

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

LEON K. SMITH,

Complainant,

v.

HEMPSTEAD HOUSING AUTHORITY,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10110821

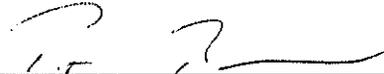
PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Peter G. Buchenholz, Adjudication Counsel, as designated by the Honorable Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before David Wm. Bowden, an Administrative Law Judge of the Division. 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.

DATED: March 13, 2008
Bronx, New York



PETER G. BUCHENHOLZ
Adjudication Counsel

**STATE OF NEW YORK
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Complainant's allegation that Respondent discriminated against him based on his sexual orientation is not supported by the record, and, therefore, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On March 21, 2006, 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 referred the case to public hearing.

After due notice, the case came on for hearing before David Wm. Bowden, formerly an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on July 9, 10, and 16, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Sandra S. Thomas, Esq. Respondent was represented by Alan M. Parente, Esq.

On February 20, 2008, ALJ Bowden issued a recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”). No Objections to the Recommended Order were filed with the Commissioner’s Order Preparation Unit.

FINDINGS OF FACT

Respondent is a housing authority, a public corporation organized under the laws of the State of New York to serve as the landlord of the premises located at 50 Evans Avenue, in Hempstead, New York. (Respondent’s Exhibit 2)

Complainant’s mother was a yearly leaseholder for Apartment 1A, a three-bedroom unit, in the 50 Evans Avenue premises from May 1, 1998, until she announced her intention to vacate the unit in September of 2005. (Respondent’s Exhibit 2; Tr. 107, 164)

Complainant, who is homosexual, resided with his mother and two sisters at Respondent’s premises throughout her tenancy. (Tr. 8) When Complainant’s mother informed Respondent that she intended to vacate the premises, she was informed that Complainant could not continue to occupy the apartment alone. (T. 164-65)

Respondent had a policy whereby an individual could not alone occupy a three-bedroom apartment as that would be an underutilization of the space. (Respondent’s Exhibit 4; Tr. 86-89, 169-70)

In September of 2005, Complainant’s mother and family moved out. Complainant thereafter remained in the apartment alone. (T. 9)

Respondent was not immediately aware of Complainant’s residency. (T. 173) Pursuant to its practice when an apartment has been vacated, Respondent disabled the electronic keys to the front door of the building and turned off the electricity to the apartment. (Tr. 174, 202-03)

In October of 2005, after turning off the electricity, Respondent discovered that Complainant remained in the apartment when it received a call from Nassau-Suffolk Law Services indicating that the apartment was inhabited. Respondent restored the electricity. (Tr. 175-76)

Respondent then commenced eviction proceedings against Complainant. (Tr. 180) Those proceedings were abandoned when a one-bedroom apartment became available for Complainant in November of 2006 into which he moved. (T. 182, 217)

Complainant alleged that the electronic key and electricity were turned off of Apartment 1A as a form of harassment related to his sexual orientation. Complainant based his allegations on the fact that Jamie Morrison, Respondent's Executive Director, spoke with him regarding several complaints that had been lodged by Complainant's neighbors regarding noise and visitors he received. (ALJ's Exhibit 1; Tr. 184) Complainant was asked during the hearing if Morrison ever made comments regarding his sexual orientation to which he responded, "Directly, no. I believe no, not directly, but . . . [a]s far as the company I keep, I believe that was a – referred to my sexuality because the company I keep, and I'm not afraid to say, is very flamboyant gay males and transsexuals." (Tr. 52). Morrison admitted that he spoke to Complainant about the complaints, but credibly denied that he made any comments related to Complainant's sexual orientation. (Tr. 183-85)

Complainant also alleged that repairs were not made to Apartment 1A after his mother vacated it and claimed that the failure to make those repairs constituted harassment based on his sexual orientation. (ALJ's Exhibit 1). The evidence reveals that Respondent received only one complaint for needed repairs in Apartment 1A, and that those repairs were, in fact, completed. (Tr. 178-79)

OPINION AND DECISION

Complainant's allegations that Respondent discriminated against him in housing based on his sexual orientation are not supported by the credible evidence in the record and, therefore, are dismissed.

It is an unlawful discriminatory practice for an owner or other person having the right to rent a housing accommodation or a publicly-assisted housing accommodation to discriminate against any person in the terms conditions or privileges of his rental or lease because of his sexual orientation. Human Rights Law §§ 292.2-a(a) and 296.5(a)(2).

Complainant in this case has produced no credible evidence that Respondent discriminated against him in the terms, conditions, or privileges of his rental or lease based on his sexual orientation. His allegation that Morrison made reference to the "company" he kept when he discussed his visitors and noise, even if true, is insufficient to draw an inference that Morrison was somehow referring to Complainant's sexual orientation. And, the keys and the electricity were turned off in the apartment in conformity with Respondent's regular practice after an apartment had been vacated.

In light of the foregoing, the complaint is dismissed.

ORDER

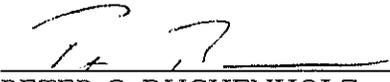
Pursuant to 9 NYCRR § 465.17(c)(3), Commissioner Kumiki Gibson designated Adjudication Counsel Peter G. Buchenholz to issue this Final Order. The Adjudication Counsel has not taken part in the prior proceedings with respect to this case.

On the basis of the forgoing Findings of Fact, Opinion and Decision, and the laws applicable to this case, it is hereby

ORDERED, that the complaint be, and the same hereby is, dismissed.

DATED: **MAR 13 2006**
Bronx, New York

NYS DIVISION OF HUMAN RIGHTS



PETER G. BUCHENHOLZ
Adjudication Counsel