

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

BARBARA WAGNER,

Complainant,

v.

**NASSAU COUNTY FIRE COMMISSION; AND
NASSAU COUNTY FIRE COMMUNICATIONS
CENTER,**

Respondent.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case No. 3506187

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 April 24, 2007 by Robert M. Vespoli, 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 14th day of June, 2007.



KUMIKI GIBSON
COMMISSIONER

TO:

Complainant

Barbara Wagner
16 Angle Lane
Hicksville, NY 11801

Respondent

Nassau County, Fire Commission
Attn: Thomas Tilley, Fire Marshall
899 Jerusalem Avenue
Uniondale, NY 11553

Respondent

Nassau County Fire Communications Center
899 Jerusalem Avenue
Uniondale, NY 11553

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS

on the Complaint of

BARBARA WAGNER,

Complainant,

v.

NASSAU COUNTY FIRE COMMISSION;
AND NASSAU COUNTY FIRE
COMMUNICATIONS CENTER,

Respondents.

RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER

Case No. 3506187

PROCEEDINGS IN THE CASE

On May 11, 2001, Complainant filed a verified complaint with the State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of the Human Rights Law of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents 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 Robert M. Vespoli, an Administrative Law Judge (A.L.J.) of the Division. Public hearing sessions were held on September 22-23, 2005 and June 13, 2006.

Complainant and Respondents appeared at the hearing. The Division was represented by Gina M. Lopez-Summa, General Counsel, by Christopher R. Knauth, Esq. and Matthew A. Menes, Esq., of Counsel. Respondents were represented by Peter J. Famighetti, Esq., Deputy County Attorney.

During the final public hearing session held on June 13, 2006, the presiding A.L.J. requested census data from Respondents deemed necessary to complete the record. Specifically, the presiding A.L.J. asked Respondents to produce census data identifying: (1) the number of women who took the test for the Fire Communication Technician I (FCTI) position for the period 2000-2004, and (2) the number of individuals who held the FCTI position, identified by name and sex, for the period 2000-2004. (Tr. 332, 412). Respondents submitted a one-page document dated June 13, 2006 in response to this request. This document is received into evidence as A.L.J. Exhibit IX.

Permission to file post-hearing briefs was granted.

FINDINGS OF FACT

1. Complainant alleges that Respondents failed to select her for appointment to the position of FCTI because of her gender. Complainant also alleges that Respondents retaliated against her by not selecting her for the FCTI position because she filed her initial complaint with the Division on May 11, 2001. (A.L.J. Exhibits I, II).
2. Respondents deny these allegations. (A.L.J. Exhibit III).
3. Complainant, a female, is a high school graduate who wishes to serve as an FCTI in Nassau County. (Tr. 26). She held a variety of positions, including working for various banks, before seeking employment through Nassau County. Complainant found county work in 1988 as a construction inspector trainee, where she remained for three years. (Tr. 26-27). She also spent one year volunteering for the Westbury Fire District from 1992-93. (Tr. 35).
4. Complainant first volunteered with the Uniondale Fire Department in 1988 and remained there for ten years. While there, she was involved in the rescue company as well as radio communications. (Tr. 27-28). Complainant is certified as an emergency medical

technician ("EMT") and is trained to respond to a wide range of situations, including auto accidents, fires, and rescues. (Tr. 28). For the past eleven years, Complainant has also served as a data entry clerk with the Uniondale Fire District on a part-time basis, working between 12 and 15 hours each week. (Tr. 29, 98). Her job responsibilities include receiving and documenting calls made to the Fire Communications Center, seeing that the information is sent to the appropriate offices, and maintaining records of firefighters' participation. (Tr. 29-30).

Complainant also served as a member of the Uniondale Fire Department Radio Committee for eight years. (Complainant's Exhibit 6).

