

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

NATHANIEL VAUGHN,

Complainant,

v.

**DAVID SEWELL, RIVENDELL WINERY LLC
D/B/A VINTAGE NEW YORK,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10114104

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by Matthew Menes, 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 Lilliana Estrella-Castillo, 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: February 8, 2008
Bronx, New York


MATTHEW MENES
Adjudication Counsel

**STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS**

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D/B/A VINTAGE NEW YORK,**

Respondents.

SUMMARY

Complainant alleged he was discriminated against due to his race. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On October 2, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents with unlawful discriminatory practices in a place of public accommodation 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 Lilliana Estrella-Castillo, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on November 5, 2007.

Complainant and Respondents appeared at the hearing. Complainant was represented by Kip Lenoir, Esq. Respondents appeared pro se.

Complainant filed a post-hearing brief.

On January 14, 2008, ALJ Estrella-Castillo issued a recommended Findings of Fact, Decision and Opinion, and Order (“Recommended Order”). No objections were received to the Recommended Order by the Commissioner’s Order Preparation Unit.

FINDINGS OF FACT

1. Complainant is African-American. (ALJ’s Exhibit I)
2. Robert Ransom (“Ransom”) is the owner of Rivendell Winery, LLC, d/b/a Vintage New York (“Vintage”). (Tr. 24, 26, 50, 78; ALJ’s Exhibit IV)
3. David Sewell (“Sewell”) was an employee and manager of Vintage. (Tr. 44)
4. Vintage is a combination wine retail store and wine bar. (Tr. 45, 48-49, 91)
5. Vintage allowed its customers to taste wines before making a purchase. (Tr. 30, 91)
6. On Saturday, August 19, 2006, Complainant and a companion visited Vintage. They tasted two glasses of wine each, ate cheese and crackers and were served several glasses of water at a table in the wine bar. Complainant then selected a bottle of wine, asked for the remainder of the cheese and crackers to be packed to go, paid his bill and left Vintage without leaving a gratuity. (Tr. 10, 16, 18, 33, 47)
7. The next evening, Complainant and his companion visited Vintage again and were served by Sewell. Complainant and his companion sat at a table and each drank a glass of wine. They were also served several glasses of water. Complainant, when finished, paid for the two glasses of wine and again left without leaving a gratuity. (Tr. 21-22, 49-50)

8. Sewell asked if there was anything wrong with the service. Complainant responded that he had the right not to leave a gratuity. Sewell informed Complainant that if he was not going to leave a gratuity, Complainant should not come back to Vintage. (Tr. 22, 31, 50)

9. Ransom apologized to Complainant on the telephone the next day explaining that Complainant was not banned from Vintage. (Tr. 26, 96)

10. At no time during Complainant's numerous visits to Vintage was his race ever mentioned or an issue. (Tr. 35, 53, 73, 98)

OPINION AND DECISION

It is an unlawful discriminatory practice for "any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . ." Human Rights Law § 296.2(a).

Complainant presented no evidence at the public hearing that he was actually denied access to or any of the advantages or privileges of the place of public accommodation at issue herein. In fact, Respondents appeared to have provided good service to Complainant (and on at least two occasions his companion) during his visits to the wine bar. And, although Respondent told Complainant not to come back, Complainant presented no evidence whatsoever that Respondents' comment and temporary decision were motivated by race. Because Complainant has failed to meet his burden of establishing that any conduct at issue was because of his race, the complaint must be dismissed.

ORDER

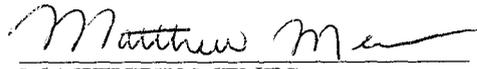
Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Matthew Menes has been designated by Commissioner Kumiki Gibson to issue this Final Order. The Adjudication Counsel has not taken any part in the prior proceedings with respect to this case.

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

ORDERED, that the complaint be, and hereby is, DISMISSED.

DATED: February 8, 2008
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS



MATTHEW MENES
Adjudication Counsel