



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

LINA A. SHEHAB,

Complainant,

v.

**CITY OF NEW YORK, DEPARTMENT OF
ENVIRONMENTAL PROTECTION, MARK PAGE,
TERRELL ESTESEN,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10198300

Federal Charge No. 16GB900927

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 July 23, 2021, by Alexander Linzer, 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 LICHA M. NYIENDO, 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: **August 31, 2021**
Bronx, New York



LICHA M. NYIENDO
COMMISSIONER



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LINA A. SHEHAB,

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**CITY OF NEW YORK, DEPARTMENT OF
ENVIRONMENTAL PROTECTION, MARK
PAGE, TERRELL ESTESEN,**

Respondents.

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

Case No. **10198300**

Federal Charge No. 16GB900927

SUMMARY

Complainant alleged that Respondents unlawfully discriminated against her because of her sex, gender, and national origin, and retaliated against her for complaining about unlawful discrimination. Complainant has failed to meet her burden of proof and this case is dismissed.

PROCEEDINGS IN THE CASE

On October 17, 2018, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents 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 Respondents 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 Alexander Linzer, an Administrative Law Judge (“ALJ”) of the Division. Virtual public hearing sessions were held on March 1, 2021, March 2, 2021, and March 19, 2021.

Complainant and Respondents appeared at the hearing. The Division was represented by Luwick Francois, Esq., senior attorney. Respondents were represented by Jennifer Y. Hwang, Esq., assistant corporation counsel, and Nicholas L. Collins, Esq., assistant corporation counsel. During the hearing, the presiding ALJ amended the complaint to correct Respondent Estesén’s first name from “Terrall” to “Terrell.” (Tr. 183)

Permission to file post-hearing briefs was granted. Respondents timely filed a post-hearing brief which was considered and, where appropriate, adopted.

FINDINGS OF FACT

1. Complainant is female and her national origin is Egyptian. (Tr. 33-34, 145, 164-65; ALJ’s Exhibit 1)
2. Respondent City of New York, Department of Environmental Protection (“DEP”), is a New York City agency responsible for treating and delivering clean water to New York City. (Tr. 184, 361) Respondent DEP also has responsibilities under the New York City charter for air quality, noise, and hazardous materials. (Tr. 184)
3. Respondent Terrell Estesén is Respondent DEP’s director of wastewater review and special projects. (Tr. 184-85) Respondent DEP’s wastewater review and special projects unit

is responsible for handling environmental reviews on Respondent DEP's wastewater projects and special projects, including air and noise projects. (Tr. 184-85)

4. Respondent Mark Page is Respondent DEP's managing director of environmental impact analysis and technical review in Respondent DEP's bureau of environmental planning and analysis. Respondent Page is Respondent Estes's supervisor. (Tr. 255)

5. In 1998, Complainant graduated from Cairo University in Egypt with a Bachelor of Science in Urban and Regional Planning. (Tr. 10-11; Complainant's Exhibit 1) In 2000, Complainant received a postgraduate degree from Cairo University in Urban and Regional Planning. (Tr. 10-11; Complainant's Exhibit 1)

6. From 2001 to 2012, Complainant was employed by the New York City Housing Authority ("NYCHA"), first as an assistant architect and then as a city planner. (Tr. 13-14, 116-20; Complainant's Exhibit 1)

7. On November 21, 2017, Respondents Estes and Page, and Bridget Kundmueller, deputy director for administration, interviewed Complainant to fill a vacancy for city planner, level 1, a civil service position. (Tr. 21-23, 28-29, 164, 185-86, 255-56)

8. Respondents initially offered the position to a female candidate, who declined. (Tr. 26, 257-58)

9. Respondents then offered the position to Complainant, who accepted. (Tr. 26, 258)

10. Respondents intended that Complainant would serve as a project manager in the wastewater review and special projects unit and would be responsible for reviewing environmental assessment statements, which are documents that comprise Respondent DEP's "hard look" at the potential environmental impact of a project and ways to mitigate or minimize that impact. (Tr. 185-86, 197-98, 259)

11. Respondents expected Complainant to review environmental assessment statements to confirm that they were readable, properly presented the project, and accurately followed the recommended methodology for examining environmental consequences. (Tr. 197-98)

