

**STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and  
Opportunities ex rel. Ann Frauenhofer,  
Complainant

CHRO No. 1010090

v.

Ascent Service & Technologies, LLC,  
Respondent

June 3, 2013

Final Order and Memorandum of Decision

Procedural Background

The Complainant, Ann Frauenhofer, filed an affidavit of illegal discriminatory practice on August 31, 2009 ("affidavit" or "complaint"). The affidavit alleged that Ascent Service & Technologies, LLC, the Respondent, violated Conn. Gen. Stat. Sections 46a-60(a)(1), 46a-60(a)(4), and 46a-58(a), as based upon a violation of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. 06-03-13 P03:45 IN *AN*

After conducting an investigation, a Human Rights Representative ("investigator") of the Commission on Human Rights and Opportunities ("Commission" or "CHRO") found that there was reasonable cause to believe that an unfair practice was committed as alleged in the complaint. See investigator's certification, dated July 11, 2011. After mandatory efforts to resolve the dispute by mediation failed, and in accordance with section 46a-84, the investigator certified the affidavit, on July 11, 2011, to the executive director of the Commission and the Attorney General. The Commission, thereafter, sent the case to the Office of Public Hearings ("OPH") for a de novo hearing.

On January 27, 2012, the Chief Human Rights Referee issued the required Notice of Contested Case Proceeding and Hearing Conference. All statutory and procedural prerequisites having been satisfied, the complaint is properly before the Presiding Human Rights Referee ("presiding referee") for decision. The public hearing was held on October 17, 2012.

Counsel for the Commission, Robin S. Kinstler Fox, argued the case on behalf of the Commission. Marc Cerniglia, the Managing Member of Ascent Service & Technologies, LLC, ("Cerniglia") appeared pro se on behalf of the Respondent. Thereafter, the parties filed post-hearing briefs, and the record was closed.

At the hearing, the Commission presented evidence regarding the retaliation claim -- section 46a-60(a)(4). Additionally, the post-hearing brief addressed only this claim. Therefore, the tribunal concludes that the Complainant abandoned all other claims alleged in her complaint and those claims are not addressed in this decision.

Findings of Fact

The following facts relevant to this decision are found from the evidence and testimony adduced at public hearing, the complaint, the answer and an assessment of the credibility of each witness:

1. On or about May 2008, Respondent's Managing Member, Marc Cerniglia ("Cerniglia"), entered into an oral agreement with the Complainant to perform bookkeeping services and to compensate her on an hourly basis at \$30.00 per hour. The initial agreement was for four hours a week. The complainant was tasked with eliminating a backlog of accounts payable work, as well as processing current transactions. Hearing Testimony of the Complainant at pages 8, 9, 10 and 13 (hereinafter referred to as "Comp. Tr. #."). See also, Hearing Testimony of Cerniglia at pages 142 and 143 (hereinafter referred to as "Cerniglia Tr. #.").
2. On March 6, 2009, Respondent's Business Manager, Christine Carpenter ("Carpenter") said to the Complainant that Complainant's medication was making her a "motor mouth." Comp. Tr. 32, 33, and 38.
3. After this March 6, 2009 comment, no other allegedly discriminatory remarks were made by Carpenter. Comp. Tr. 35, 36, 99 and 100.
4. On or about March 27, 2009, the Complainant told Cerniglia of Carpenter's March 6, 2009 remark regarding the effect that medication the Complainant was taking for an alleged disability. Comp. Tr. 128; Answer, ¶ 9.
5. Cerniglia considered the Complainant's comments to him regarding Carpenter's "motor mouth" remark to reflect the Complainant's belief that a discriminatory act had occurred. Cerniglia Tr. 128 and 129. Answer, ¶ 9.<sup>1</sup>

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<sup>1</sup> "The Respondent affirms only that a conversation occurred between [Cerniglia] and the Complainant in which the Complainant alleged [Carpenter] committed a discriminatory act by making an allegedly boorish remark. [Cerniglia] informed the Complainant that a single act does not necessarily constitute discrimination, rather, repetition of similar behavior is necessary. [Cerniglia] said that he would look into the matter and inform the Complainant of what he learned." Answer, ¶ 9a. "After questioning and speaking with [Carpenter] about the allegation, [Cerniglia] reported back to the Complainant that while he had found nothing to indicate that a discriminatory act had occurred, he did instruct [Carpenter] to be more mindful of her word choice around the Complainant." Answer, ¶ 9b.

