

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DOCKET NO. EA99AB-64019
EEOC CHARGE NO. 17E-2013-00506

Giovanna Manno,)
)
 Complainant,)
)
 v.)
)
 DGMB Casino, LLC, d/b/a)
 Resorts Casino Hotel,)
)
 Respondent.)

Administrative Action

FINDING OF PROBABLE CAUSE

On August 12, 2013, Galloway Township resident Giovanna Manno (Complainant) filed a complaint with the New Jersey Division on Civil Rights (DCR) alleging that DGMB Casino LLC, d/b/a Resorts Casino Hotel¹ (Respondent or Resorts) refused to hire her as a cocktail server because of her age, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of age discrimination. DCR commenced an investigation into the matter and, for purposes of this disposition only, finds as follows.

Respondent is a casino hotel operating in Atlantic City, New Jersey. Complainant told DCR that she had been working at the Showboat Casino in Atlantic City as a cocktail server for over seventeen years when she began to hear rumors that it might close. Around that time, she saw an employment advertisement announcing that Resorts was seeking cocktail servers as summer help. She applied for the position hoping that the seasonal position at Resorts would turn into a long-term position.²

¹ Complainant filed her complaint against "Resorts Casino Hotel." In its answer to the complaint, Respondent stated that the corporate entity is properly called, "DGMB Casino, LLC d/b/a Resorts Casino Hotel." The caption of this matter has been modified to reflect Respondent's representation.

² Showboat Casino Hotel closed on August 31, 2014.

Resorts invited Complainant to sit for an interview. Complainant believed that the interview went well and was confident that she would be hired. Within a few days, she was invited for a second interview. Complainant called a phone number she had been provided and spoke to "Katie," who was the supervisor of the cocktail servers. Complainant told DCR that Katie was very cordial and seemed anxious to meet her. Complainant reported to a room as instructed and waited for Katie. Complainant claims that the moment Katie entered the room and saw her, "her smile turned to a frown." According to Complainant, Katie said, "Oh. So you are Giovanna." Complainant said it seemed like Katie was expecting to meet someone either different or younger. Complainant was 45 years old at the time.

Complainant alleged that when she subsequently contacted Respondent to see if she got the job, she was given "the run around" while Respondent continued to advertise for cocktail servers. DCR reviewed pictures and other advertisements contained on Respondent's website. All of the human models used by Respondent in its advertisements appear to be under the age of 40.

Respondent filed an answer to the verified complaint but did not respond to the accompanying Document and Information Requests, which sought information about Complainant's application and the cocktail servers who were hired instead of Complainant. In its answer to the complaint, Resorts asserted that it decided to not hire Complainant because of her "pushy" personality.

On October 24, 2014, the DCR investigator wrote to Respondent's counsel again requesting information concerning Complainant's application and the applications of others who applied for the position at issue. The investigator requested a response by November 21, 2014. No response was ever received.

On December 23, 2014, the DCR investigator served interrogatories on Respondent again seeking information needed to investigate the allegations contained in the complaint. No response

was ever received.

On May 7, 2015, DCR served an administrative subpoena, again seeking materials related to cocktail servers hired by Resorts. The subpoena was returnable on May 15, 2015. No response was ever received.

Analysis

At the conclusion of an investigation, the Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. Probable cause for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD makes it illegal to refuse to hire someone based on his or her age unless the person is “over 70 years of age.” N.J.S.A. 10:5-12(a). A complainant makes out a *prima facie* case of age discrimination by showing that he or she (1) belongs to a protected class, (2) applied and was qualified for a position for which the employer was seeking applicants, (3) was rejected despite adequate qualifications, and (4) after rejection the position remained open and the employer continued to seek applications for persons of complainant's qualifications. Bergen Commer. Bank v. Sisler, 157 N.J. 188, 210 (1999).

In this case, Complainant was 45 years old when she sought employment with Resorts.

She had more than seventeen years of experience as a cocktail server in another Atlantic City casino. Despite those qualifications, she was rejected for employment and Respondent continued to seek others to fill the position.

Respondent stated that it was Complainant's "pushy" personality—not her age—that caused it to not offer her the position. DCR's efforts to investigate whether this seemingly non-discriminatory explanation was the actual motivation behind the personnel decision, or merely a pretext for age discrimination, has been thwarted by Respondent's unwillingness to provide requested material and information to DCR. DCR has repeatedly requested information concerning Complainant's application, the total applicant pool, and those ultimately hired for the position. The material and information was requested first in a Document and Information Request, then by letter, then by interrogatories, and finally by administrative subpoena. In each instance, Respondent simply failed to respond. Under the circumstances, DCR is compelled to infer that the reason Respondent refuses to comply is because it is concerned that the requested materials/information contradict its stated position. See State v. Clawans, 38 N.J. 162, 170 (1962)("failure of a party to produce before a trial tribunal proof which, it appears, would serve to elucidate the facts in issue, raises a natural inference that the party so failing fears that exposure of those facts would be unfavorable to him.").

Moreover, Respondent appears to be exclusively using younger human models in its advertising on its website. Cf. Ragin v. New York Times Co., 923 F.2d 995 (2nd Cir. 1991)(holding that use of human models on one race in advertisements may be evidence of discriminatory intent).

DCR would have preferred to conduct a comprehensive investigation with the ability to analyze all relevant information from the parties. However, it was prevented from doing so by Respondent's repeated failure to respond to requests for relevant information and materials. Taking the due inferences from the failure to respond to DCR's inquiries, as well as based on the information it was able to review, the Director is satisfied at this preliminary stage of the process

that the circumstances of this case support a "reasonable ground of suspicion . . . to warrant a cautious person in the belief," N.J.A.C. 13:4-10.2, that Respondent did not hire Complainant because of her age. Thus, the Director finds that the matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

DATE: 5-29-15



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS