

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

DAWN M. STALEY,

Complainant,

v.

BRIDAL CHATEAU, INC.,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10113199

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 March 27, 2009, by Spencer D. Phillips, 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 GALEN D. KIRKLAND, 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: **JUL 01 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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

Case No. 10113199

SUMMARY

Complainant alleged that Respondent terminated her employment because she had a disability. Complainant failed to prove a prima facie case of disability discrimination and the complaint is therefore dismissed.

PROCEEDINGS IN THE CASE

On August 7, 2006, 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 unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Spencer D. Phillips, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on February 11, 2009.

Complainant and Respondent appeared at the hearing. The Division was represented by Erin Sobkowski, Esq. Respondent was represented by Richard H. Wyssling, Esq.

Permission to file post-hearing briefs was granted. Complainant submitted a timely brief. Respondent did not submit a brief.

FINDINGS OF FACT

1. Respondent is a retail bridal shop located in Williamsville, New York. Ellen Furmanek is Respondent’s owner. Furmanek’s daughter, Debbie Daruszka, is Respondent’s head seamstress. (Tr. 104-06, 145-46)

2. Complainant is a self-trained seamstress with experience on domestic-grade sewing machines. Prior to June 2006, Complainant designed and altered wedding gowns on a “very part-time” basis from her home, at a rate of approximately one gown every two to six months. Most of Complainant’s work was performed without charge as “gifts” to relatives, friends or acquaintances. (Tr. 11, 34-40, 47)

3. Complainant has suffered from severe back pain for many years. Complainant has undergone several back surgeries, and regularly receives both medical evaluation and treatment for back pain. (Tr. 19-20, 22, 77-78)

4. In May 2006, Respondent placed three advertisements in Buffalo-area newspapers stating “Seamstress, great bridal shop, twelve dollars to start, call 631-8345.” The primary

activity of this seamstress position was to perform alterations on wedding gowns, including hems and seams. (Respondent's Exh. 1; Tr. 40-42, 79, 86, 107-08, 148, 157)

5. Respondent's busiest months are May, June, July, August and September. Respondent advertised the seamstress position in May because work orders were rising and experienced seamstress help was urgently needed. Respondent did not have time to train an inexperienced seamstress. (Respondent's Exh. 6; Tr. 46, 109-12, 130, 158-59)

6. In mid-June 2006, Complainant called the telephone number listed on the advertisement and spoke to Furmanek. Complainant told Furmanek that she had twenty years' of alteration experience. Furmanek then invited Complainant to visit the bridal shop for an interview. (Tr. 157, 168)

7. On June 20, 2006, Complainant met Furmanek at the bridal shop for an interview. Furmanek told Complainant that the main job activity of the seamstress position was to perform alterations. Complainant told Furmanek that she had extensive alteration experience. Furmanek offered the seamstress position to Complainant and stated "You have a job for life if you can do what you say you can do." (ALJ Exh. 1; Respondent's Exh. 5; Tr. 80-84, 88-89, 157-60)

8. Furmanek offered the seamstress position to Complainant without requiring Complainant to perform a physical sewing test because Furmanek believed Complainant's representations about her skills and experience. (Tr. 159-60)

9. Complainant had no experience sewing with a ball hemmer at the time of hire. A ball hemmer is a sewing machine attachment that increases efficiency of hem sewing. Respondent regularly uses ball hemmers to improve the efficiency and quality of alterations. (Respondent's Exh. 3; Tr. 17, 46, 55-57)

10. Complainant had no experience working on commercial-grade sewing machines at the time of hire. All of Respondent's sewing machines are commercial-grade, which are more powerful and more challenging to use than domestic-grade sewing machines. (Respondent's Exh. 2; Tr. 12-13, 24-25, 43, 45-47, 51, 55, 110-11)

11. On June 23, 2006, Complainant reported to the bridal shop for her first day of work as a seamstress. (ALJ Exh. 1, 2; Tr. 11-13, 16)

12. Daruszka allowed Complainant to spend an hour getting used to the commercial-grade sewing machine that she would be using. Daruszka gave Complainant several scrap bodices and asked Complainant to perform different alterations on the scraps. (Respondent's Exh. 7; Tr. 16, 117, 162)

13. Complainant's alterations to the scrap bodices were unsatisfactory and "shoddy." (Tr. 119-23, 125-27, 163, 171-72, 175, 184)