12. Complainant began working for Respondents on or about December 11, 2017, as a probationary employee, meaning that her first year of employment was an evaluation period during which Respondents would decide whether to make her a permanent employee. (Tr. 27, 93-94, 258-59; Complainant's Exhibit 16)

13. Respondent Estesén was Complainant's supervisor. (Tr. 27-28)

14. When Respondents hired Complainant, Respondent Estesén also supervised project managers Lisa Furst, Rasheed Lucas, and Mitchell Landish. (Tr. 28-30, 237-38, 259-60, 294-97, 312-14)

15. Furst is female. Landish and Lucas are male. (Tr. 53, 306, 321)

16. After Respondents hired Complainant, Respondent Estesén worked with her to familiarize her with Respondent DEP's work, including speaking with her extensively concerning how to review an environmental assessment statement. (Tr. 190-91, 198)

17. Respondent Estesén also provided Complainant with several examples of completed environmental assessment statements and asked her to familiarize herself with the documents and applicable regulations. (Tr. 190-91, 198)

18. Respondent Estesén had concerns in the first two weeks of Complainant's employment about whether she was able to comprehend the materials because after speaking with her about environmental review and their department's role, Complainant "would ask a question that made it sound as though nothing had sunk in." (Tr. 191)

19. On or about December 17, 2017, Respondent Estesén assigned Complainant to tabulate New York City's recent city planning land use actions in an Excel spreadsheet. (Tr. 191-92; Respondents' Exhibit 4)

20. Respondent Estesén gave Complainant this assignment because he was going to be on vacation, and he believed that she could perform the assignment with minimal oversight. (Tr. 194-95)

21. Respondent Estesén asked Lucas to be available to assist Complainant with the project after she expressed concerns about being able to complete the assignment. (Tr. 194, 300-01)

22. Complainant did not ask Lucas to assist her with the assignment. (Tr. 301)

23. After Respondent Estesén returned from vacation, he asked Complainant about the status of the assignment. Complainant provided "an evasive answer that indicated work had not been advanced." (Tr. 195)

24. Complainant did not complete the assignment, and Respondent Estesén decided to "move on" without the assignment being completed. (Tr. 195)

25. On March 15, 2018, Respondent Estesén assigned Complainant to an environmental assessment statement related to an infrastructure project named "Keegan's Lane," in which water mains and sewers were being installed in a Staten Island neighborhood. (Tr. 196)

26. Respondent Estesén had already reviewed the first draft of the environmental assessment statement for the project. He asked Complainant to review a revision to make sure it was a quality document and that his comments had been addressed. (Tr. 198)

27. On March 23, 2018, Respondent Estesén met with Complainant because she had completed her first review of the Keegan Lane environmental assessment statement. (Tr. 198-99)

28. Respondent Estesén found that Complainant's work product was unsatisfactory and inconsistent with what he had asked her to do because it was "very sparse," and she had made only three comments. (Tr. 199)

29. Respondent Estesén reviewed and edited approximately half of the environmental assessment statement to demonstrate to Complainant what his expectations were. (Tr. 199-200; Respondents' Exhibits 5, 6) On April 9, 2018, Respondent Estesén provided the revised document to Complainant and asked her to complete the review. (Tr. 199-200, 202-03; Respondents' Exhibits 5, 6)

30. On April 16, 2018, Complainant provided Respondent Estesén with a three-paragraph memorandum comprising her review of the environmental assessment statement. (Tr. 201; Respondents' Exhibit 5)

31. Complainant's memorandum did not meet Respondent Estesén's expectations because it was not detailed or comprehensive, and did not reflect the example that he had provided to her. (Tr. 205; Respondents' Exhibits 5, 6)

32. Respondent Estesén forwarded Complainant's memorandum to Respondent Page by email and stated that Complainant's work product was "well short" of what he was looking for. (Tr. 205-06; Respondents' Exhibit 5)

33. Respondent Estesén subsequently completed the project himself. (Tr. 206)

34. In or around April 2018, Respondent Estesén assigned Complainant to a project intended to reduce the amount of nitrogen being discharged in treated water at the Ward's Island wastewater treatment plant. (Tr. 206-08; Respondents' Exhibit 7)