5. Since 1995, Complainant has been employed full-time by the Nassau County Department of Public Works. (Tr. 32). Complainant began there as a Laborer I, Grade 5 and was promoted in June 2001 to the position of Laborer II, Grade 6. She currently earns approximately \$44,000 annually. (Tr. 34, 154). Complainant has been a member of the Civil Service Employees Association ("CSEA") for the duration of her time as a Nassau County employee. (Tr. 34).

6. Complainant first took the civil service examination required to qualify for the FCTI position in 1994. Complainant was interested in bettering herself and believed the FCTI position offered better hours, working conditions, and stability. (Tr. 38).

7. An FCTI is responsible for answering incoming phone calls from the public, gathering the necessary information so that the correct fire department can be dispatched, and then dispatching that fire service. (Tr. 237). An FCTI is also responsible for ensuring that all communication equipment is working properly, maintaining necessary records regarding the operation of the equipment, and scheduling necessary repair service. (Joint Exhibit 12). The two

basic requirements for an FCTI are high school graduation and five years of volunteer service with a fire department located in Nassau County. (Joint Exhibit 12).

8. The FCTI positions are filled through a multi-step process. First, an application is filled out and a fee is paid. (Joint Exhibits 13, 14). The Nassau County Civil Service Commission ("NCCSC") then checks the applicants' qualifications and notifies those who meet the minimum requirements that they are eligible to take an upcoming civil service examination. (Tr. 218). Next, the applicants take the examination which is administered and graded by the NCCSC. The NCCSC then ranks all passing candidates by score. (Tr. 358-59, 361).

9. Respondent Fire Commission requests a list of qualified applicants from the NCCSC as positions become available. (Tr. 218). Respondent Fire Commission is responsible for sending "canvas letters," or letters of interest, to the three highest scoring applicants within two months of receiving this list. If there is a tie at any score, each of the applicants with that score is contacted. (Tr. 223). Respondent Fire Commission then interviews each of the interested candidates and chooses, by majority vote, the one they feel is best qualified to fill the FCTI position. (Tr. 232, 249, 295).

10. Respondent Fire Commission is made up of a chairman from each of the nine fire battalions in Nassau County, each with a single vote. (Tr. 235). In May each year, three to five chairmen are replaced with successors. (Tr. 228).

11. The commissioners are present at interviews, as well as various other people, including the fire marshal and assistant fire marshals. Typically, the interviews are conducted with approximately eleven to fifteen men present who are eligible to ask questions of the candidates, including the nine voting commissioners. The interviews are done individually and typically last around fifteen minutes. (Tr. 44-45, 277-79). All of the candidates are asked the same general

questions, which typically concern the candidate's firematic experience, previous employment, familiarity with Nassau County locations, and reactions to hypothetical situations. (Tr. 285-86). At the conclusion of all interviews, the commissioners deliberate and select an applicant to fill the FCTI position. The commissioners do not discuss or consider the gender of a candidate during their deliberations. (Tr. 232, 294-95). Once a candidate is chosen to fill an open FCTI position, a six month probationary period begins. At the end of the probationary period, a supervisor determines whether the candidate should continue to serve in a permanent capacity. (Tr. 90, 314).

12. Over the past thirty years, Respondent Fire Commission has interviewed approximately seventy people for the position of FCTI. Of these candidates, approximately seven, or ten percent, have been women. (Tr. 398-99). In 1990, a woman was selected to fill an open FCTI position, however after her selection it was discovered that she did not meet the basic requirements of the job and therefore could not serve. (Tr. 233). Between 2000 and 2004, there were two FCTI civil service lists established: one in April 2000, from the August 1999 examination, and another in March 2003, from the October 2002 exam. Two of the three women who took the August 1999 test passed. Six of the seven women took the October 2002 test passed. During this time period, eight FCTI positions became available and all were filled by male applicants. (A.L.J. Exhibit IX).

13. Complainant took the August 1999 civil service examination for FCTI and received a score of 75. This score placed her in a tie for the eighth position on the NCCSC's rankings list. (Joint Exhibit 8).

