

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

TONYA S. WILLIAMS,

Complainant,

v.

TBI SERVICES LLC,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10113841

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 February 3, 2009, by Thomas J. Marlow, 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.

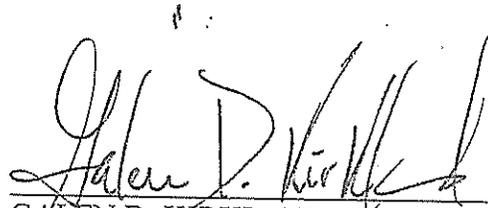
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **MAR 25 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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DIVISION OF HUMAN RIGHTS

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RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER

Case No. 10113841

SUMMARY

Complainant alleged that Respondent discriminated against her because of her race and color. Because the evidence does not support the allegation, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On September 15, 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 Thomas J. Marlow, an Administrative Law Judge ("ALJ") of the Division. A public hearing was held on December 17, 2008.

Complainant appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq. Respondent did not appear at the hearing.

Pursuant to 9 N.Y.C.R.R. § 465.12(d)(2), a default was entered and the hearing proceeded on the evidence in support of the complaint.

FINDINGS OF FACT

1. On September 5, 2006, Complainant, who is Black, interviewed with Carol Stuart ("Stuart"), Respondent's Quality Control Manager, for a position as a Home and Community Support Specialist. (ALJ's Exhibit 1) Complainant had been unemployed for over four years prior to applying for employment with Respondent. (Tr. 37)

2. During the interview, Complainant provided Stuart with a "current working resume." Stuart told Complainant that she would meet with a client the next day and if the client liked Complainant and Complainant's background check revealed no problems then Complainant would be given a position. (Tr. 17-19, 32) Stuart "thought the interview went well," expected to meet with Complainant the next day, and anticipated that Complainant would soon begin working for Respondent. (ALJ's Exhibits 12, 16) Diane Weeks-Fernandez, Respondent's President, expected Complainant to begin her on-the-job training on September 6, 2006. (ALJ's Exhibit 12) Complainant never indicated to Stuart during the interview that she had any concerns about working for Respondent. (Tr. 20-22)

3. In the evening of September 5, Complainant called Respondent and left a message stating that she did not want to "... work for a company that discriminates against African Americans." (Tr. 31-32)

4. On September 6, 2006, Complainant went to the New York State Department of Labor and filed a complaint ("DOL complaint") claiming that Respondent had discriminated against her. In her DOL complaint, Complainant misrepresented that Stuart brought Complainant in for an interview knowing that Respondent had no job available. Complainant further claimed that, during the interview, Stuart told Complainant that Respondent did not like to hire Blacks because they did not like to work and were abusive to clients. (ALJ's Exhibits 1, 15; Tr. 18-19)

5. In a letter to DOL dated September 6, 2006, Stuart expressed shock and disbelief that Complainant would make such allegations since the interview, in her opinion, went well. (ALJ's Exhibit 16)

6. Complainant concedes that, in fact, Respondent had a job available, conveyed that fact to her, and expected to hire Complainant if the client liked Complainant and Complainant's background check revealed no problems. (Tr. 32)

7. On September 6, 2006, Complainant sent a letter to Respondent via facsimile, which, at times, was incomprehensible. In said letter, Complainant revoked her consent for any review of her "private protected information," which included her "current working resume," and demanded that her "private protected information" be destroyed. (ALJ's Exhibit 15)

8. Complainant's testimony was, at times, evasive and contradictory. I do not find Complainant's testimony credible. (Tr. 17-30, 34-37)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer to refuse to hire an individual because of that individual's race or color or to discriminate against an

individual in the terms, conditions, or privileges of employment because of that individual's race or color. *See* Human Rights Law § 296.1(a).

Complainant raised an issue of unlawful discrimination, alleging that Respondent's Quality Control Manager made racially offensive comments during the interview process. Complainant's testimony, however, was, at times, evasive and contradictory. Complainant's complaint filed with the DOL begins with a blatant misrepresentation of what happened during her interview with Respondent. In her DOL complaint, Complainant claimed that Respondent had no position available, when, in fact, Respondent had a position available, conveyed that fact to Complainant, and expected that Complainant would meet with a client the next day. Complainant knew that if the client liked Complainant and Complainant's background check revealed no problems, Respondent intended to give Complainant a position. In Complainant's letter to Respondent, which at times is incomprehensible, Complainant made her claim that no position was available, and then emphatically revoked her consent for any review of her "private protected information," which included her "current working resume," and demanded that Respondent destroy her "private protected information." After she made this misrepresentation, revocation, and demand, Complainant then alleged that Stuart made racially offensive comments during the interview. After considering Complainant's demeanor during the hearing and evaluating her testimony and all of the evidence presented, I do not credit Complainant's testimony. There was no credible evidence presented to corroborate that Complainant experienced an adverse employment action under circumstances giving rise to an inference of unlawful discrimination.

Complainant has the burden to establish by a preponderance of the evidence that unlawful discrimination occurred. *See Stephenson v. Hotel Employees and Restaurant*

Employees Union Local 100 of the AFL-CIO, 6 N.Y.3d 265, 811 N.Y.S.2d 633 (2006)

Complainant has failed to meet the burden of showing that Respondent's conduct constituted unlawful discrimination in violation of the Human Rights Law. Therefore, the complaint must be 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: February 3, 2009
Bronx, New York


Thomas J. Marlow
Administrative Law Judge