

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**PATRICIA A. WILSON-SHELL,**

Complainant,

v.

**CARMEN STENNETT,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10113269

**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 November 7, 2007, 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 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 30th day of November, 2007.

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KUMIKI GIBSON  
COMMISSIONER

**NEW YORK STATE  
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**PATRICIA A. WILSON-SHELL,**  
Complainant,

v.

**CARMEN STENNETT,**  
Respondent.

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

Case No. **10113269**

**SUMMARY**

Respondent unlawfully discriminated against Complainant because of her sexual orientation in violation of the Human Rights Law. Complainant is therefore entitled to an award for mental anguish and punitive damages against Respondent totaling \$110,000.00. Respondent is also imposed a civil fine and penalty in the amount of \$25,000.00, which is not intended as compensation for Complainant, but as a deterrent to Respondent for her willful, wanton and malicious conduct.

**PROCEEDINGS IN THE CASE**

On August 9, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to housing in violation of Executive 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.

On July 2, 2007, a Notice of Hearing was served on all the parties informing them that a preliminary conference was scheduled for Friday, July 20, 2007, at 10:00 a.m. (ALJ Exhibit III) The Notice of Hearing further advised that the public hearing was scheduled to commence on Monday, August 13, 2007, at 10:00 a.m. (ALJ Exhibit III) The affidavit of service stated that the Notice of Hearing was mailed to Respondent at 46 East 57<sup>th</sup> Street, 2<sup>nd</sup> Floor, Brooklyn, New York 11203. (ALJ Exhibit III) The Notice of Hearing was not returned to the Division as undeliverable and is, therefore, presumed received.

After due notice, the case came on for hearing before Lilliana Estrella-Castillo, an Administrative Law Judge (“ALJ”) of the Division. A preliminary conference was held as scheduled on July 20, 2007. Respondent did not appear. The ALJ placed a telephone call to Respondent’s telephone number at (718) 221-2467. Respondent answered the telephone, identified herself and then expressed that she had no intention of participating in this proceeding. Respondent refused to confirm her mailing address and hung up. (Tr. 4)

On July 20, 2007, the ALJ advised Respondent that she was being afforded an opportunity to cure her default by August 1, 2007. (ALJ Exhibit IV) Respondent failed to appear, and has failed to file a verified answer. Respondent is therefore in default.

A public hearing was held on August 13, 2007. Complainant appeared at the hearing. The Division was represented by Toni Ann Hollifield. Respondent once again failed to appear, and the hearing proceeded on the evidence in support of the complaint, pursuant to the Division’s Rules of Practice, (9 N.Y.C.R.R.) § 465.11 (e).

The Division filed timely proposed findings of fact and conclusions of law.

## **FINDINGS OF FACT**

1. Complainant is an African American woman, and a lesbian. (ALJ Exhibit I)
2. In 2001, Complainant moved into the property known as 46 East 57<sup>th</sup> Street, Brooklyn, New York 11202, with her daughter, son and Karen Stinson (Stinson), Complainant's girlfriend. (Tr. 17, 20)
3. The property is listed by the New York City Department of Finance, Office of the City Register as a three family dwelling. (Complainant's Exhibit 2)
4. The landlord and owner of the property is Carmen Stennett (Respondent). (Tr. 17; Complainant's Exhibits 1, 2).
5. During the relevant time period, and at the time of the hearing, Respondent lived in the apartment above Complainant. (Tr. 96)
6. In 2004, Complainant and Respondent entered into a three year lease agreement, due to expire on June 1, 2007. (Tr. 18-19; Complainant's Exhibit 6)
7. Complainant's relationship with Respondent was described as "fine" (Tr. 20; ALJ Exhibit I).
8. Respondent watched Complainant's children when Complainant had to work, and their families often had dinner together (Tr. 100; ALJ Exhibit I).
9. In August 2005, Complainant and Stinson ended their relationship, and Stinson moved out of the apartment. (Tr. 21)
10. Shortly thereafter, Antoinetta Etienne (Etienne) became Complainant's new roommate. (Tr. 21, 105)
11. When Etienne was introduced to Respondent, Etienne informed Respondent that she was Complainant's roommate, and not Complainant's lover. (Tr. 21)

