION AND DECISION

To make out a prima facie case of unlawful discrimination under the Human Rights Law, a complainant must show (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Pace*

College v. Commission on Human Rights of the City of New York, 38 N.Y.2d28, 39-40, 377 N.Y.S.2d 471, 479, 339 N.E.2d 880, 885-886 (1975), citing, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

If Complainant establishes a *prima facie* case of discrimination, Respondent must articulate a legitimate, non-discriminatory business reason for its actions. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993); *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 120 S.Ct. 2097, 147 L.Ed. 105_(2000).

Complainant was the only female sales manager. She is a member of a protected class who was qualified to hold her position. She was the only female general sales manager and a male employee, Greenblatt, was promoted during her tenure. Her employment was terminated after approximately seven months. She has established a prima facie case. However, by Complainant's own admission, the sales numbers during her tenure were down. As a result, Respondent terminated her employment. This was sufficient to establish a legitimate, nondiscriminatory explanation for her termination, which Complainant has not shown to be a pretext. As a result, the Complainant has not succeeded in proving her claim of unlawful discrimination against Respondent.

In addition to her failure to prove that Respondent's claim was a pretext, Complainant was hired and fired by the same individual. When the hirer and firer is the same individual, and the termination occurs within a short period of time after the employee was hired, one can usually infer that discrimination was not the reason for the adverse action. *Dickerson v. Health Management Corporation of America*, 21 A.D.3d 326, 329, 800 N.Y.S. 391, 394 (1st Dept. 2005). "There is an inherent implausibility in hiring a member of a protected class and then discriminating against that person on the basis of his or her protected status." *Youth Action*

Homes v. State Division of Human Rights, 231 A.D.2d 7, 14, 659 N.Y.S.2d 447, 452 (1st Dept. 1997). Complainant has not presented evidence that would overcome the inference that there was no discrimination when Cartalemi hired her, and then fired her after seven months. Nor can she explain why Cartalemi would hire her and immediately begin a campaign to prevent her from selling cars, thereby reducing his own profits. Finally, the fact that Cartalemi hired Complainant on three different occasions suggests he did not have any discriminatory animus towards Complainant.

Complainant's assertions that her commissions were not fully paid have been considered. In light of the fact that no discriminatory motive on Respondent's part has been shown, any discrepancies she has with Respondent in that regard do not violate the Human Rights Law.

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 case be, and the same hereby is, dismissed.

DATED: August 15, 2007
Bronx, New York

Thomas S. Protano
Administrative Law Judge