14. The first time a position for FCTI became available after the August 1999 examination was in May 2000. Complainant was not "reachable" at this time under the Civil Service Law

based on her score on the exam. To be "reachable," a candidate must be one of the top three scorers on the list created by the NCCSC. (Tr. 344). Seven candidates were sent canvas letters, including one female, Barbara Derisi. (Tr. 223-224). However, Derisi did not wish to be interviewed because she was seven months pregnant at the time. (Tr. 224). The open FCTI positions were filled by three men, Victor Sowinski, Donald Olsen, and Robert McLaughlin. (Joint Exhibit 1). The next open position was filled the following week with another male who had previously interviewed, Peter Pearsall. (Joint Exhibit 2).

15. Complainant became "reachable" as a result of appointments and declinations of candidates ranked higher than her on the NCCSC's list. She was called to interview for an available FCTI position on June 27, 2000 at the Nassau County Fire Marshal's office in Uniondale. (Tr. 41-42, 343-47). On this date, Complainant and two other candidates, Gregg Spaulding and Ronald Kahan, were interviewed. (Joint Exhibit 3). Spaulding was tied for third on the rankings list, with a score of 80. (Joint Exhibit 8). Kahan was tied with Complainant on the NCCSC's rankings list, with a score of 75. (Joint Exhibit 8). After interviewing all three candidates, Respondent Fire Commission selected Spaulding to fill the open FCTI position. (Joint Exhibit 3). Spaulding was well-qualified for the FCTI position; he has worked for the Rockville Centre Police Department since 1980, the Nassau County Police Department since 1988, and the Rockville Centre Fire Department since 1990. (A.L.J. Exhibit VII).

16. On August 14, 2000, Kahan was appointed to an available FCTI position by Respondent Fire Commission. (Joint Exhibit 4). Because this decision was based on a review of the resumes of the three potential applicants, rather than live interviews, Complainant contends that the hiring of Kahan was in violation of civil service policy. (A.L.J. Exhibits I, II). This conclusory allegation is unsupported in the factual record.

17. On March 20, 2001, Complainant and six other candidates were called to interview to fill two available FCTI positions. The candidates, in addition to Complainant, were Brian Combs, Christian Mercadante, James Allen, Gregory Bartow, Ryan Kelly, and John Morris. (Joint Exhibit 5). As a result of these interviews, Allen and Kelly were selected to fill the open positions. (Joint Exhibit 5). Both were males who scored a 70 on the civil service examination and were well-qualified for the FCTI position. (Joint Exhibit 8). Allen has experience with the Melville, North Bellmore, and North Merrick Fire Districts, dating as far back as 1988. He is also a certified emergency medical dispatcher and submitted six positive recommendation letters. (A.L.J. Exhibit VII). Kelly worked on the Crash Fire Rescue team at American Port Services and served for five years as a dispatcher at the Farmingdale Fire Department. Additionally, Kelly has New York certifications in at least six areas, including hazardous materials, CPR, and high angle ropes rescue. (A.L.J. Exhibit VII).

18. Complainant was again called to interview for an open FCTI position on December 6, 2001. (A.L.J. Exhibit II; Joint Exhibit 6). Complainant alleges that Respondents did not select her for this position in retaliation for the filing of her initial complaint with the Division on May 11, 2001. (A.L.J. Exhibit II). This allegation is without merit. The voting chairmen for Respondent Fire Commission were aware of Complainant's initial complaint on or before December 6, 2001. (Tr. 320). Two other candidates, Combs and Bartow, were also interviewed for this position. (Joint Exhibit 6). Complainant's answers during her interview were "pointed" and "sharp." (Tr. 245). Respondent Fire Commission unanimously selected Combs, who received the highest score of all test-takers on the August 1999 exam, to fill the position. (Joint Exhibits 6, 8). The record establishes that Combs was a well-qualified candidate who has been a volunteer firefighter since 1978. He attended the Nassau Fire Academy and is a certified EMT,

an assistant fire inspector, and has trained other firemen in the appropriate procedures in the case of a propane accident. (A.L.J. Exhibit VII).