35. Respondent Estesén forwarded Complainant an email with information about the project and asked her review it and formulate any questions she had. (Tr. 207)

36. On April 4, 2018, Respondent Estesén and Complainant attended a staff meeting concerning the project. Complainant did not ask any questions. (Tr. 208, 212; Respondents' Exhibit 7)

37. Respondent Estesén was surprised and concerned that Complainant did not have any questions about the project because it was a new kind of project for Respondent DEP. (Tr. 209)

38. Subsequently, Respondent Estesén met with Complainant and Respondent Page and asked Complainant to brief Respondent Page on the project. (Tr. 209-10) Complainant stated that she was unable to explain the project because it was too technical and she did not understand it. (Tr. 210)

39. On April 25, 2018, Respondent Estesén issued Complainant a quarterly performance evaluation for the period December 11, 2017, to March 10, 2018. Respondent Estesén rated Complainant's performance as "conditional," meaning that Complainant should be retained in her present title conditional on improvement. (Tr. 47-48, 214-15, 258; Complainant's Exhibit 4)

40. Respondent Estesén wrote that Complainant's work was "not up to expectations," and he recommended that she familiarize herself with guidance documents of environmental review and examples of other environmental reviews to understand Respondents' expectations. (Complainant's Exhibit 4) Respondent Estesén also wrote that Complainant should ask questions and follow up with the staff to understand the projects. (Complainant's Exhibit 4)

41. Complainant was "surprised" and "shocked" when she received the performance evaluation because she had prior experience as a city planner and "never received something like that for an entry level job." (Tr. 48-49)

42. Complainant met with Respondent Estesén two days later and told him that she objected to the evaluation and that she had held a “higher position” when she worked for NYCHA. (Tr. 49)

43. Complainant’s work performance did not improve following her evaluation. (Tr. 216)

44. On May 4, 2018, Respondent Estesén asked Complainant to attend a meeting about a project concerning odor control at the Rockaway Wastewater Treatment plant because he was unavailable. (Tr. 216-17) Complainant attended the meeting. (Tr. 217)

45. Respondent Estesén later found a handout from the meeting on his office desk with no explanation, and he scheduled a meeting with Complainant via Microsoft Outlook to discuss the project. (Tr. 217)

46. Complainant did not appear for the meeting. (Tr. 217-18)

47. Respondent Estesén then sent Complainant an email asking her to set up a meeting with him to discuss the project. (Tr. 218) Complainant sent Respondent Estesén a meeting invitation via Microsoft Outlook for a time he was busy even though his Outlook calendar was visible to Complainant and showed that he was unavailable. (Tr. 218)

48. Respondent Estesén declined the meeting and emailed Complainant asking her to schedule a meeting for a time he was available. (Tr. 218)

49. Complainant replied that Respondent Estesén should set up a meeting since he was the “busy person.” (Tr. 218) No meeting took place. (Tr. 218)

50. On May 22, 2018, Respondent Estesén emailed Complainant asking her to review Respondent DEP’s past environmental reviews in connection with air and noise rulemaking. (Tr. 219-20; Respondents’ Exhibit 8)

51. Complainant met with Respondent Estes and said that she believed that the assignment he had given her was not planning work and should be handled by a scientist instead. (Tr. 221)

52. Respondent Estes told Complainant that the assignment he had given to her involved planning functions and that their role was to provide environmental review support for the project. Complainant responded that the work should be given to someone else. (Tr. 221)

53. On May 23, 2018, Respondent Estes emailed Complainant the job description for her position, stated that the job description for the city planner position encompasses environmental review support for departmental initiatives, and requested that Complainant complete the assignment. (Tr. 224-25; Respondents' Exhibit 9)

54. Complainant did not complete the assignment. (Tr. 221, 223)

55. On May 24, 2018, Respondent Estes emailed Respondent Page advising him that Complainant believed that the assignment he had given to her should have been given to someone else. Respondent Estes stated, “. . . [T]here is little indication that work is improving since [Complainant's] ‘conditional’ evaluation and I don't have much reason to expect further improvement.” (Tr. 222, 267-68; Respondents' Exhibit 8)

56. That day, Respondent Page forwarded the email exchange to Frank Malandro, director of Respondent DEP's administration, and asked, “Do we need to wait until 6 months to take the next step?” (Tr. 267-68; Respondents' Exhibit 8)