14. After one hour of sewing practice, Daruszka asked Complainant to watch Daruszka fit a gown on a customer. Complainant observed the fitting session. When Complainant arose from the chair at the end of the fitting session, she made a grunting sound as she straightened out her back. Daruszka asked Complainant if she was okay, and Complainant responded affirmatively. Complainant and Daruszka then returned to the sewing machine area. (Tr. 18, 20-21, 140)

15. Daruszka observed Complainant performing alterations on the scrap bodices. Daruszka asked Complainant to demonstrate the use of the ball hemmer. Complainant was unable to do so. After three minutes of observation, Daruszka commented "This is not going to work out...I got to talk to my mother." (Tr. 22, 124-25)

16. Daruszka left the sewing room and spoke with Furmanek about Complainant's unsatisfactory sewing abilities. (Tr. 128-29, 140)

17. Furmanek called Complainant into her office and terminated Complainant's employment because Complainant was inefficient and unskilled at performing alterations. (Tr. 129-132, 163-65, 171-72)

18. Furmanek gave Complainant a check for forty-eight dollars and then dismissed Complainant. (Tr. 23)

19. Before Complainant left the bridal shop, Furmanek told Complainant that "she might call [her] in December when it slows down." (Respondent's Exh. 5)

OPINION AND DECISION

The Human Rights Law prohibits an employer from discriminating against an employee because of disability. Human Rights Law §296.1(a); *Matter of McEniry v. Landi*, 84 N.Y.2d 554, 558, 620 N.Y.S.2d 328 (1994).

To establish a prima facie case of unlawful disability discrimination under the Human Rights Law, Complainant must show that: 1) she was disabled within the meaning of the Human Rights Law; 2) she was otherwise qualified to perform the essential functions of the job with or without a reasonable accommodation; and 3) she suffered an adverse employment action; and 4) she suffered the adverse employment action because of her disability. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 39-40, 377 N.Y.S.2d 471 (1975), citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

The proof establishes that Complainant has suffered from severe back pain for many years, requiring multiple surgeries, continuing medical treatment and prescription medication. Complainant is therefore disabled as that term is defined by the Human Rights Law. Complainant suffered an adverse employment action when Furmanek terminated her

employment. However, Complainant failed to demonstrate that she was qualified to perform the essential functions of the seamstress position, or that Furmanek terminated her employment because of her back disability.

The proof establishes that Complainant was not qualified to perform the essential functions or activities of the seamstress position. Complainant was a self-taught seamstress who obtained an offer of employment by exaggerating her skills and experience during the job interview. Just one hour after Complainant began work, Daruszka viewed Complainant's work product and immediately realized that Complainant was not qualified for the position. Daruszka reported her observations to Furmanek, and Furmanek reasonably concluded that Complainant did not possess the skills and experience she represented during the job interview.

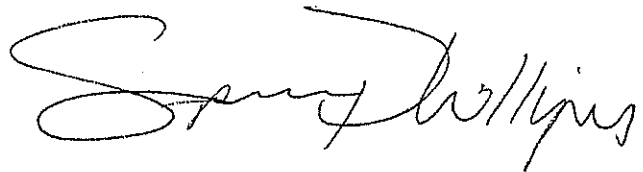
Likewise, the proof establishes that Furmanek terminated Complainant's employment because she was unqualified for the seamstress position. Due to the busy season and rising work orders, Daruszka had no time to train anyone for the job which Complainant represented she knew how to do. Complainant proffered no evidence showing that Furmanek considered Complainant's back disability in deciding to terminate her employment.

Finally, Complainant admits that Furmanek stated that she might call Complainant back to work in December, after the busy season ended. This offer demonstrates that Furmanek would consider reemploying Complainant at a time of year when Complainant could be trained on the commercial-grade sewing machine and ball hemmer attachment. Furmanek's offer also establishes that Complainant was not terminated because of the back disability which had afflicted her for many years, as that disability would likely still be present the following December. Therefore, Complainant has failed to satisfy her prima facie burden and her complaint of disability discrimination is 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 the same hereby is, dismissed.

DATED: March 27, 2009
Rochester, New York

A handwritten signature in black ink, appearing to read "Spencer D. Phillips". The signature is written in a cursive, flowing style with a large initial "S".

Spencer D. Phillips
Administrative Law Judge