



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**SHEILA B. COOLEY,**

Complainant,

v.

**TOWN OF BABYLON,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10137129

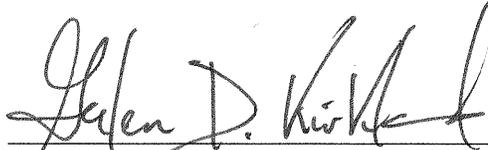
**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on February 1, 2012, by Thomas J. Marlow, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity 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: 5/23/12  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

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**SHEILA B. COOLEY,**

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v.

**TOWN OF BABYLON,**

Respondent.

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

Case No. **10137129**

**SUMMARY**

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

**PROCEEDINGS IN THE CASE**

On October 13, 2009, 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 session was held on October 5, 2011.

Complainant and Respondent appeared at the hearing. The Division was represented by Aaron Woskoff, Esq. Respondent was represented by Allen E. Huggins, Senior Assistant Town Attorney, Town of Babylon.

Permission to file proposed findings of fact and conclusions of law was granted. Respondent so filed after the conclusion of the public hearing.

#### **FINDINGS OF FACT**

1. Respondent provides certain transportation services for its senior citizens. (Tr. 16-18, 25-27, 164-65, 207-08)

2. In June of 2008, Marilyn Rosen (“Rosen”), a Senior Citizen Aide II for Respondent, interviewed Complainant for a position as a part-time bus driver for senior citizens, working mainly for its Wyandanch senior citizen center (“Wyandanch center”). Thereafter, Rosen recommended to Madeline Bayton (“Bayton”), Respondent’s then Deputy Commissioner of Human Services, that Complainant be hired as a part-time bus driver. Bayton offered the position to Complainant and Complainant accepted the position. (Tr. 16-19, 25-27, 47-48, 93-94, 205-06, 208-09, 213-14, 238, 251-52)

3. In November of 2008, Complainant attended a dance for the senior citizens at a private establishment during hours when she was not working. Complainant drank at the dance, appeared intoxicated, was driven home in one of Respondent’s buses with some senior citizens,

vomited on the bus, and has no recollection of the bus ride. (ALJ's Exhibit 6; Tr. 33-51, 55-60, 169-80, 184-85, 190-91, 195, 234-39, 251-52)

4. Senior citizens expressed their displeasure to Respondent concerning Complainant's behavior on the bus after the dance. Bayton and Rosen, who was then Complainant's supervisor, spoke with Complainant regarding her behavior at the dance and on the bus ("the senior citizen dance incident"). Bayton warned Complainant that such behavior in front of senior citizens would not be tolerated. (ALJ's Exhibit 6; Tr. 25-26, 36, 42-43, 50-51, 54, 68, 95-96, 160, 175-80, 184-86, 190-96, 238-39, 251-52)

5. In August of 2009, Complainant was assigned to drive canvassers ("canvassing assignment") for one of Respondent's special projects. When Complainant was a half of an hour late to pick up the canvassers, Mannix Gordon ("Gordon"), who was in charge of the project, called and spoke to Complainant. After Gordon spoke with Complainant, he considered her behavior to be insubordination and he reported Complainant's behavior to Bayton. Because of Gordon's complaint ("the Gordon incident"), Bayton relieved Complainant of the canvassing assignment. (Tr. 107-10, 200-01, 210-13)

6. In September of 2009, Robert Brinkley ("Brinkley"), a resident of Respondent who knew Complainant, went to the Wyandanch center and boisterously complained in the presence of senior citizens that Complainant used drugs and that Complainant stole a power cord for his cell phone or telephone ("the Brinkley incident"). Bayton spoke with Brinkley and also learned that Brinkley made the same complaint about Complainant to a councilwoman for Respondent. When Bayton spoke with Complainant about the allegations of Brinkley, Complainant denied the

allegations and informed Bayton that Brinkley was not reliable. (Tr. 78-80, 84-88, 91, 140, 201-02, 213-15, 222-34, 251-52)

7. Bayton learned that the senior citizens who heard Brinkley's accusations were upset by them and were dismayed that Complainant was still employed by Respondent. (Tr. 251-52)

8. On September 22, 2009, Bayton terminated the employment of Complainant in writing, citing, among other reasons, the senior citizen dance incident, the Gordon incident, the Brinkley incident, and the lingering concerns of the senior citizens caused by the senior citizen dance incident and the Brinkley incident. (ALJ's Exhibit 8; Tr. 245-57)

9. On October 13, 2009, Complainant filed the instant complaint (Case No. 10137129) with the Division, alleging that Respondent unlawfully discriminated against her because of her sex, race, and color. Complainant alleged that the unlawful discrimination included the following: being treated differently than other employees, being yelled at by a supervisor, and having her employment terminated based on an accusation from an unreliable source. (ALJ's Exhibit 1)

### **OPINION AND DECISION**

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an individual in the terms, conditions, or privileges of employment because of that individual's sex, race, or color. *See* Human Rights Law § 296.1(a).

Complainant raised issues of unlawful discrimination, alleging that Respondent discriminated against her because of her sex, race, and color. Complainant alleges that, because of her sex, race, or color, Respondent treated her differently than other employees, that her

supervisor yelled at her, and that her employment was terminated based on an accusation from an unreliable source.

When a complainant raises issues of unlawful discrimination, she has the burden to establish by a preponderance of the evidence that unlawful discrimination occurred. *See Ferrante v. American Lung Assn.*, 90 N.Y.2d 623, 630, 665 N.Y.S.2d 25, 29 (1997). In all cases involving allegations of unlawful discrimination, conclusory allegations, unsupported by credible evidence, are insufficient to establish unlawful discrimination. *See Gagliardi v. Trapp*, 221 A.D.2d 315, 633 N.Y.S.2d 387 (2d Dept. 1995).

After considering all of the evidence presented and evaluating the credibility and demeanor of the witnesses, I find that the evidence does not support Complainant's allegations. I credit the testimony of Bayton and Rosen and find that no actions attributed to Respondent were motivated by or determined by discriminatory animus. The lingering concerns of the senior citizens caused by the senior citizen dance incident and the Brinkley incident clearly led Bayton to conclude that the termination of Complainant's employment was warranted. It is also important to note that Bayton is the person who hired Complainant. *See Youth Action Homes, Inc. v. State Div. of Human Rights*, 231 A.D.2d 7, 659 N.Y.S.2d 447 (1<sup>st</sup> Dept. 1997).

Complainant has failed to meet the burden of showing that any conduct attributed to her employer 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 1, 2012  
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas J. Marlow". The signature is fluid and cursive, with a large initial "T" and "M".

Thomas J. Marlow  
Administrative Law Judge