57. At the time, Respondent Page thought that if Respondents did not see quick advancement in Complainant's productivity, Respondents would “probably move forward with termination given the one-year probationary window.” (Tr. 268)

58. On July 16, 2018, Malandro responded to Respondent Page by email, asking when Complainant was due for her next performance evaluation. Respondent Page provided Malandro with a draft performance evaluation for Complainant. (Tr. 268-69; Respondents' Exhibit 8)

59. On July 24, 2018, Respondents Estes and Page met with Complainant and provided her with a performance evaluation for the period March 11, 2018, through June 11, 2018, rating her "unsatisfactory" overall. (Tr. 68-69, 225-26, 269-70; Complainant's Exhibit 6)

60. The performance evaluation stated that Complainant's "[w]ork is not up to expectations of City Planner Level I; [Complainant] still must show a much greater comprehension of the environmental review process and the projects being reviewed. Work still lacking in insight and thoroughness. . . . Unable to assign projects of even moderate complexity without needing to extensively revise and redo the work." (Tr. 225-26; Complainant's Exhibit 6)

61. Complainant signed the performance evaluation and wrote on it that she disagreed with the content. (Tr. 68-69, 228; Complainant's Exhibit 6)

62. On August 8, 2018, Complainant appealed her July 24, 2018, performance evaluation to Respondent Page. (Tr. 78-79, 283; Complainant's Exhibits 10, 11, 12) In her appeal, Complainant stated that her attendance and reliability were regular and that she was still in the "very early stage of receiving the new job." (Complainant's Exhibit 11)

63. On August 17, 2018, Complainant emailed Respondent Estes and stated that two of the assignments that he had given her were outside of her title because they focused on construction, design, and engineering. (Tr. 230-31; Respondents' Exhibit 10)

64. That day, Respondent Estes emailed Complainant and stated that the assignments she identified did not carry construction, design, or engineering responsibilities and that it was Complainant's role to oversee environmental review. (Tr. 230-32; Respondents' Exhibit 10)

65. Respondent Estes forwarded his email exchange with Complainant to Malandro and stated that he “does not see a way through this” and needed staff who can assist with Respondent DEP’s workload. (Tr. 232; Respondents’ Exhibit 10)

66. Malandro responded, “We will move forward with termination process early next week.” (Tr. 232; Respondents’ Exhibit 10)

67. Respondent DEP has an Equal Employment Opportunity and Diversity (“EEO”) office where employees can submit internal complaints of discrimination. (Tr. 334-36)

68. On August 20, 2018, Complainant submitted a complaint to Respondent DEP’s EEO office, dated August 1, 2018, in which she alleged that Respondent Estes discriminated against her because of her gender and national origin. (Tr. 87-88, 341-42; Complainant’s Exhibit 14; Respondents’ Exhibit 11)

69. In her complaint, Complainant alleged that Respondent Estes rarely met with her to discuss work but dealt almost daily with American male employees, was “friendly” towards them, and “accepts any level of work” from them. Complainant further alleged that Respondent Estes made disparaging comments about Egypt, including that it is poor and corrupt, and told Complainant to go back to her country. (Complainant’s Exhibit 14)

70. Complainant’s EEO complaint stated that she had also filed a complaint of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”). (Tr. 343-45; Complainant’s Exhibit 14)

71. Respondent DEP’s policy when a complaint is filed externally is to stop an EEO internal investigation and to refer the case to Respondent DEP’s internal attorneys. (Tr. 344-45)

72. Respondent DEP’s EEO office did not investigate Complainant’s complaint because Complainant stated that she had filed an external complaint with the EEOC. (Tr. 344-45)

73. On August 21, 2018, Complainant emailed Respondent Page advising that he had not responded to the appeal of her July 24, 2018, performance evaluation. Respondent Page responded that he had been out of the office on vacation. (Tr. 80-81, 283-84; Complainant's Exhibit 12) Respondent Page did not communicate further with Complainant in connection with her appeal. (Tr. 80-81, 284)

74. On or about October 7, 2018, Respondents terminated Complainant's employment. (Tr. 93-94, 232-33; Complainant's Exhibit 16)

75. During the relevant period, Furst was a project manager with the civil service title of city planner, level 1. (Tr. 313)

76. Furst believed that Respondent Estesén was supportive of her and did not treat her differently than any other project manager. (Tr. 315-16)

77. Complainant's testimony was untruthful on at least one occasion. Complainant initially testified that she quit her prior employment at NYCHA. (Tr. 52, 116) However, Complainant admitted on cross-examination that she had been terminated from NYCHA following an administrative trial. (Tr. 116, 119-20; Respondents' Exhibits 1, 2) Accordingly, I credit the testimony of Respondents' witnesses over the testimony of Complainant.