6. Cerniglia spoke with Carpenter about the alleged remarks and admonished her not to say such things around the Complainant because the Complainant "had sensitivity about some comments." Cerniglia told Carpenter to "cease and desist" from making such remarks to the Complainant. Cerniglia Tr. 130 and 131.
7. After speaking with Carpenter, Cerniglia reported back to the Complainant his belief that no discriminatory act had occurred and that he admonished Carpenter not to make any more comments. Cerniglia Tr. 131.
8. On or about April 22, 2009, the Complainant told Carpenter that Complainant's psychiatrist expressed an opinion (on or about April 15, 2009) that Carpenter's "motor mouth" comment was illegal. Comp. Tr. 38-40.
9. On April 28, 2009, Carpenter left a voice message on the Complainant's answering machine instructing her not to come to the office the next day and that Cerniglia would call the Complainant. Comp. Tr. 42-43.
10. On or about May 1, 2009, Cerniglia telephoned the Complainant and informed her that her services as a bookkeeper would no longer be needed.<sup>2</sup> Comp. Tr. 43.
11. Cerniglia was solely responsible for Respondent's hiring and firing decisions. Cerniglia Tr. 137.
12. The Respondent lost its license to inspect elevators in New York City early in 2009. The delay in obtaining its NYC license renewal had a significant impact on Respondent's revenues in 2009. Cerniglia Tr. 126. Answer page 12 of 13.
13. In addition to the Complainant, the Respondent dismissed four employees from March 2009 to July 2009. Cerniglia Tr. 127 and Answer pages 12 of 13 and 13 of 13.

#### Employee or Independent Contactor

During the public hearing evidence was introduced intended to establish that the Complainant was the Respondent's employee. Additionally, in its post-hearing brief, the Commission argues that the Complainant was the Respondent's employee. The Respondent disputed this assertion.

In light of the current posture of this case – the only remaining claim is a violation of Section 46a-60(4) – this question need not be resolved. There is no legal significance to this

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<sup>2</sup> Although the affidavit of discriminatory practice contained an allegation that Cerniglia told the Complainant during this call that Carpenter had told him about this April 22, 2009 disclosure "and added that the one remark did not constitute harassment", no evidence was offered at the hearing to support this allegation. See affidavit ¶ 15.

determination because, as the Commission correctly argues, under this provision the complainant need not be an employee.<sup>3</sup>

### Retaliation

According to section 46a-60(a)(4), it is unlawful “[f]or any person [or] employer ... to discharge, expel or otherwise discriminate against any person because he has opposed any discriminatory employment practice ....” A retaliation claim under section 46a-60(a)(4) is analyzed under one of the numerous variants of the burden shifting framework originally set forth in McDonnell Douglas v. Green, 411 U.S. 792, 802-804 (1973). (See, e.g., Cosgrove v. Sears, Roebuck & Co., 9 F.3d 1033, 1038-39 (2d Cir. 1993), CHRO ex rel. Nobili v David E. Purdy & Company, LLC., et al., CHRO No. 0120389 (2004) and CHRO ex rel. Shea v. Spruance, et al., CHRO No. 9640243 (1999)). First, the complainant must satisfy the burden of proving her prima facie case.<sup>4</sup> Tomka v. Seiler Corp., 66 F.3d 1295, 1308 (2d Cir. 1995); Newtown v. Shell Oil Co., 52 F.Supp.2d 366, 373 (1999). This burden is de minimus. CHRO ex rel. Nobili, CHRO No. 0120389 (2004).

Once this burden is met, a rebuttable presumption of retaliation is established, and the respondent must articulate a legitimate, non-discriminatory reason for taking the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Tomka, 66 F.3d at 1308; Newtown, 52 F.Supp.2d at 373. If the respondent’s proffer is credible, the burden shifts back to the complainant to prove that the articulated reason was false and a pretext for retaliation. The

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<sup>3</sup> The affidavit alleged violations of Sections 46a-60(a)(1), 46a-60(a)(4), and 46a-58(a), as based upon a violation of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq (ADA). To the extent that section 46a-58(a) has been interpreted to transmute the substantive and retaliation provisions of federal employment discrimination law, including the ADA, into its provisions, and thereby afford a complainant the remedies available under section 46a-86(c), it is not an issue here because mental disability is not one of the categories enumerated under section 46a-58(a).

