

(State Division of Human Rights on the Complaint of)	
Hando Gustavson	COMPLAINANT
-Against -	
International Shoppes, Inc.	RESPONDENT

Federal Charge No: 16GA04066

DETERMINATION AND ORDER AFTER INVESTIGATION

On June 30, 2000, Hando Gustavson filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to Employment, because of Age in violation of the Human Rights Law of the State of New York.

After investigation, and following review of related information and evidence with named parties, the Division of Human Rights has determined that, insofar as respondent International Shoppes, Inc. is concerned, there is NO PROBABLE CAUSE to believe that the said respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The issue here, is whether Complainant was discriminated against because of his Age. The record however, does not support such an allegation.

Complainant alleges, that Respondent's adverse actions created a hostile work environment, compelling him to resign from his position.

Respondent denied that it discriminated against Complainant.

Complainant has not presented any evidence that Respondent took any adverse action that would lead a reasonable person to conclude that one had no alternative but to resign his employment.

Respondent has presented a legitimate business reason for removing Complainant from his office. Respondent has asserted that Complainant's removal was necessary to provide Mr. Karlis with an appropriate working environment and space required to perform his work. Additionally, Complainant does not dispute Respondent's assertion that his job responsibilities required him to be absent from his office 80% of the time. Finally, Respondent has submitted evidence that tends to

Determination: NPC TITLE VII, ADEA or ADA (DET.18 - 08/92) (1 of 4)  
 BNI/jhk  
 12/23/02

demonstrate that the relocation of Complainant was temporary. Respondent has presented a floor plan illustrating that Complainant was to return to a private office setting once a planned move to new office space was completed (R/P Exhibit k). Therefore, it must be concluded that Respondent's actions in removing Complainant from his office were not motivated by age discrimination.

There is no evidence that warrants a finding that Respondent reduced Complainant's vacation time from four weeks to three weeks because of age discrimination. Complainant and Respondent agree that, five years prior to Complainant's resignation, Complainant's vacation time was reduced. However, Respondent has stated that no other managers received four weeks vacation and that Complainant's receipt of four weeks was in error. There is no evidence that other managers received four weeks vacation. Additionally, this action occurred five years prior to Complainant's resignation and is time-barred and is too remote in time to have a causal connection to Complainant's resignation.

It cannot be concluded that Respondent's enforcement of the time clock requirements against Complainant evidences an intention to discriminate against Complainant because of his age. The investigation has revealed that, despite a July 1999 Memorandum requiring all staff to clock in and out daily (R/P Exhibit L), Complainant was exempted by Mr. Rosenberg, owner. The investigation has also revealed that in May 2000, two months after an impromptu retirement discussion, Complainant was made to punch in and out. Respondent asserts that the sudden enforcement was necessitated by the fact that Complainant started leaving work early and needed to be tracked. The administrative concern of Respondent is evidenced by the April 28, 2000 Memo from Mr. Karlis to Mr. Dombrowski, indicating that Complainant had left early for the third time in a one month period (C/P Exhibit B). While there appears to be some question as to the timing of Respondent's action, it cannot be concluded that such action was the result of age discrimination.

The record does not support Complainant's assertion that Respondent hired a younger and less experienced person, Christopher Karlis, age 40, to replace him. The investigation record clearly supports Respondent's assertion that Mr. Karlis was qualified to assume the duties once performed by Ms. Graziano. Furthermore, the record indicates that the only function previously performed by Complainant given to Mr. Karlis, was that of ATF Reporting. The record indicates that Complainant was relieved of this function on February 25, 1999, approximately one year prior to Mr. Karlis being hired (R/P Exhibit D). After the hiring of Mr. Karlis, Complainant continued to perform his inventory and purchasing functions until the time he resigned.

The record demonstrates that, at the time of Complainant's resignation, Respondent continued to employ three management level employees who were in their 60's, and two others who were in their 70's. Furthermore,

Determination: NPC TITLE VII, ADEA or ADA (DET.18 08/92) (2 of 4)  
BNI/jhk  
12/23/02

Complainant acknowledges that he was never told that he was too old.

Therefore, investigation has not yielded sufficient evidence to support Complainant's allegation that because of his age, Respondent created an atmosphere that was so severely hostile that it had the purpose or effect of interfering with his job performance.

For the above reasons, it is concluded that the allegation of age discrimination is not sufficiently supported by the record.

Based on the foregoing record and analysis, I find NO PROBABLE CAUSE to support that Complainant was unlawfully discriminated against because of his age.

Determination: NPC TITLE VII, ADEA or ADA (DET.18 - 08/92)

BNI / jhk

12/23/02

(3 of 4)

The complaint is therefore ordered dismissed and the file is closed.

Any party to the proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Petition and Notice of the Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, Bronx, NY 10458. DO NOT FILE THE ORIGINAL PETITION AND NOTICE OF PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

PLEASE TAKE FURTHER NOTICE that a complainant who seeks state judicial review and who receives an adverse decision therein, may lose his or her right to proceed subsequently in federal court by virtue of Kremer vs. Chemical Construction Co., 456 U.S. 461 (1982)

As your charge was filed under Title VII of the Civil Rights Act or the Americans with Disabilities Act (ADA) which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC review of this action. To secure a review, you must request it in writing, within 15 days of your receipt of this letter, to EEOC District Office - 33 Whitehall Street , 5th Floor, New York, New York 10004. Otherwise, EEOC will generally adopt our action in your case.

DATED, AND MAILED: JHK  
12/23/02

STATE DIVISION OF HUMAN RIGHTS

By \_\_\_\_\_  
Joseph H. Kaufman  
Regional Director

Determination: NPC TITLE VII, ADEA or ADA (DET.18 - 08/92) (4 of 4)  
BNI / jhk  
12/23/02