12. According to Complainant, it was during this conversation with Etienne, that Respondent found out that Complainant is a lesbian. (Tr. 21)
13. Respondent's relationship with Complainant changed "dramatically." (Tr. 21)
14. Respondent started to look at Complainant "strangely" and stayed away from Complainant, and started being "nasty" towards Complainant. (Tr. 22)
15. Respondent's mistreatment of Complainant intensified after December 2005, with Respondent calling Complainant derogatory and vulgar names on a daily basis. (Tr. 23)
16. Respondent called Complainant a "lesbian bitch," "blood clot," and "cunt licker." (Tr. 23, 100, 109)
17. Respondent yelled at Complainant "you are going to go to hell." (Tr. 23, 100)
18. Respondent also threatened Complainant with statements such as, "in my country we would chop your head off." (Tr. 23)
19. Respondent yelled these threatening and derogatory words at Complainant in front of Complainant's young children. (Tr. 24, 100-101, 110)
20. Complainant's daughter became so frightened of Respondent that she started to sleep with scissors under her pillow. (Tr. 24, 100-101, 103)
21. Complainant's son was so uncomfortable with Respondent's conduct that he did not want to live with Complainant. (Tr. 24)
22. As a result, Complainant moved her children out of the apartment. Complainant became so concerned for her safety that she would not sleep in the apartment, opting instead to stay with a friend. (Tr. 24-5, 51, 101)
23. In February 2006, Respondent started to refuse Complainant's rent payments. (Tr. 26)

24. On February 15, 2006, Complainant called the police to witness the fact that she was attempting to pay her rent and that Respondent would not accept it. (Tr. 26-27; Complainant's Exhibit 7)

25. On February 25, 2006, as Complainant was entering the building, Respondent threw lye and urine out her window at Complainant (Tr. 28-9, 31, 108-09). Complainant ran inside the building and found Respondent coming down the stairs with a butcher knife yelling "I want you out of my place, you fucking lesbian." and "I will chop your fucking head off." (Tr. 30, 109).

26. As a result of this incident, the police arrested and charged Respondent with menacing, harassment, and possession of a weapon. (Tr. 30; Complainant's Exhibit 8)

27. Respondent also refused to do any repairs in Complainant's apartment, and would respond to Complainant's complaints by stating, "fucking lesbian you probably broke it" (Tr. 38-41, 43-7)

28. On February 13, 2006, Complainant reported the state of disrepair of her apartment to the City of New York, Department of Housing Preservation and Development, (HPD) and an inspection was conducted which resulted in violations being issued. (Tr. 49; Complainant's Exhibits 9,10, 11, and 12)

29. When Respondent refused to make repairs in the apartment, the New York City Housing Authority, which provided a rent subsidy to Complainant, stopped making rental payments to Respondent (Tr. 49; Complainant's Exhibit 12)

30. On May 2, 2006, Respondent initiated a court action seeking Complainant's eviction from the apartment for non-payment of rent. (Tr. 49; Complainant's Exhibits 3 and 4)

31. The court action was resolved by Stipulation of Settlement on May 17, 2006, wherein Respondent was awarded possession of the apartment and Complainant had to vacate the apartment by August 31, 2006. (Tr. 49; Complainant's Exhibit 5).

32. Complainant had a hard time finding an apartment, and when she finally found an apartment, in November 2006, it was much smaller and paid a higher rent than the apartment Complainant rented from Respondent. (Tr. 50-1, 58-9)

33. As a result of Respondent's unlawful actions, Complainant's family is still not together. Complainant's son decided he does not want to live with Complainant. (Tr. 24)

34. Complainant had to give away her dog which she had since it was a puppy and was considered part of the family, because pets were not allowed in the new apartment. (Tr. 57, 94)

35. As a result of the harassment, Complainant became a "nervous wreck" and would often "burst out in tears at work." (Tr. 52) There were times when Complainant became so distraught that she had to leave work. (Tr. 52)

36. Complainant felt like "everything started to close in on me, trying to find an apartment, trying to get my stuff out of [Respondent's] house, worrying about my kids, worrying about everything." (Tr. 53).

