



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
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GEORGE E. PATAKI
GOVERNOR

MICHELLE CHENEY DONALDSON
COMMISSIONER

April 16, 2003

The State University of New Jersey
Rutgers-Newark Campus
Law School Library
123 Washington Street
Newark, New Jersey 07102
Attention Paul Axel-Lute
Deputy Director & Collection Development Librarian

**Re: Freedom of Information Law ("FOIL") Request for
Two (2) New York State Human Rights Appeal Board
("SHRAB") Decisions**

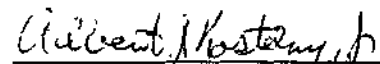
Dear Mr. Axel-Lute:

Your attached April 9, 2003 letter to State Commissioner of Human Rights Donaldson, as well as your March 9, 2003 letter to Division General Counsel Gina M. Lopez Summa, have been referred to me for reply. Please be advised that the State Human Rights Appeal Board, which was abolished on June 1, 1984, was a separate agency from the Division of Human Rights and that the Division does not possess a complete set of SHRAB decisions. After a diligent search of the Division's files, I regret to inform you that the Division does not possess copies of SHRAB's decisions on either the **St. Cross v. Playboy Club** or the **Weber v. Playboy Club** appeals. Furthermore, a diligent search of the remaining copies of the Division of Human Rights' *Law Bulletin*, which was an internal training publication of the Division of Human Rights published at irregular intervals until December of 1972, has also failed to uncover copies of the aforementioned SHRAB decisions.

However, I am pleased to provide you with a copy of the Division's August 1, 1985 Order After Hearing in **Aromi et al. v. Playboy Club**, which incorporates the full text of SHRAB's **St. Cross/Weber** decisions at pp. 5-7 in the "Opinion" section of the **Aromi** Order.

I hope that the attached copy of the **Aromi** Order will, at least partially, satisfy your FOIL request. If you require further information, please feel free to contact me.

Very truly yours,


ALBERT J. KOSTELNY, JR.
Associate Attorney

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

----- :
STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

LISA AROMI, :

Complainant, :

CASE NO. GS-32986-74

-against- :

PLAYBOY CLUB, INC.; MARIO STAUB, GENERAL
MANAGER; VICTORIA THIBAUT, BUNNY MOTHER;
HOTEL RESTAURANT EMPLOYEES UNION, AFL-CIO
LOCAL #1; AND DAVID SEGAL, PRESIDENT, :

Respondents. :
----- :

STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

SANDI MEEHAN, :

Complainant, :

CASE NO. GS-32985-74

-against- :

PLAYBOY CLUB, INC.; MARIO STAUB, GENERAL
MANAGER; VICTORIA THIBAUT, BUNNY MOTHER;
HOTEL RESTAURANT EMPLOYEES UNION, AFL-CIO
LOCAL #1; AND DAVID SEGAL, PRESIDENT, :

Respondents. :
----- :

STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

JOYCE REICHERT, PATTI HOPKINS, NANCY
PHILLIPS, CARMELITA ATWELL AND PAT
COLUÈBO, :

Complainants, :

CASE NO. CASF-31570-73

-against- :

PLAYBOY CLUB OF NEW YORK, INC.; MARIO
STAUB, GENERAL MANAGER; TONI LeMAY,
HEAD BUNNY MOTHER; ELIZABETH YEE, NEW
YORK BUNNY MOTHER; HOTEL & RESTAURANT
& BARTENDERS INTERNATIONAL UNION, AFL-CIO
LOCAL #1; DAVID SEGAL, PRESIDENT; AND
JACQUES LeBALLEUR, BUSINESS AGENT, :

Respondents. :
----- :

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the complaint(s) of

STATE DIVISION OF HUMAN RIGHTS,

Complainant,

- against -

PLAYBOY CLUB OF NEW YORK, INC.; AND HOTEL &
RESTAURANT & BARTENDERS INTERNATIONAL UNION,
CIO-AFL LOCAL #1,

NOTICE OF ORDER AFTER HEARING

CASE NO.(s) X-E-ADMS-42884-76D

PLEASE TAKE NOTICE that the within is a true copy of an Order issued herein by Douglas H. White, Commissioner of the State Division of Human Rights, after a hearing held before Administrative Law Judge Hon. Norman Mednick. 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 55 West 125 Street, New York, New York 10027, and at 270 Broadway, New York, New York 10007.

