



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

LUCEMI M. VASQUEZ,

Complainant,

v.

CAMBA, INC., CLIFFORD ROBINSON AS AIDER
AND ABETTOR,

Respondents.

NOTICE AND
FINAL ORDER

Case No. 10133253

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 28, 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: APR 9 2012
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

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

Case No. **10133253**

SUMMARY

Complainant alleged that Respondent discriminated against her because of her sex and because she opposed unlawful discrimination. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On April 27, 2009, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents 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 Respondents 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 26, 2011.

Complainant and Respondents appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondents were represented by Jeremi L. Chylinski, Esq., of Seyfarth Shaw LLP.

Permission to file proposed findings of fact and conclusions of law was granted.

FINDINGS OF FACT

1. On January 22, 2008, Complainant began her employment with Respondent, CAMBA, Inc. (“CAMBA”), as a case manager technician (“CMT”). As a CMT, Complainant’s responsibilities included aiding chronically homeless adults to implement service plans. (ALJ’s Exhibit 1; Respondent’s Exhibits 1, 2; Tr. 19-22, 28)

2. In November of 2008, Respondent, Clifford Robinson (“Robinson”), began his employment with CAMBA as a CMT. (ALJ’s Exhibit 1; Tr. 158-59, 210-11)

3. In November of 2008, Maria Santiago (“Santiago”) was the supervisor of Complainant and Robinson. (ALJ’s Exhibit 1; Tr. 22, 148-51, 154-60)

4. Santiago observed that Complainant tended to be “flirtatious” with Robinson. Santiago testified that “being a woman, I can tell you when a woman is being flirtatious towards a man.”

When Santiago asked Complainant if she liked Robinson, Complainant said she did and that she “found him attractive.” (Tr. 157-58, 160-62)

5. In December of 2008, Complainant went out to dinner with Robinson. (ALJ’s Exhibit 1; Tr. 21-22, 25, 76, 81, 107, 165-66)

6. Some time after Complainant went out to dinner with Robinson, she complained to Santiago that Robinson was acting like a supervisor at work. Complainant complained that Robinson said things like, “you don’t do this like this, this is not good, you should do it this way.” Santiago spoke with Robinson about the way he critiqued Complainant’s work. (ALJ’s Exhibit 1; Tr. 21-22, 164)

7. In January of 2009, Complainant became engaged to be married and showed other employees of CAMBA, including Robinson, her engagement ring. Robinson made a comment, in what he meant to be a joking fashion, indicating the ring came from Kmart. (ALJ’s Exhibit 1; Tr. 26, 191-92, 211-26)

8. In March of 2009 (“March meeting”), Complainant complained (“the sexual harassment complaint”) first to Shirley Gayle, a former supervisor, and then to Santiago and Angeles Delgado (“Delgado”), the Program Director, that Robinson was sexually harassing her. Santiago and Delgado met with Complainant to discuss her complaint. Santiago asked Complainant for details of what Robinson had done and Complainant provided no details. Complainant said she did not like the way Robinson looked at her. Santiago spoke with Robinson who was shocked by the allegations. Robinson denied any sexual harassment. Robinson agreed to stay away from Complainant. When Complainant made the sexual harassment complaint, her work location was sitting behind Santiago on one side of the room. Robinson’s work location was on the other side of the room which was divided by a partition. (ALJ’s Exhibit 1; Tr. 22, 81-82, 84, 86, 168-77)

9. After the March meeting, Complainant had no further complaints about the behavior of Robinson. In fact, just weeks after the March meeting, Complainant asked for, and was given, permission to move her work location to the other side of the room right behind Robinson and away from Santiago. Complainant wanted to be away from Santiago and had no concern being near Robinson. (Tr. 78, 84, 86-90)

10. In the morning of April 16, 2009, Complainant escorted a client, Eddie Corretjer (“Corretjer”), to the Queens Job Center in Long Island City. When they completed what had to be done, Complainant and Corretjer took the subway to 42nd Street in Manhattan where they went their separate ways. In the afternoon of April 16, Santiago called Complainant to receive an update but Complainant did not answer her phone. It is a common practice for a supervisor of CAMBA to call a CMT who is out of the office on official business. Santiago then called Corretjer and spoke with him. It is also a common practice for a supervisor of CAMBA to call a client. Corretjer informed Santiago that they completed what had to be done at the Queens Job Center and that he was already home. Santiago again called Complainant, Complainant answered, and they spoke. Complainant told Santiago that she was still at the Queens Job Center with Corretjer. Thereafter, Complainant called Corretjer, told him she was at home, and asked him to lie about what they did on that day and when they did it. Complainant completed a form for Respondent used in the regular course of business known as a progress note in which she falsified her actions with Corretjer on April 16.

(Complainant’s Exhibit 1; Tr. 28-30, 122-31, 140, 178-79, 199-201, 211-21)

11. On April 24, 2009, Respondent terminated Complainant’s employment for falsifying the progress note form. (ALJ’s Exhibit 1; Complainant’s Exhibit 1; Respondent’s Exhibit 3; Tr. 28-30, 39-40, 186-88)

12. After the sexual harassment complaint, Santiago did not change the way she interacted with Complainant. (Tr. 205-07)

13. Complainant testified in a manner inconsistent with her sworn complaint in that, in her sworn complaint, Complainant swore that, after the March meeting, “the harassment continued from Mr. Robinson,” and “he would continue to look at me in a sexual manner.” I credit Complainant’s testimony that, after the March meeting, Robinson did not act in a harassing manner toward her. (ALJ’s Exhibit 1; Tr. 78, 84, 86-90)

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, or to retaliate against an individual in the terms, conditions, or privileges of employment because that individual opposed unlawful discrimination. *See* Human Rights Law §§ 296.1(a), 296.7.

Complainant raised issues of unlawful discrimination, alleging that Respondent unlawfully discriminated against her in the terms, conditions, and privileges of employment because of her sex, and unlawfully retaliated against her because she opposed unlawful discrimination. Complainant alleges that Robinson sexually harassed her and that CAMBA treated her differently than Robinson. Complainant further alleges that she experienced adverse changes in the conditions of her employment and, eventually, termination of employment after she complained that Robinson was sexually harassing her.

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 credible evidence does not support Complainant's allegations. I credit the testimony of Santiago, Robinson, and Corretjer and find that no actions attributed to CAMBA were motivated by or determined by discriminatory animus.

There was no evidence presented to establish that any action of Robinson would constitute unlawful discrimination under the Human Rights Law. *See Father Belle Community Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. to app. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997); *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 311, 786 N.Y.S.2d 382, 395 (2004).

The credible evidence establishes that when Complainant alleged that Robinson was sexually harassing her, CAMBA acted promptly to address Complainant's concerns and, in fact, allayed her concerns. Clearly, CAMBA did not acquiesce in or condone any sexual harassment. Complainant's employment was terminated after Respondent concluded that Complainant falsified her progress note regarding her interaction with Corretjer. *See Father Belle*, 221 A.D.2d at 53.

Complainant has failed to meet the burden of showing that any conduct attributed to Respondents 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 28, 2012
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas J. Marlow". The signature is written in a cursive, flowing style.

Thomas J. Marlow
Administrative Law Judge