<sup>4</sup> Under the McDonnell Douglas framework, the Complainant’s initial burden is not onerous. “Recognizing that ‘the question facing triers of fact in discrimination cases is both sensitive and difficult,’ and that ‘[t]here will seldom be ‘eyewitness’ testimony as to the employer’s mental process,’ ..., the Courts of Appeals ... have employed some variant of the framework articulated in McDonnell Douglas to analyze [discrimination] claims that are based primarily on circumstantial evidence.” Reeves at 141. “McDonnell Douglas and subsequent decisions have ‘established an allocation of the burden of production and an order for the presentation of proof in ... discriminatory-treatment cases.’ St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 506 (1993).” Reeves at 142.

complainant must prove that respondent's action was "prompted by an impermissible motive." Tomka, 66 F.3d at 1308; Newtown, 52 F.Supp.2d at 374. The ultimate burden of persuasion remains at all times with the complainant. Sumner v. US Postal Service, 899 F.2d 203, 209 (2d Cir., 1990) (citing Texas Dept. of Community Affairs v. Burdine, 450 U.S.248, 253 (1981)).

In a retaliation case, liability depends on whether the discharge was motivated retaliation. Gordon v. New York City Bd. Of Educ., 232 F.3d 111, 116 (2d Cir. 2000)("[W]hen a retaliation case goes to the jury, [its] task is simply to determine the ultimate question of whether the plaintiff met her 'burden of proving that the defendant was motivated by prohibited [retaliation].'"(citations omitted). The ultimate question is whether the complainant has proven, by a preponderance of the evidence, that the respondent intentionally retaliated against her because she engaged in protected activity. Cosgrove, 9 F.3d at 1039. Sumner, 899 F.2d at 209 (citations omitted).

#### Complainant's Prima Facie Case

To satisfy her prima facie case burden of proof, the complainant must establish that (1) she participation in a statutorily protected activity; (2) the respondent was aware that the complainant participated in such activity; (3) an adverse employment action was taken by the respondent that disadvantaged the complainant; and (4) a causal connection existed between the participation in the protected activity and the adverse action. Reed v. A. W. Lawrence & Co., Inc., 95 F.3d 1170, 1178; Manoharan v. Columbia University College of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988); Ayantola v Bd. Of Trustees of Technical Colleges, 116 Conn. App. 531, 536 (2009); Nelson v City of Bridgeport, 2012 WL 4902812 at 13 (Conn. Super.) and CHRO ex rel. Malizia v. Thames Talent, Ltd., CHRO No. 9820039 (2000). This burden is not onerous. Id. (citing Ann Howard's Apricots Restaurant, Inc. v CHRO, 273 Conn. 209, 225 (1991)).

The complainant is not required to establish that the conduct she opposed actually violated a state law prohibiting employment discrimination to prove that she was engaged in a protected activity. She need only have a "good faith reasonable belief that the underlying challenged actions of the employer [or other person] violated the law." Reed, 95 F.3d at 1178 (citing Manoharan 842 F.2d at 593); Malizia v. Thames Talent, Ltd., CHRO No. 9820039 (2000).

Although the record reveals that the Complainant may or may not have said to the Cerniglia that she believed Carpenter's alleged "motor mouth" comment to be illegal, Comp. Tr. 103 and 104, she immediately perceived the remark to be highly offensive and later that day,

after taking time to calm herself, told Carpenter the remark was inappropriate.<sup>5</sup> Approximately three weeks later, Complainant reported the incident to Cerniglia. Cerniglia Tr. 128.

Specifically, Complainant testified that, on March 27, 2009, she called Cerniglia to arrange a meeting to discuss how to reduce/eliminate interruptions by Carpenter that interfered with the Complainant's productivity. Comp. Tr. 34. The Complainant stated that during the course of her conversation with Cerniglia, after she had addressed the interruptions issue, she "just mentioned the fact that [Carpenter] made this comment to me and that it was inappropriate, and that ... I was kind of upset about it, but ... I wasn't going any further with it." Complainant then elucidated her testimony saying this meant that she, at that time, "had no intentions of ... creating a lawsuit or complaining to anyone." Comp. Tr. 34-35.