78. I do not credit Complainant's testimony that Respondent Estesén made demeaning comments about Egypt "continuously" starting in February 2017, including that Complainant was a "stupid woman who came from Egypt," and that "Egypt takes funds from begging money from USA associated with its poor slums." (Tr. 33-37, 65-66) I also do not credit Complainant's testimony that in or around March 2017, Estesén screamed at her during a meeting, threw a document in her face, and threatened her with physical violence. (Tr. 37-39,

41) Respondent Estes denied making such comments and Complainant did not provide any evidence to corroborate her testimony. (Tr. 233-35)

OPINION AND DECISION

Retaliation

N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.7 makes it an “unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate against any person” who has opposed discriminatory practices. To make out a prima facie case of retaliation, Complainant must show that 1) she engaged in activity protected by the Human Rights Law, 2) Respondents were aware that Complainant participated in the protected activity, 3) she suffered an adverse employment action, and 4) there is a causal connection between the protected activity and the adverse employment action. *See Adeniran v. State of New York*, 106 A.D.3d 844, 965 N.Y.S.2d 163 (2d Dept. 2013).

In a retaliation context, an adverse employment action is one which “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Mejia v. Roosevelt Is. Med. Assoc.*, 31 Misc.3d 1206(A), 927 N.Y.S.2d 817 (Table) (Sup. Ct. N.Y. Co. 2011), *aff’d*, 95 A.D.3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed*, 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013), citing *Burlington Northern & Santa Fe Railway Co. v. White*, 543 U.S. 53, 68 (2006).

If Complainant makes out a prima facie case of retaliation, the burden shifts to Respondents to articulate a legitimate, independent, and non-discriminatory reason for their actions. If Respondents do so, Complainant must show that the reasons presented by Respondents were merely a pretext for discrimination. *Adeniran* at 845, 965 N.Y.S.2d at 165.

Complainant established a prima facie case. Complainant engaged in protected activity when she filed an internal complaint of gender and national origin discrimination with Respondent DEP's EEO office on August 20, 2018. Respondent DEP had notice that Complainant filed a complaint of discrimination. Complainant suffered an adverse employment action when her employment was terminated in early October 2018. Respondents terminated Complainant's employment approximately seven weeks after she filed her internal EEO complaint. In light of the totality of the circumstances of this case, this temporal proximity between Complainant's complaint and the adverse employment action is sufficient to establish the element of causation. *Calhoun v. Cty. of Herkimer*, 114 A.D.3d 1304, 1307, 980 N.Y.S.2d 664, 667 (4th Dept. 2014); *Harrington v. City of New York*, 157 A.D.3d 582, 586, 70 N.Y.S.3d 177, 181 (1st Dept. 2018).

Respondents articulated a legitimate, independent, and non-discriminatory reason for terminating Complainant's employment; Complainant was a probationary employee who failed to complete assignments and her performance did not meet Respondents' expectations. On August 17, 2018, before Complainant filed her internal complaint, Respondents began the process of terminating her employment following her failure to complete an assignment that she believed was outside of her job description.

Complainant failed to establish that Respondents' stated reason was pretext. Respondents repeatedly communicated to Complainant that her performance did not meet their expectations prior to her filing her internal EEO complaint, including giving her a "conditional" performance evaluation in April 2018, and an "unsatisfactory" performance evaluation in July 2018. Complainant did not offer any evidence establishing that Respondents terminated her employment because of retaliatory animus or for any reason other than her

performance. This claim is dismissed.