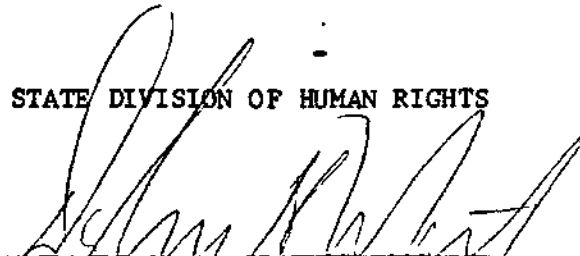
The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that in accordance with Section 298 of the New York State Human Rights Law, as amended by Chapter 340 of the Laws of 1985, any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice which 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. The Petition and Notice of Petition must also be served on all parties, including the 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 under Title VII, by virtue of Kremer v. Chemical Construction Co., 456 U.S. 461 (1982).

DATED: **AUG 1 1985**
NEW YORK, NEW YORK

STATE DIVISION OF HUMAN RIGHTS


DOUGLAS H. WHITE, COMMISSIONER

TO:

Ms. Lisa Aromi
201 East 28 Street
New York, New York

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Attention Herbert L. Borovsky, Esq.

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Attention Robert J. Mozer, Esq.

Margarita Rosa, Esq., General Counsel
Werner L. Loeb, Esq., of Counsel
State Division of Human Rights
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New York, New York 10027

Hon. Robert B. Abrams
Attorney General
2 World Trade Center
New York, New York 10047

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

----- :
STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

LISA AROMI, :

Complainant, :

NOTICE OF ORDER AFTER
CONSOLIDATED HEARING

CASE NO. CS-32986-74

-against- :

PLAYBOY CLUB, INC.; MARIO STAUB, GENERAL
MANAGER; VICTORIA THIBAUT, BUNNY MOTHER;
HOTEL RESTAURANT EMPLOYEES UNION, AFL-CIO
LOCAL #1; AND DAVID SEGAL, PRESIDENT, :

Respondents. :

----- :
STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

SANDI MEEHAN, :

Complainant, :

CASE NO. CS-32985-74

-against- :

PLAYBOY CLUB, INC.; MARIO STAUB, GENERAL
MANAGER; VICTORIA THIBAUT, BUNNY MOTHER;
HOTEL RESTAURANT EMPLOYEES UNION, AFL-CIO
LOCAL #1; AND DAVID SEGAL, PRESIDENT, :

Respondents. :

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STATE DIVISION OF HUMAN RIGHTS :

on the complaint of :

JOYCE REICHERT, PATTI HOPKINS, NANCY
PHILLIPS, CARMELITA ATWELL AND PAT
COLUMBO, :

Complainants, :

CASE NO. CASF-31570-73

-against- :

PLAYBOY CLUB OF NEW YORK, INC.; MARIO
STAUB, GENERAL MANAGER; TONI LeMAY,
HEAD BUNNY MOTHER; ELIZABETH YEE, NEW
YORK BUNNY MOTHER; HOTEL & RESTAURANT
& BARTENDERS INTERNATIONAL UNION, AFL-CIO
LOCAL #1; DAVID SEGAL, PRESIDENT; AND
JACQUES LeBALLEUR, BUSINESS AGENT, :

Respondents. :

STATE DIVISION OF HUMAN RIGHTS

on the complaint(s) of

STATE DIVISION OF HUMAN RIGHTS,

Complainant,

-against-

PLAYBOY CLUB OF NEW YORK, INC.; AND HOTEL &
RESTAURANT & BARTENDERS INTERNATIONAL UNION,
CIO-AFL LOCAL #1,

Respondents.

CASE NO.(S) X-E-ADMS-42884-76

PROCEEDINGS IN THE CASE

Between October 15, 1973, and June 9, 1976, the above-named Complainants filed with the State Division of Human Rights (hereinafter the "Division") verified complaints, charging the above-named Respondents with unlawful discriminatory practices relating to employment, in violation of the Human Rights Law (Executive Law, Article 15) of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaints and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the cases to a consolidated public hearing.

After due notice, the case came on for consolidated hearing before Hon. Norman Mednick, an Administrative Law Judge of the Division. Twelve hearing sessions were held between July 12, 1976 and May 10, 1978.

At the conclusion of the May 10, 1978 session, Counsel for the Division requested an adjournment for the purpose of applying to the Commissioner of Human Rights for an order authorizing "a separate hearing on the Division initiated complaint." The hearing accordingly, was adjourned sine die pending a decision by the Commissioner on the application to sever.