37. Complainant felt depressed, angry and sad. Those feelings also manifested in physical pain (stomach ulcers), causing Complainant to seek medical care and consider psychotherapy. (Tr. 59; Complainant's Exhibit 15)

38. During the hearing, Complainant was often tearful when recalling the events that led to the filing of the complaint with the Division, as well as the times the stress made her have suicidal thoughts. (Tr. 59-60)

39. Complainant's young daughter testified about the vulgar language that Respondent directed towards Complainant in her presence, and how it made her feel, "sad that there are people out there like that." (Tr. 102).

40. Juanita Grant testified on behalf of Complainant. Grant heard the derogatory words used by Respondent to address Complainant, and witnessed the incidents involving the police (Tr. 103-108).

41. Complainant testified to monetary damages that she suffered as a result of Respondent's unlawful conduct. Complainant also provided receipts for items that she pawned (Complainant's Exhibits 16, 17, 18, 20 and 21).

42. Complainant testified that she paid a higher rent in the new apartment. However, Complainant's rent is subsidized by the New York City Housing Authority, and she did not provide any evidence indicating what her share of the rent was when she was renting from Respondent, or any evidence indicating what her share of the rent is now. Therefore, damages for the difference in rent will not be awarded.

43. Complainant also testified regarding moving expenses, but the evidence produced indicated that Complainant was reimbursed for those expenses. (Complainant Exhibit 22)

## **OPINION AND DECISION**

The Division's Rules of Practice provide that, "if a respondent fails to appear at the duly noted time and place of the hearing and the hearing is not adjourned . . . the hearing shall proceed on the evidence in support of the complaint." 9 N.Y.C.R.R. § 465 (b) (3). Although Respondent was duly notified of the time and place of the hearing, and was afforded an opportunity to cure her default, Respondent failed to appear. Therefore, the hearing proceeded with the evidence in support of the complaint.

The Human Rights Law prohibits owners of housing accommodations from unlawfully discriminating against any person "because of . . . sexual orientation . . . in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith." Human Rights Law § 296.5 (a) (2)

In this case, Complainant has demonstrated that Respondent unlawfully discriminated against her because of her sexual orientation in the terms and conditions of the rental when Respondent subjected Complainant to a daily outpouring of vulgar and derogatory name calling, yelling and physical threats to her safety and that of her children. Respondent also unlawfully discriminated against Complainant when Respondent refused to accept Complainant's rent or make repairs to the apartment, thereby denying Complainant services because of her sexual orientation. Respondent's actions towards Complainant created a hostile and abusive environment, which interfered with Complainant's ability to use and enjoy her apartment. Respondent's offensive conduct began immediately after Respondent learned of Complainant's sexual orientation.

Complainant and her witnesses credibly described the offensive conduct engaged in by Respondent. The credible testimony outlined a course of action by Respondent that was sufficiently severe and pervasive to sustain a claim of harassment because of Complainant's sexual orientation. The evidence produced established daily incidents of verbal harassment and threats directed at Complainant because of her sexual orientation.

Respondent subjected Complainant to a daily regimen of vulgar and derogatory insults directed at Complainant because of her sexual orientation. Complainant had to endure these living conditions from the end of 2005 until she vacated the apartment at the end of August 2006.

Respondent's actions are extremely disturbing and show a lack of decency. Complainant did nothing wrong, she continued to be the same person that had lived in the apartment for over six years. The only thing that changed was that Respondent found out that Complainant is a lesbian. Complainant continued to be the same person with whom Respondent had socialized; she was the same mother that cared for her children. Yet, Respondent retaliated, not only against Complainant, but also against Complainant's children whom she had watched and with whom she had dinner for over six years, all because of Complainant's sexual orientation. This is illegal and a direct violation of the Human Rights Law.

It offends and shocks the conscience to hear that a human being is threatened with having her head "chopped" off, and actually had urine and lye thrown at her because of her sexual orientation. It is equally offensive to hear that a human being is not entitled to repairs or use and enjoyment of her apartment because of her sexual orientation.