Discrimination

Complainant alleged that Respondents discriminated against her based on her sex, gender, and national origin. It is unlawful for an employer to discriminate against an employee on the basis of national origin, sex, or gender identity or expression. Human Rights Law § 296.1(a). To make out a prima facie claim of unlawful discrimination in the employment context, Complainant must show that (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. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004), *citing Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997).

If Complainant makes out a prima facie case of unlawful discrimination, the burden shifts to Respondents to articulate a legitimate, independent, and non-discriminatory reason for their actions. *Id.* If Respondents do so, Complainant must show that the reasons presented by Respondents were merely a pretext for the unlawful discrimination by demonstrating both that Respondents' stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391. The "burden of persuasion of the ultimate issue of discrimination always remains" with Complainant. *Stephenson v. Hotel Empls. and Rest. Empls. Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.S.2d 633, 636 (2006).

Complainant is a member of protected classes because she is female and her national origin is Egyptian. Complainant was qualified for the position of city planner because she held the position for approximately nine months. Complainant suffered an adverse employment action when Respondents terminated her employment.

However, Complainant failed to establish that the termination of her employment occurred under circumstances giving rise to an inference of unlawful discrimination. Complainant's allegations that Respondent Estesén made disparaging comments about her national origin were not credible, and Complainant did not offer any evidence to support her conclusory allegation that Respondent Estesén treated male city planners in a preferential manner. Moreover, Respondents Estesén and Page interviewed Complainant and decided to hire her just nine months before deciding to terminate her employment. "[I]n cases where the hirer and the firer are the same individual and the termination of employment occurs within a relatively short time span following the hiring, a strong inference exists that discrimination was not a determining factor for the adverse action taken by the employer." *Dickerson v. Health Mgmt. Corp. of Am.*, 21 A.D.3d 326, 329, 800 N.Y.S.2d 391, 394 (1st Dept. 2005) (quoting *Proud v Stone*, 945 F.2d 796, 797 (4th Cir 1991)). Finally, Furst, a female project manager, believed that Respondent Estesén was supportive of her and did not treat her differently than her male co-workers.

Even if Complainant had established a prima facie case, as explained above, Respondents set forth a legitimate, non-discriminatory reason for terminating her employment – Complainant's performance – and Complainant failed to establish pretext. This claim is dismissed.

Hostile Work Environment

In order to establish a hostile work environment claim under Human Rights Law § 296.1(a), Complainant must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment. *Forrest*, 3 N.Y.3d at 310,

786 N.Y.S.2d at 394 (quoting *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 21, 114 S.Ct. 367 (1993)). Whether an environment is hostile or abusive can be determined only by looking at all the circumstances, including the “frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance. The effect on the employee’s psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive.” *Id.* at 311 (quoting *Harris*, at 23). Moreover, the conduct must both have altered the conditions of the victim’s employment by being subjectively perceived as abusive by the plaintiff and have created an objectively hostile or abusive environment--one that a reasonable person would find to be so. *Id.* (quoting *Harris*, at 21).¹

Complainant must show that the discriminatory conduct occurred because of her protected class membership. See *Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Complainant failed to establish that she was subjected to a hostile work environment. Complainant’s testimony that Respondent Estes continuously made derogatory comments towards her and physically threatened her was not credible, and there is no other evidence establishing that Complainant was subjected to a hostile work environment. This claim is dismissed.

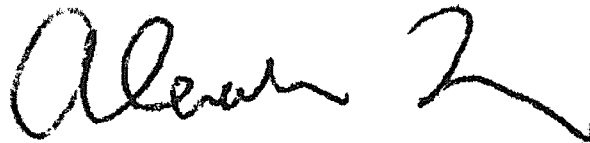
¹ Effective October 11, 2019, the Human Rights Law was amended to make it an unlawful discriminatory practice, “For an employer . . . to subject any individual to harassment because of an individual's national origin, . . . gender identity or expression, . . . [or] sex, . . . regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories.” Human Rights Law § 296.1(h). Because Respondent terminated Complainant’s employment before October 11, 2019, the amendment is not applicable to this case.

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 this case be, and hereby is, dismissed.

DATED: July 23, 2021
Bronx, New York

A handwritten signature in black ink, appearing to read "Alexander Linzer", followed by a large, stylized flourish or checkmark.

Alexander Linzer
Administrative Law Judge