On November 30, 1978, Judge Mednick wrote to Counsel for the Division, with notice to Counsel for Respondents and the Commissioner, asking the status of the application to the Commissioner.

On January 17, 1983, approximately four-and-a-half years after the last hearing session of May 10, 1978, Counsel for the Division wrote Judge Mednick, as follows:

"... be advised that in reference to your letter dated November 30, 1978, the Division will not make further application to the Commissioner.."

Although Counsel for the Division states that no "further" application will be made, Judge Mednick is not aware that any application was made to the Commissioner.

In his communication of January 17, 1983, Counsel for the Division further states: "In addition, the Division does not intend to introduce any further evidence regarding the Division Initiated Complaint." (Emphasis added).

The record, however, shows that no evidence was introduced regarding the Division Initiated Complaint during the previous twelve hearing sessions.

The communication of January 17, 1983, further states that "... the Division has rested its case on direct for the remaining Complainants ..." and requests "that the matter be calendared for hearing to allow Respondents to cross examine the Complainants, as well as to present their direct case."

On January 17, 1983, Judge Mednick denied the motion to restore these matters to the calendar.

The communication of January 17, 1983, further states that the complaints of five of the individual Complainants "were dismissed for administrative convenience on December 6 and 24, 1982."

On February 2, 1983, Counsel for the Division requested Judge Mednick to "take dispositional action by forwarding recommended finding[s] fact, opinion and order for the Commissioner's consideration."

On February 23, 1983, Judge Mednick informed Counsel for the parties that since the doctrine of administrative convenience had been improperly applied, it would be "inappropriate for me [Judge Mednick] to either restore these matters to the calendar or to recommend findings of fact, opinion and order to the Commissioner."

On April 1, 1983, Counsel for the Division applied to the Commissioner to "direct the Administrative Law Judge to take immediate action to restore these cases to the hearing calendar...."

On July 8, 1983, the Commissioner vacated the orders dismissing for administrative convenience and ordered that "all the captioned cases be restored to the Hearing Calendar... for continued hearing within a reasonable time."

On July 13, 1983, Judge Mednick notified Counsel and the parties that the hearing in the instant matters will continue on December 14, 1983. However, having learned that the decision of the Commissioner was on appeal before the Human Rights Appeal Board, Judge Mednick adjourned the hearing sine die pending disposition of the appeal.

On or about December 30, 1983, the Human Rights Appeal Board dismissed the appeal on the basis of its being "premature."

On June 28, and September 17, 1984, Judge Mednick requested of Counsel for the parties "what action, if any, has been taken following the Appeal Board's decision dated December 30, 1983."

On September 28, 1984, Counsel for Respondent Playboy Club, Inc. informed Judge Mednick that it "decided not to appeal from the December 30, 1983" order of the Human Rights Appeal Board.

On October 1, 1984, Judge Mednick notified counsel and the parties that the hearing will resume on December 19, 1984.

At the hearing on December 19, 1984, Counsel for the Division moved for an adjournment. The motion was denied and Counsel for Respondent Playboy Club, Inc. rested.

At the hearing of December 19, 1984, Respondent Playboy Club, Inc. was represented by Kirkland & Ellis, Esqs., by Thomas D. Yannucci, Esq., of Counsel. The Division was represented by Roberto Albertorio, Esq., General Counsel, by Sam Singer, Esq., of Counsel, Respondents Hotel Restaurant Employees Union, AFL-CIO, Local No. 1, David Segal, President, and Jacques LeBalleur, Business Agent, neither appeared nor were represented at the hearing. Complainants Lisa Aromi, Sandi Meehan, Joyce Reichert, Patti Hopkins, Nancy Phillips, Carmelita Atwell and Pat Columbo did not appear at the hearing.

The final transcript was received on January 7, 1985.

Although permission was granted for Post-Hearing Memoranda of Law, none was filed.

FINDINGS OF FACT

1. In her complaint, each of the individually-named Complainants alleges that she was terminated from her employment as a "Bunny" with Respondent Playboy Club, Inc. because of her age and because she lost the "Bunny Image."

2. In her complaint, each of the individually-named Complainants, alleges that Respondents Hotel Restaurant Employees Union AFL-CIO, Local No. 1, David Segal, President, and Jacques LeBalleur, Business Agent, aided and abetted the unlawful discriminatory practices of Respondent Playboy Club, Inc.