Cerniglia also testified that, "[s]ometime in March, [Ms.] Fraunhofer approached me in the office, stating that Mrs. Carpenter had made an illegal discriminatory action by calling her a motor mouth because of her PTSD and medications. At that time, I asked her if there were any other incidents that had occurred. Her answer was no. I also told her that I would look into the matter and get back to her. I also told her that albeit distasteful, a single comment does not, in and of itself, constitute a discriminatory act ...." Cerniglia Tr. 128.<sup>6</sup> The Complainant testified that she did not recall what Cerniglia said during that conversation. Comp. Tr. 35. No evidence was presented to discredit Cerniglia's recollection of his conversation with the Complainant on March 27, 2009, or his subsequent actions.

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<sup>5</sup> The Complainant testified to being so angry and embarrassed that she had to walk away from Ms. Carpenter to regain her composure. Comp. Tr. 33.

<sup>6</sup> Additionally, Respondent admitted in its Answer ¶ 9 that:

"[A] conversation occurred between [Cerniglia] and the Complainant in which the Complainant alleged [Carpenter] committed a discriminatory act by making an allegedly boorish remark. [Cerniglia] informed the Complainant that a single act does not necessarily constitute discrimination[;] rather, repetition of similar behavior is necessary. [Cerniglia] said that he would look into the matter and inform the Complainant of what he learned." Answer ¶ 9a. "After questioning and speaking with [Carpenter] about the allegation, [Cerniglia] reported back to the Complainant that while he had found nothing to indicate that a discriminatory act had occurred, he did instruct [Carpenter] to be more mindful of her word choice around the Complainant." Answer ¶ 9b.

I conclude that the Complainant's disclosure of Carpenter's remark to Cerniglia and his reaction to the Complainant's remarks establish that she possessed the good faith reasonable belief that the comments violated the law. Therefore, the Complainant has met the first three prongs of her burden to establish a prima facie case - (1) she participated in a statutorily protected activity; (2) the respondent was aware that the complainant participated in such activity; and (3) an adverse employment action was taken by the respondent that disadvantaged the complainant.

#### Causal Connection

A complainant seeking redress for retaliation pursuant to section 46a-60(a)(4), may satisfy the causation element "either (1) directly, through evidence of retaliatory animus ...; or (2) indirectly, by showing that the protected activity in question was closely followed in time by the adverse action." Miller v. Ethan Allen Global, Inc., 2011 WL 3704806 (D. Conn.), p.8. CHRO ex rel. Nobili, CHRO No. 0120389 (2004). "Without awareness by a decision-maker, it will be hard to find any causal connection between the protected activity and the adverse action." *Id.* (citing Galdeieri-Ambrosini v. Nat'l Realty & Dev. Corp., 136 F.3d 276, 292 (2d Cir. 1998)).

The Commission argues that courts have noted that temporal proximity can give rise to a reasonable inference of a causal connection between the protected activity and the adverse employment action. Citing Newtown v. Shell Oil Company, 52 Fed. Supp. 2d. 366 (D. Conn. 1999) (employee received bad performance review and was fired after filing complaint with the CHRO and the EEOC); Reed v. A.W. Lawrence & Co., Inc., 95 F.3d 1170, (2d Cir., 1996) (employee complaint to employer about sex discrimination followed by termination); and Tomka v. Seiler Corp., 66 F.3d 1295 (2d Cir., 1995) (plaintiff terminated weeks after informing her supervisor she may press criminal charges and take other unspecified legal action for alleged work-related sexual assault). See also CHRO ex rel. Nobili, CHRO No. 0120389 (2004) ("Close temporal proximity between the protected express and the adverse action has often justified an inference of causality.")