19. During at least the second and third interviews of Complainant, those in March and December 2001, the commissioners knew of information gathered by Peter Meade concerning Complainant's references. (Tr. 375, 381). After working for Respondent Fire Commission for two years, Meade has worked at the Fire Rescue Communications Center since 1974. (Tr. 372). Since 1988, Meade has been the assistant chief fire marshal for fire and rescue services. (Tr. 373). Meade routinely calls references and previous employers listed on candidates' applications for Respondent Fire Commission. (Tr. 383). In Complainant's case, one of the references Meade spoke with was Vitallo Vacchio, who was the superintendent of the Westbury Fire and Water District while Complainant was employed there. (Tr. 375). While working in Westbury, Complainant had trouble taking direction and preferred working independently, without supervision or oversight. Also, Complainant was resentful when offered criticism and Vacchio strongly urged that Complainant not be selected to fill the open FCTI position. (Tr. 376). Meade reported this recommendation to Respondent Fire Commission during deliberations, and it was considered along with Complainant's test score and responses to interview questions. (Tr. 377).

20. Complainant was not the only candidate to interview multiple times as a result of the August 1999 civil service examination. Spaulding was interviewed twice before being hired; Combs, who received the highest score of all test-takers on the August 1999 exam, was interviewed three times before he was offered a position; and Bartow was interviewed twice and never selected to fill an FCTI position. (Joint Exhibits 1-8). All three of these applicants are male.

21. Complainant was still interested in the FCTI position after failing to receive an appointment after three interviews. She took the civil service examination for the FCTI position again in October 2002, after the results of the August 1999 test expired. (Tr. 59-60).

Complainant received a score of 80 on this examination, which put her in a tie for eleventh place on the rankings list compiled by the NCCSC. (Tr. 144; Joint Exhibit 9). As of the hearing date September 22, 2005, Complainant had not been called to interview for the position because she was not yet "reachable" under the Civil Service Law. (Tr. 61, 63, 145).

22. Cheryl Swanburg was another female candidate who took the October 2002 FCTI test. She received a score of 90 on the test, which was the second highest score, tying her with four other males. (Joint Exhibit 9).

23. As a result of her score on the October 2002 examination, Swanburg was called to interview for an available FCTI position on January 5, 2004. (Joint Exhibit 7). The other candidates interviewed were Frank Passanisi, who received the highest score of all test-takers on the October 2002 examination, as well as Brian Tomeo and Michael Ostipwko, who tied with Swanburg with a score of 90. (Joint Exhibit 7). Swanburg was asked a variety of questions during her individual interview, including questions about a suspended driver's license, her understanding of the hours the position would require, her comfort with driving in inclement weather, what hobbies she participated in, and how she would handle phone calls. (Tr. 170-73). Eleven to fifteen men were present during the interview, and later that evening it was announced that the commissioners selected Passanisi and Tomeo to fill the open FCTI positions. (Tr. 168; Joint Exhibit 7).

24. Swanburg was not chosen for the position and feels that the selection process was biased. She felt that the interviewers did not make eye contact with her and that their questions

were unfair because she was repeatedly asked if she understood the hours and conditions in which she would have to work. She was also unhappy about one interviewer who asked her about the revocation of her license, which she had noted on her application. (Tr. 184-85). However, it is routine practice to ask about license revocations that have been listed on application forms. (Tr. 281). There is no evidence in the record substantiating Swanburg's allegations or connecting her testimony with Complainant's claims.