3. In its Division Initiated Complaint, the Division alleges that

Respondent Playboy Club, Inc. "maintains an age limitation and specification for the job category of 'Bunny' which discriminates on the basis of age and sex," that the "respondent union aids and abets respondent Playboy's age limitation and specification, and that Respondent Playboy "requires an application for employment containing unlawful questions relating to age, marital status, child care, and medical status."

OPINION

1. On December 17, 1971, in the cases of Margarita St. Cross v. Playboy Club, et al, Case No. CSF-22618-70, Appeal No. 773, and Donnalee Weber v. Playboy Club, et al., Case No. CSF-22619-70, Appeal No. 774, the New York State Human Rights Appeals Board wrote as follows:

"This is an appeal from a Decision of the Division of Human Rights dismissing complainant's complaint upon a determination that there is no probable cause to believe that the respondents have engaged in or are engaging in the unlawful discriminatory practice complained of. Before the Division, the complainant-appellant (hereinafter referred to as complainant) charged the respondents with an unlawful discriminatory practice against her because of her sex by terminating her from her employment.

"Respondent Playboy Clubs International, Inc., operates establishments in a number of cities in this country and elsewhere for eating, drinking and the entertainment of its members and their guests. These establishments are designated as Playboy Clubs International, Inc. Respondent Playboy Club of New York is such an entity. Respondent Hefner is President of Playboy Clubs International, Inc., and of each such Playboy Clubs.

"The membership of such clubs is attracted thereto, in large measure, by the allure of young and beautiful female employees who serve the patrons

and who are called 'Bunnies.' By this exploitation of female youth and pulchritude respondents have made the employment of 'Bunnies' the cornerstone of its business. Bunnies are required, while on duty, to wear abbreviated costumes with simulated rabbit ears and tails. Among the qualifications for the retention of his position is the maintenance by the employee of that which is somewhat vaguely described as the 'Bunny Image.' Respondents have set forth negative factors which will call for correction or dismissal of a 'Bunny.' The Union agreement also concedes that loss of 'Bunny Image' is a valid basis for discharge. Management has set standards against which the 'Bunny Image' is to be measured. Such standards are, and in the very nature of such evaluation must be to some degree, subjective. Respondents' evaluation scale is as follows:

- #1 A flawless beauty (face, figure and grooming)
- #2 An exceptionally beautiful girl
- #3 Marginal (is aging or has developed a correctable appearance problem)
- #4 Has lost Bunny Image (either through aging or an uncorrectable appearance problem).

"Complainant's services were terminated by respondents because of her loss of weight and because she did not meet acceptable standards in reference to physical proportions. The judgment thus reached by respondents must be deemed to be well within their competence and cannot be here reviewed.

"Complainant's complaint must fall, moreover, for the reason that complainant was not barred from employment, nor from the equal application of the terms and conditions thereof, because of her sex. Her dismissal was based upon her failure to maintain those attributes of her sex which constitute a minimum qualification for continued employment. In this respect she

is being measured against standards of near perfection within her own sex to which the Bunny position is obviously limited.

"Although the issue is not stressed, it is to be noted in passing that the restriction to females only of the eligibility for employment as a Bunny constitutes a bona fide occupational qualification and as such is exempt from the provisions of Section 296 of the Human Rights Law. This is somewhat similar to a juvenile part in a theatrical production.

"Respondents maintain that their business would be destroyed were they required to abandon the Bunny Image. This is doubtless the fact; however, such an argument is without force if in fact they are in violation of the law. The prospect of loss of profits cannot justify illegal action. Although it is this writer's opinion that a business such as respondents which is based upon the commercial exploitation of sex appeal and deliberately seeks so to titillate and entice has little to recommend its establishment or perpetuation, its existence is not in violation of the Human Rights Law.

"The decision of the Division of Human Rights is not arbitrary, nor capricious nor an abuse of discretion and it must therefore be affirmed."

2. Section 297-a of the Human Rights Law, in effect at the times alleged in the complaints herein, states:

"The division shall be bound by the decision of the board except to the extent such decision is reversed or otherwise modified by a court of competent jurisdiction pursuant to this article."

3. Since the gravamen of the instant complaints are identical to those of the St. Cross and Weber cases, the Division is bound by the decisions therein.

4. The record does not show that the decision of the Human Rights

Appeal Board in the St. Cross and Weber cases were reversed or otherwise modified by a court of competent jurisdiction; accordingly, the Division is debarred from rendering a substantive decision, in cases on all fours with St. Cross and Weber, contrary to the ruling of the Human Rights Appeal Board.