The Human Rights Law empowers the Commissioner to award compensatory damages to a person aggrieved by such practice, as, in the judgment of the Division, will effectuate the purposes of the law. Human Rights Law § 297.4 (c). Complainant is entitled to compensatory damages for emotional distress and humiliation. For almost one year Complainant was subjected to a litany of vulgar and offensive words directed at her in front of her children. Respondent called Complainant a "lesbian bitch," "blood clot," and "cunt licker." Respondent would also yell at Complainant that she was "going to go to hell." Respondent threatened to chop off Complainant's head. Respondent did all of this because of Complainant's sexual orientation.

Respondent also refused to make any repairs in Complainant's apartment. As a result, several violations were issued against Respondent, and ultimately Complainant had to move out of the apartment.

Respondent's threats against Complainant not only affected Complainant but her children as well. Complainant had to move her children out of the apartment, and Complainant so feared for her life and safety that she stopped sleeping in the apartment and stayed with a friend.

Respondent's abuse of Complainant physically manifested itself by causing Complainant stomach ulcers. Complainant was made to feel sad, depressed and angry. The effects of Respondent's conduct continue to have an effect on Complainant; Complainant's family is still not together, and Complainant tearfully recalled the times she felt suicidal. Given the severity of Respondent's conduct, including the threats to Complainant's physical safety, the degree of Complainant's suffering and the length of time she endured the suffering, an award of \$100,000.00 for mental anguish and humiliation is appropriate, and reasonably related to Respondent's discriminatory conduct. *Matter of 119-121 East 97<sup>th</sup> Street Corp. et al. v. New York City Commission on Human Rights, et al.*, 220 A.D.2d 79, 642 N.Y.S.2d 638 (1<sup>st</sup> Dept. 1996).

Complainant is also entitled to an award of \$10,000.00 for punitive damages, because of Respondent's shocking discriminatory conduct. Respondent engaged in outrageous unlawful discriminatory conduct after she found out about Complainant's sexual orientation. Respondent threw urine and lye on Complainant, not because Complainant did anything wrong, but because Complainant is a lesbian. Respondent's conduct was shocking and abhorrent, and must be punished. Human Rights Law, § 297.4 (c) (iv); *see also, Van Cleef Realty, Inc. v. New York State Division of Human Rights*, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2<sup>nd</sup> Dept. 1995). In

addition, Respondent is assessed a civil fine and penalty in the amount of \$25,000.00, as a deterrent for Respondent's unlawful discriminatory actions which have been found to be willful, wanton and malicious. Human Rights Law, § 297.4 (c) (vi); see also, *Matter of 119-121 East 97<sup>th</sup> Street Corp. et al., Supra.*

### **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 Respondent cease and desist from discrimination on the basis of sexual orientation in the rental and provision of services in housing accommodations; and it is further

ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty (60) days from the signing of the Final Order by the Commissioner, Respondent shall pay to Complainant the sum of \$100,000.00, without any deductions or withholdings whatsoever, as compensatory damages for the mental anguish she suffered as a result of Respondent's unlawful discrimination against her. Respondent shall also pay interest on this amount from the date of this Order until the date of payment;
  
2. Within sixty (60) days from the signing of the Final Order by the Commissioner, Respondent shall pay to Complainant the sum of \$10,000.00, without any deductions or withholdings whatsoever, as punitive damages.

3. The aforesaid payments shall be made by the Respondent in the form of certified checks made payable to the order of Patricia A. Wilson-Shell, and delivered by certified mail, return receipt requested, to the office of General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458;
4. Within sixty (60) days from the signing of the Final Order by the Commissioner, Respondent shall pay to the Division a civil fine and penalty in the amount of \$25,000.00, as a result of Respondent's actions which were found to be willful, wanton, and malicious.
5. The aforesaid payment shall be made by the Respondent in the form of a certified check made payable to the order of the New York State Office of the State Comptroller, and delivered by certified mail, return receipt requested, to 110 State Street, Albany, New York 12244. A copy of the certified check shall be delivered by certified mail, return receipt requested, to Caroline Downey, General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458;

6. Respondent shall make available to the representatives of the Division whatever documents and information as may be necessary for the Division to ascertain whether there has been compliance with the remedial provisions of this Order.

DATED: November 7, 2007  
Bronx, New York

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Lilliana Estrella-Castillo  
Administrative Law Judge