25. Complainant claims that Kelly, who was selected for the FCTI position in March 2001, did not meet the basic requirements to fill the FCTI position because he was not old enough to have the requisite five years of volunteer service at the time he took the FCTI examination. (Tr. 88). This conclusory allegation is unsupported in the factual record. The Farmingdale Fire Department, where Kelly worked, allows volunteers at the age of 17 and he was appointed to the position of FCTI at the age of 22. It is therefore possible that he satisfied the five year service requirement. (Tr. 267-68). Moreover, Kelly was found to be qualified by the NCCSC and that finding has never been altered. (Tr. 366).

26. Complainant also claimed that the Civil Service Law provided a preference for county employees in hiring decisions. (A.L.J. Exhibits I, II). This allegation is baseless. (Tr. 370, 402). Complainant was actually referring to the seniority provision in section twelve of the collective bargaining agreement of the CSEA, which states that "ability, adaptability, and seniority shall prevail insofar as practicable and consistent with the needs of the department, including: (a) promotions in labor and non-competitive jobs; (b) job assignments; (c) transfers within a department regarding proximity of job; (d) vacancies in agencies with branches." (Tr. 409; Joint Exhibits 10, 11). However, this provision is inapplicable because the FCTI position is a

competitive position in a different department than the one in which Complainant is currently employed. (Tr. 134-35, 370).

OPINION AND DECISION

Complainant alleges that Respondents failed to select her for appointment to the position of FCTI because of her gender and in retaliation for filing her complaint with the Division. The Division finds that Respondents did not discriminate against Complainant in violation of the New York State Human Rights Law ("NYSHRL").

Under the NYSHRL, it is unlawful for an employer "to refuse to hire or employ" an individual on the basis of her gender. N.Y. EXEC. LAW § 296(1)(a). A complainant has the burden of establishing a *prima facie* case by showing that he or she is a member of a protected group, that he or she suffered an adverse employment action and that the respondent's action occurred under circumstances giving rise to an inference of discrimination. Once a *prima facie* case is established, the burden of production shifts to the respondent to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its actions. The ultimate burden rests with the complainant to show that the respondent's proffered explanations are a pretext for unlawful discrimination. *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)).

Complainant has established a *prima facie* case. She is a member of a protected class and the NCCSC qualified her to take the civil service examination for the FCTI position, which she passed. Complainant suffered an adverse action when she was not selected for the FCTI position on three separate occasions. Given Complainant's relative test scores, the number of interviews she attended, and the dearth of females placed by Respondents in the FCTI position,

Complainant has satisfied her burden of demonstrating a *prima facie* case of employment discrimination based on her gender.

Respondents have satisfied their burden of providing a legitimate, non-discriminatory reason for not selecting Complainant for the FCTI position. Complainant was interviewed on several occasions, which indicates that Respondent Fire Commission believed she was a worthy candidate. On two of the three interview dates, the men chosen to fill the position over Complainant scored higher than her on the civil service examination. Also justifying Respondent Fire Commission's decision not to hire Complainant was the negative referral from her previous employer, who described her as difficult to work with and hostile to supervision.

Complainant did not establish that Respondents' legitimate reason was merely a pretext for discrimination. The hiring process for the FCTI position is governed by the Civil Service Law which states in pertinent part that:

Appointment or promotion from an eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest of such eligible list who are willing to accept such appointment or promotion . . . appointment or promotion may be made by the selection of any eligible whose final examination rating is equal to or higher than the final examination rating of the third highest standing eligible willing to accept such appointment or promotion.

N.Y. CIV. SERV. LAW § 61(1) (McKinney 1999).

Complainant alleges an impropriety in one instance where Respondents offered candidate Kahan an available FCTI position on August 14, 2000. Complainant alleges that Kahan was offered this position absent an interview process of at least three candidates, in violation of Civil Service Law § 61(1). However, Complainant has not established that Respondents violated the Civil Service Law. Further, even if a technical violation of the Civil Service Law occurred in the

intent.

