

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

MICHELE WATKINS,

Complainant,

v.

NEW YORK CITY HEALTH & HOSPITALS  
CORPORATION, BELLEVUE HOSPITAL  
CENTER,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 2309296  
10102607

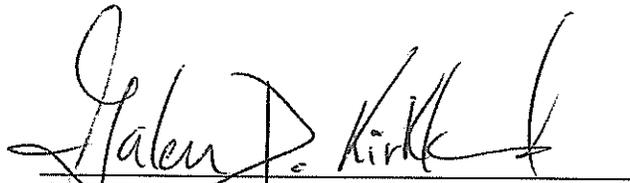
PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on June 10, 2008, by Lilliana Estrella-Castillo, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity 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 30 2008**  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER

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

Case Nos. **2309296  
10102607**

**SUMMARY**

The complaint is hereby dismissed for Complainant's failure to make out a prima facie case of employment discrimination. Complainant alleged that Respondent discriminated against her on the basis of age, race, disability and in retaliation for having filed a prior complaint with the Division.

**PROCEEDINGS IN THE CASE**

Complainant filed verified complaints with the New York State Division of Human Rights ("Division"), on April 13, 2004, and November 16, 2004, 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 complaints 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 Lilliana Estrella-Castillo, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on January 9, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Toni Ann Hollifield. Respondent was represented by the New York City Law Department, by Assistant Corporation Counsel Camille D. Barnett.

The parties submitted timely proposed findings of fact and conclusions of law which were read and considered.

#### **FINDINGS OF FACT**

1. Complainant is African American. (Tr. 16)
2. Complainant’s date of birth is June 6, 1957. (Tr. 16)
3. Complainant suffers from bi-lateral carpal tunnel syndrome. (Tr. 16; Complainant’s Exhibit 1)
4. Complainant has been employed by Respondent since March 6, 1989. (Tr. 19)
5. Complainant filed a prior discrimination complaint with the Division on January 6, 2004. (ALJ Exhibits 1, 4)
6. Complainant agreed that Respondent’s workforce is racially diverse, and range in age from early 20’s to mid 50’s. (Tr. 114, 170)
7. On July 15, 2002, Complainant started to work at Bellevue Hospital in the Pharmacy Department in the title of Principal Administrative Associate (PAA) Level I, as secretary to the Director of Pharmacy. (Tr. 19-20, 143-144)

8. In March 2003, Marcelle Levy-Santoro, who had been employed with Respondent since 1981, became the new Director of Pharmacy, and Complainant's immediate supervisor. (Tr. 20-21, 140-141)
9. Complainant alleged that Levy-Santoro was Hispanic, and as a result favored younger Hispanic employees over Complainant. (ALJ Exhibit 1) Complainant also alleged that Levy-Santoro did not accommodate her disability. (ALJ Exhibit 1)
10. Levy-Santoro is fifty-three years old. (Tr. 140)
11. Levy-Santoro was born in Africa, is Caucasian, and self describes as French, Moroccan Jew. (Tr. 140)
12. Complainant never advised her supervisor that she had a disability or that she needed an accommodation. (Tr. 115, 145)
13. Levy-Santoro changed Complainant's job duties on August 1, 2003, after she found out that Complainant removed a document from her office without her consent or knowledge. (Tr. 23) When Complainant was confronted by Levy-Santoro about how she gained entrance into the office, Complainant's response was "I have my ways." (Tr. 148-149)
14. Complainant acknowledged that she went into Levy-Santoro's office without permission, and that after that incident Levy-Santoro changed the locks to her office. (Tr. 84-85)
15. Levy-Santoro could no longer trust Complainant as her secretary and decided to reassign Complainant. (Tr. 149) Complainant's secretarial duties were transferred to Jennifer Martinez, a Hispanic employee. (Tr. 152; ALJ Exhibit 1)
16. Complainant felt that her duties were changed as "punishment for something." (Tr. 26)
17. Complainant's new duties included supervising the transporters, but Complainant refused to carry a beeper which was a requirement. (Tr. 23-25, 153)

18. Complainant was then assigned to the EPIC program three days per week, where her duties were to sign up elderly patients for insurance, and two days per week she was assigned to order non-pharmaceutical supplies for the Pharmacy department. (Tr. 24-25, 157-158, 178-179)

19. In December 2004, Complainant was again reassigned. She was reassigned to the Research Department and to the Police Hospital Security Department. (Tr. 39)

20. Complainant was reassigned because she was having problems with her co-workers. (Tr. 87-88, 101-102, 103-105, 106, 107-108, 110, 145-147; Respondent's Exhibits 3, 4, 5, 6, 7) Complainant made her co-workers uncomfortable because she would "literally [watch] them and [write] all day long what they were doing." (Tr. 154-155)

21. Complainant alleged that as a result of filing a prior discrimination complaint she was retaliated against when she was denied a "lateral promotion." (Tr. 61, 96, 156-157)

22. On September 3, 2004, Complainant applied for an Assistant Manager position, which Complainant alleged was given to a younger person. (Tr. 64-65) Complainant did not know who was awarded the position. Complainant did not know the age, race or level of experience of the person awarded the position. (Tr. 64-65)

23. Complainant was aware that the salary for the position was about \$10,000 less a year than her current position. (Tr. 62, 164-165) But, Complainant felt that she would have been able to retain her current salary, because she is a "civil servant." (Tr. 62)