The evidence reveals that on or about April 15, 2009, the Complainant's psychiatrist allegedly said to the Complainant that Carpenter's remark was "illegal." Comp. Tr. 37 and 39. Subsequently, on April 22, 2009, the Complainant communicated her psychiatrist's opinion to Carpenter. No other person, including Cerniglia, participated in that latter conversation. There is no evidence that the Complainant, or any other person, made Cerniglia aware of the remark

attributed to the Complainant's psychiatrist prior to Cerniglia's call to the Complainant, on or about May 1, 2009, informing her that her services were no longer needed.<sup>7</sup>

The Complainant speculated that she felt Ms. Carpenter possibly told Cerniglia about her psychiatrist's comment and that she felt that Carpenter and Cerniglia "obviously did have a discussion ...." Comp. Tr. 43. She stated,

I don't know what [Carpenter] said, but I kind of got the impression, seeing I was terminated so quickly after [my April 22 disclosure to Carpenter], that she went to him and maybe told him the exact opposite of what I told her, maybe denied that she made the [motor mouth] comment. Like I said[,] I don't know, but it just seemed rather strange that she would tell me that he would call me .... I kind of felt like I was fired.

Comp. Tr. 43-44.

Respondent objected to Complainant's speculation regarding Carpenter having had such a discussion with Cerniglia. Furthermore, in response to the Presiding Referee's inquiry -- "Did Ms. Carpenter say anything to you about the need to terminate the Complainant?" -- Cerniglia said no, that he and Carpenter never discussed the need to fire the Complainant. Id. 159-160.<sup>8</sup>

Although the evidence reveals that Cerniglia spoke with Carpenter after the Complainant disclosed her psychiatrist's opinion to Carpenter<sup>9</sup>, there is no evidence that

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<sup>7</sup> This is striking because although the Complainant testified about the May 1, 2009 termination call (Comp. Tr. 43-45), she provided no testimony to support the allegations in her complaint that Cerniglia told her during this call that Carpenter had informed him of the psychiatrist's comment. Complaint ¶ 15. (Although the Respondent's Answer did not directly deny this allegation, the Complainant's failure to offer probative evidence on this subject precludes this tribunal from finding for the Complainant on this point.) Additionally, Complainant's only testimony indicating she told Cerniglia about her psychiatrist's April 22, 2009 opinion was provided as she described a conversation they supposedly had during their March 27, 2009 lunch meeting. Comp. Tr. 102-103.

<sup>8</sup> Neither party called Carpenter as a witness.

<sup>9</sup> On or about April 29, 2009, Cerniglia instructed Carpenter to tell the Complainant not to come in the next day and that he would call her. Cerniglia Tr. 135 and 154. Cerniglia testified that "for a while I struggled with it, but ultimately decided on April 30th, I couldn't do it... I told Mrs. Carpenter not to -- to tell the Complainant not to come in for no other reason, and we were too busy to deal with the issue then." Cerniglia Tr. 135. Subsequently, Carpenter left a message to that effect on Complainant's answering machine. Comp. Tr. 42-43.

Carpenter made Cerniglia aware of that remark, prior to his call to the Complainant to end their arrangement.

Therefore, to the extent that there is a casual connection sufficient to establish this prong, it must be between Complainant's disclosure to Cerniglia on March 27, 2009 and her discharge, on May 1, 2009. I conclude that the five or so weeks between the March 27 disclosure and the May 1 adverse action is sufficient circumstantial evidence for the Complainant to satisfy the fourth prong of her prima facie case.

#### Legitimate Business Reason

The Respondent merely need proffer a legitimate non-retaliatory business reason for its adverse action. Nelson v City of Bridgeport, 2012 WL 4902812 at 13 (Conn. Super.) (citing Beizzer v. Department of Labor, 56 Conn. App. 347, 355-56, cert. denied, 252 Conn. 937 (2000)). Respondent has done so.

Cerniglia presented evidence of a significant drop in Respondent's revenues. He testified that its NYC elevator inspection license renewal was delayed and resulted in a substantial revenue loss beginning in January 2009. He testified that once the license was renewed, in April 2009, Respondent was "unable to establish contracts with ... a brand new customer base, and, therefore, lost a lot of revenue." Cerniglia Tr. 126. Cerniglia also pointed to page 12 of 13 of the Answer filed in which he noted that Respondent's revenues had fallen off approximately 65%.<sup>10</sup> Additionally, Cerniglia testified that due to the downturn in business, Respondent terminated five employees (in addition to the Complainant) -- four within a few months of Complainant's discharge -- May 2009. Cerniglia Tr. 127. Those terminations occurred March 2009 (S. Kamini); April 2009 (A. Freeman); June 2009 (A. Pejman); July 2009 (L. Seaburg) and March 2010 (S. Banks). See Answer page 13 of 13 and Cerniglia Tr. 127.