5. In addition to Section 297-a of the Human Rights Law, Judge Mednick accepts the defense of laches.

6. The instant cases were originally filed in 1973 and 1974. Over five years ago, in January 1978. Counsel for the Division refused or otherwise failed to proceed with these consolidated cases or rest, thereby depriving appellant of a proper opportunity to present its defense. Four years later, in December 1982, the Division on its own motion dismissed the complaints of Ms. Phillips, Aromi, Meehan, Reichert and Hopkins for administrative convenience.

7. In January 1983, almost ten years after the original cases were filed, the Division requested that the Atwell and Columbo cases be recalendared for hearing "to allow respondents to cross-examine the complainants, as well as present their direct case."

8. Respondents, through no fault of their own, will be forced to present their defense ten years after the events at issue occurred. As a consequence of this substantial delay, Respondents would have to proceed without the benefit of testimony of material witnesses knowledgeable concerning the events at issue who may have left the Company's employ since the last hearing in this matter at which Counsel for the Division refused to rest its case. Necessarily, the memories of any remaining witnesses will have dimmed over the intervening years, further hampering Respondents' defense and causing Respondents substantial prejudice and harm.

9. Moreover, Respondents' right to cross-examine witnesses is

seriously compromised as a consequence of the substantial delay. Indeed, Respondents do not know whether all of the Division's witnesses would be available for cross-examination, let alone competent to testify after the passage of so much time. For example, mail sent to Ms. Reichert and Ms. Hopkins at their last known address were returned stamped "addressee unknown."

10. The courts have ruled that delays of far less magnitude constitute undue prejudice as a matter of law, divesting the Division of Human Rights of its jurisdiction over the action. State Division of Human Rights v. Board of Education of West Valley Central School District, 386 N.Y.S.2d 166, 168 (N.Y. App. Div. 1976), aff'd 397 N.Y.S.2d 166, 168 (N.Y. App. Div. 1976), aff'd 397 N.Y.S.2d 791 (N.Y. 1977); State Division of Human Rights v. Bethlehem Steel Corp., 448 N.Y.S.2d 331, 332 (N.Y. App. Div. 1982); State Division of Human Rights v. Board of Education of the School District of the City of Niagara Falls, 399 N.Y.S.2d 805 (N.Y. App. Div. 1977); State Division of Human Rights v. The Gannet Co., 402 N.Y.S.2d 889 (N.Y. App. Div. 1978). See also, Washington v. Walker, CA 7. 34 EPD. Par. 34, 396.

11. The Division may not require Respondents to proceed with its case ten years after the filing of the initial complaints. Such a delay is unconscionable, constitutes undue prejudice to Respondents as a matter of law, and provides ample grounds to divest the Division of its jurisdiction over these actions. State Division of Human Rights v. Board of Education of West Valley Central School District, 386 N.Y.S.2d 166 (N.Y. App. Div. 1976) aff'd, 397 N.Y.S.2d 791 (N.Y. 1977).

DECISION

On the basis of the foregoing, I find that the Division is without jurisdiction to proceed in these matters.

ORDER

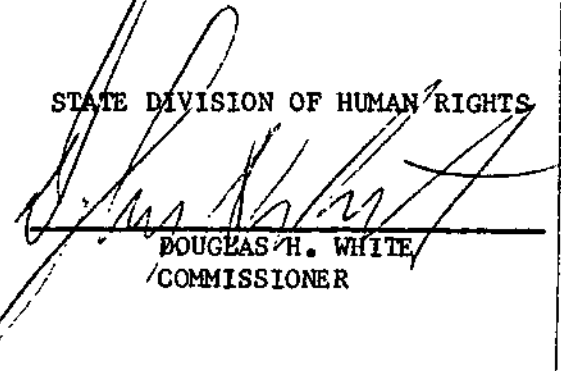
On the basis of the foregoing Findings of Fact, the Decision and Opinion rendered herein, and pursuant to the Human Rights Law, it is

ORDERED, that the complaint be, and hereby are, dismissed.

DATED: AUG 1 1985

NEW YORK, NEW YORK

STATE DIVISION OF HUMAN RIGHTS



DOUGLAS H. WHITE
COMMISSIONER

CITATION SHEET

Case No. CS-32986-74 etc.

Finding	Sentence	and/or Is Supported by Transcript/Exhibit Page
1		C #2, C #3, C #4
2		C #2, C #3, C #4
3		C #1