24. Complainant alleged that in retaliation for filing prior complaints with the Division she had problems with her time sheets, and as a result was absent without pay which affected her income. (Tr. 66, 70-71, 74, 124-125; Complainant's Exhibits 12, 13)

25. Complainant's testimony is not credible. Complainant had attendance problems; she would call out sick excessively, was out without prior approval, and as a result would be out

without pay. (Tr. 166-167) Furthermore, Complainant acknowledged that she could have requested copies of her time sheets from the Personnel Department, and the evidence produced indicated that she in fact received copies of her time sheets. (Tr. 111, 165-166)

26. Complainant is currently employed by Respondent in the Psychiatry Department, and earns \$44,200.00. (Tr. 74-75)

### OPINION AND DECISION

The Human Rights Law § 296 (1) (a), makes it an unlawful discriminatory practice for an employer to discriminate against any person “because of the age, race . . . disability . . . in terms, conditions or privileges of employment.” Complainant must show that she was a member of a protected class, and suffered an adverse employment action under circumstances that raised an inference of 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).

If Complainant establishes a prima facie case of discrimination, then Respondent must produce evidence showing that its action was non-discriminatory and for a legitimate business reason. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993). Respondent need not conclusively establish the validity of its proffered reason; rather, it merely must show that such reason, “if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the [adverse] employment action.” *St. Mary's Honor Ctr.*, 509 U.S. at 507.

Once Respondent has articulated a legitimate non-discriminatory reason for the adverse employment decision, the burden shifts back to the Complainant to put forth “adequate evidence to support a rational finding that the legitimate non-discriminatory reasons proffered by the employer were false, and that more likely than not the employee’s [protected class] was the

reason for the [adverse decision].” *Holt v. KMI-Continental, Inc.*, 95 F.3d 123, 129 (2d Cir. 1996), *cert. denied*, 520 U.S. 1228 (1997).

Complainant failed to make out a prima facie case of employment discrimination based on disability. Although, Complainant suffers from bi-lateral carpal tunnel syndrome, which is a disability under the Human Rights Law, Complainant never informed her supervisor of her disability and failed to ask for an accommodation for her disability.

Complainant failed to make out a prima facie case of employment discrimination based on age, and race. Complainant is a member of two protected groups, and her terms and conditions of employment were altered under circumstances that gave rise to an inference of discrimination.

Complainant alleged that she was transferred and her duties changed because the Pharmacy Director, who was allegedly Hispanic favored Hispanic employees. However, Complainant was incorrect, and the Pharmacy Director, Levy-Santoro, is not Hispanic, but actually African. And when Complainant’s duties were changed they were changed because Complainant violated the trust that is inherent in a secretary; she broke into her supervisor’s office and retrieved a document without permission. Complainant’s secretarial duties were then transferred to another employee who is Hispanic. Complainant’s salary remained the same and she was performing duties within her title. Therefore, Complainant did not suffer an adverse employment action.

But, even assuming that Complainant made a prima facie case of discrimination, Respondent showed that it had a legitimate non-discriminatory reason for reassigning and then transferring Complainant within the Department. Complainant removed a document from her supervisor’s office without permission. Complainant also did not get along with her co-workers,

and was constantly watching them and writing notes which made her co-workers uncomfortable. Finally, Complainant failed to show that the other employees were favored because they were Hispanic. As stated above, Complainant's supervisor was not Hispanic, as alleged by Complainant, and other than make bold conclusions, Complainant did not rebut Respondent's defense for its action to transfer her and reassign her duties. The law is clear that conclusory allegations are not enough for Complainant to meet this burden. *See, Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3<sup>rd</sup> Dept., 1999).

Complainant alleged she applied for a "lateral promotion" which was instead given to a less experienced and younger Hispanic employee. However, Complainant did not know the identity of the person that was awarded the position; she did not know their age, gender or nationality. Furthermore, and more importantly, it was clear that the position was not a promotion at all, and would pay about \$10,000 less than Complainant was earning. Complainant was aware that the salary was less, but was under the mistaken belief that she would be able to retain her salary in a lower title, because she is a "civil servant." Complainant was offered the position, but when she was told the salary and that she would not retain her own salary, she turned down the position.

The 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 or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article." To make out a prima facie case of retaliatory discrimination, Complainant must show that (1) she engaged in protected activity; (2) Respondent knew that Complainant engaged in protected activity; (3) Complainant suffered an adverse action; and (4) there was a causal connection

between the protected activity and the adverse action. *See, Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3rd Dept. 1999), *citing, Dortz v. City of New York*, 904 F.Supp. 127, 156 (1995).

Complainant failed to meet her burden. She failed to show that she suffered an adverse employment action as a result of filing a complaint with the Division. Complainant alleged that as a result of the prior filing Respondent retaliated against her by withholding copies of her time sheets, which resulted in Complainant not being aware of the actual accruals, which then resulted in Complainant taking time off without pay, which adversely affected her income. Respondent credibly testified that Complainant was given an opportunity to review her time sheets, and that she could acquire copies from the Human Resources Department, but that in any event, she was at one point supplied with copies. Complainant also did not dispute that she had an attendance problem and that is why she was often out without leave. I do not see a connection between not getting copies of time sheets and going into debt, therefore, no inference of a causal connection can be made.

**ORDER**

Based on the foregoing Findings of Fact, Decision and Opinion, and pursuant to the provisions of the Human Rights Law, it is

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

DATED: June 10, 2008  
Bronx, New York



Lilliana Estrella-Castillo  
Administrative Law Judge