Inherent in the selection process is the rejection of other candidates. Respondent Fire Commission must consider three applicants for every open position, thereby leaving two candidates disappointed. When one person is chosen over another, it is inevitable that there will be differences between the candidates regarding sex, religion, race and other factors. *DiLegge v. Gleason*, 131 F. Supp. 2d 520, 526 (S.D.N.Y. 2001). The court in *DiLegge* stated that, “[t]he mere existence of such differences will not support a verdict for plaintiff. A plaintiff must prove that discrimination was the real reason for his failure to obtain promotion, and a jury cannot infer discrimination from thin air. The same is true of retaliation.” *Id.* (citations and internal quotation marks omitted).

In the instant case, the record shows that on one occasion the two men selected over Complainant to fill available FCTI positions, Kelly and Allen, scored lower than Complainant on the civil service examination. However, Complainant has not proven that these men were not qualified for the FCTI position or that she was a superior candidate. In fact, the record shows that both men chosen were well-qualified candidates with several years of service and training.

The Court of Appeals has explicitly recognized that the Civil Service Law is “designed to reflect the policy that factors aside from examination performance could be taken into account in making civil service appointments.” *Cassidy v. Municipal Civil Service Com.*, 37 N.Y.2d 526, 529, 375 N.Y.S.2d 300 (1975). In fact, the *Cassidy* court stated that “it would be impracticable to fully determine the merit and fitness of an employee or appointee by a mere examination.” *Id.* (citations and internal quotation marks omitted).

In the case at bar, Respondent Fire Commission was entitled to use its discretion in deciding that other applicants were better suited for the job than Complainant, based not only on test scores, but also on experience, answers to interview questions, and recommendations.

Respondent Fire Commission had legitimate, credible reasons for choosing other candidates over Complainant. Complainant has not shown that these reasons were merely a pretext for sex-based discrimination.

Complainant also alleges that Respondents retaliated against her on or about December 6, 2001 by selecting Combs over her for an open FCTI position because she filed her initial complaint with the Division on May 11, 2001. The NYSHRL makes it unlawful for "any employer . . . to discharge, expel or otherwise discriminate against any person because he or she has . . . filed a complaint, testified or assisted in any proceeding under this article." N.Y. EXEC. LAW § 296(1)(e). In order to prove that Respondents violated this provision, Complainant must establish a *prima facie* case by showing that (1) she has engaged in protected activity, (2) Respondents were aware that she participated in this activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action. *See Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 313, 786 N.Y.S.3d 382 (2004).

Complainant has established the first three prongs of her *prima facie* case. She filed her initial complaint with the Division on May 11, 2001 and Respondent Fire Commission was aware of this prior to her December 6, 2001 interview. Complainant has also established that she suffered an adverse action when she was not selected for the FCTI position at that time. However, Complainant has not established a causal connection between the protected activity and the adverse action.

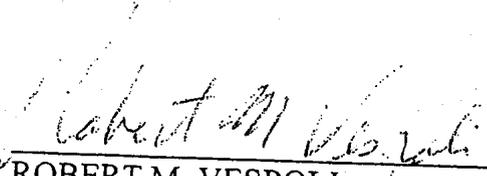
proximity between the protected activity and the adverse action. *See Treglia v. Town of Manlius*, 313 F.3d 713, 720 (2d Cir. 2002). Complainant filed her complaint with the Division on May 11, 2001. On December 6, 2001, almost seven months later, she was not selected for the FCTI position. The temporal relationship between the two actions here, without any additional evidence of causation, is too remote to establish a causal connection. *See Payne v. MTA N.Y. City Transit Auth.*, 349 F. Supp. 2d 619, 629 (E.D.N.Y. 2004) (stating that a three month period is insufficient to establish causation).

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 instant complaint be, and the same hereby is, dismissed.

DATED: April 24, 2007
Hempstead, New York


ROBERT M. VESPOLI
Administrative Law Judge