Respondent has articulated a legitimate, non-retaliatory rationale for the adverse action taken. Therefore, the burden of proof shifts back to the Complainant to demonstrate by a preponderance of the evidence that the Respondent's reasons are merely a pretext for retaliation.

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<sup>10</sup> Cerniglia also testified about losing a contract with the Metropolitan Museum of Art, in New York City -- resulting in a loss of \$10,000 per month. (It is unclear from the record when this loss occurred.) Cerniglia Tr. 125-126.

## Pretext

The Complainant must present evidence that satisfies her ultimate burden of proving that retaliation “played a motivating role in, or contributed to, the employer’s decision.” Gordon v. New York City Bd. Of Ed., 232 F.3d, at 117 (quoting Renz v. Grey Advertising, Inc., 135 F.3d 217, 222 (2d Cir. 1997)). Section 46a-60(4) “is violated when a retaliatory motive plays a part in adverse employment actions ... whether or not it was the sole cause.” See Id. at 117 (quoting Cosgrove, 9 F.3d at 1039).

“The critical question is whether a plaintiff has proven by a preponderance of the evidence that the defendant intentionally discriminated or retaliated against the plaintiff for engaging in protected activity.” Id. (citation omitted). “[T]here are two distinct ways for a plaintiff to prevail – ‘either by proving that a discriminatory motive, more likely than not, motivated the defendants or by proving that the reasons given by the defendants are not true and that discrimination is the real reason for the actions.’” Id. (quoting Fields, 115 F.3d at 121).

“One basis for inferring discrimination is plaintiff’s proof of her prima facie case combined with the jury’s disbelief of defendant’s explanation for its actions.” Gordon v. New York City Bd. Of Ed., 232 F.3d, at 116-17 (Citing Cabrera, 24 F.3d at 382). The Second Circuit “has consistently held that proof of causation can be shown either: (1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant.” Gordon, 232 F.3d at 117 (citation omitted).

The Complainant argues that the Respondent’s proffered reason, a loss of business and reduction in revenues, are a pretext for retaliation. Complainant’s primary evidence of retaliation was the short time period from her communication with Carpenter, on April 22, 2009, and Cerniglia’s call to her, on or about May 1, 2009, terminating her services. As explained previously, this tribunal determined that this is not the proper benchmark because there is no evidence that Cerniglia was aware of the Complainant’s disclosure.

Additionally, as evidence of pretext, the Complainant argues that the Respondent’s efforts to create new work area for her, about one week before her dismissal, prove that the Respondent had sufficient resources to retain her. Those efforts were minimal – Cerniglia personally moving 2 six-foot tall bookcases, a copy machine and a desk and the Respondent expending some unspecified amount to hire an electrician to repair an outlet. Cerniglia Tr. 133-

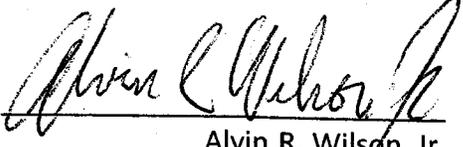
34. The only evidence offered by the Complainant to discredit Respondent's assertion that it terminated her and five other employees due to the downturn in business was that Cerniglia had hired an Administrative Assistant in February 2009 – Laura Seaburg. Comp. Tr. 32. Seaburg was terminated in July 2009. Cerniglia Tr. 127. Answer page 13 of 13.

Upon a thorough review of the record, the presiding referee concludes that insufficient evidence was produced to satisfy the Complainant's burden to establish that the reasons offered by the Respondent constitute a pretext for retaliation or that the Respondent possessed a retaliatory motive. Therefore, I find no violation of section 46a-60(a)(4).

Final Decision and Order

In light of the foregoing, I find in favor of the Respondent. It is hereby ordered, in accordance with the provisions of subdivision (4) of subsection (d) of section 46a-54-88a of the Regulations of Connecticut State Agencies, that the complaint be, and hereby is, dismissed.

It is so ordered this 3<sup>rd</sup> day of June 2013.

  
Alvin R. Wilson, Jr.  
Presiding Human Rights Referee

cc.

Ann Frauenhofer  
Marc Edward Cerniglia  
Robin Kinstler-Fox, Esq.