

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 00831-01S
DCR DOCKET NO. EC24AB-45004-E
DECIDED: JULY 24, 2002

CHRISTOPHER CROCE,)
)
 Complainant,)
)
 v.)
)
 CENDANT MORTGAGE)
 CORPORATION,)
)
 Respondent.)

ADMINISTRATIVE ACTION
FINDINGS, DETERMINATION AND
ORDER

APPEARANCES:

Mark Cimino, Esq., for the complainant

Zachary D. Fasman, Esq., and Richard B. Palmer, Esq., members of the New York bar admitted *pro hac vice* for the respondent (Paul, Hastings, Janofsky & Walker, attorneys) Attorney of Record and on the reply to Complainant's exceptions: Michael T. Bissinger, Esq., (Pitney, Hardin, Kipp & Szuch, attorneys)

BY THE DIRECTOR:

I. INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by the complainant, Christopher Croce (Complainant), alleging that the respondent, Cendant Mortgage Corporation (Respondent) refused to hire him because of his age (48) in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

On February 20, 2002, the Honorable Jeffrey S. Masin, Administrative Law Judge (ALJ), issued an initial decision dismissing the complaint based on his conclusion that Complainant failed to establish by a preponderance of the evidence that Respondent denied Complainant employment because of his age. Having conducted an independent review of the record, including the

pleadings, documents, and arguments submitted by the parties, the Director adopts the initial decision dismissing the complaint.

II. PROCEDURAL HISTORY

This matter arose on June 24, 1999, when Complainant filed a verified complaint with the Division alleging that Respondent subjected him to unlawful discrimination by refusing to hire him because of his age in violation of the LAD. Respondent filed an answer on December 9, 1999, denying the allegations of discrimination. The Division held a fact-finding conference on January 13, 2000. However, prior to completion of the Division's investigation, the Division transmitted the case to the Office of Administrative Law (OAL) at Complainant's request pursuant to N.J.S.A. 52:14B-1 to 15 and 52:14F-1 to 13.

Respondent filed a motion for summary decision with the ALJ on December 31, 2001. Complainant opposed the motion and submitted a cross motion for partial summary decision on the issue of liability. After evaluating the submissions of both parties, the ALJ granted Respondent's motion, denied Complainant's motion, and issued an initial decision dismissing the complaint on February 20, 2002.¹ Complainant filed exceptions to the initial decision on March 6, 2002, and Respondent filed a response to Complainant's exceptions on March 13, 2002. The Director sought and was granted three extensions of time for issuing his findings, determination and order in this matter, which is now due to be issued by August 22, 2002.

III. THE ALJ'S FINDINGS AND DETERMINATIONS

Based upon the evidence submitted in connection with the parties' respective motions for summary decision, the ALJ found the following facts to be undisputed: Complainant was employed as a tour sales agent with TWA Getaway Vacations (TWA) for 15 years (ID 2). His employment with TWA ended when the office closed and relocated to Virginia. On October 21, 1998, at age 48,

¹ Hereinafter, "ID" will refer to the February 20, 2002 initial decision of the ALJ; "Ce" will refer to Complainant's exceptions to the initial decision; "Rr" will refer to Respondent's replies to Complainant's exceptions; and "Exhibit" will refer to the exhibits introduced by the parties at the hearing.

Complainant applied for employment with Respondent as a Mortgage Sales Representative. Ibid. Complainant was interviewed by Respondent's employees, Richard Jones, a thirty-year old human resources representative, and Fran Forest, a thirty-year old supervisor of mortgage sales Ibid. By letter dated October 21, 1998, Respondent informed Complainant that he was not selected for the position. Ibid. Complainant subsequently interviewed with Respondent for another position of customer service representative. On this occasion, he was interviewed by Rita Spiritoso, manager of the Consumer Marketing Center (CMC). Respondent again declined to hire Complainant (ID 2-3).

The ALJ concluded that for purposes of the summary decision motion, the undisputed facts established a prima facie case of age discrimination, in that Complainant was a member of a protected class because of his age, he met the basic qualifications for the available positions, and Respondent refused to hire him and continued to seek to fill the vacant positions (ID 7). Having found that the threshold prima facie case was established, the ALJ next concluded that Respondent had articulated a legitimate non-discriminatory reason for denying Complainant employment. In reaching this determination, the ALJ noted that the two employees who interviewed Complainant for the mortgage sales position determined that he "was not a prime candidate to hire, that he was deficient in skills and that his responses were less than satisfactory." (ID at 8). In particular, Respondent submitted a certification by Jones describing the standard interview process, which included simulated sales calls and his evaluation of Complainant's performance in the interviews. Jones certified that he believed Complainant would not be an effective mortgage service representative because of his vague responses to the interview questions. Ibid. With respect to the customer service position, the ALJ determined that it was undisputed that Complainant expressed in his interview that his true interest in obtaining the customer service position was to eventually obtain a mortgage sales position. Ms. Spiritosa wrote on the interview evaluation form

that Complainant was “too concern[ed] when he will be in sales.” Based upon this evidence, the ALJ concluded that Respondent articulated a legitimate business reason for rejecting Complainant’s application.

The ALJ next addressed whether Complainant raised a genuine issue of material fact regarding the ultimate question of whether Respondent’s articulated reasons were a pretext for unlawful discrimination. Under the standards for determining a motion for summary decision, the ALJ noted that he was required to assess “whether the evidence [was] such that a reasonable trier of fact could find that the proffered reasons were not the actual reasons and/or that the substantial motivating or determinative factor was actually illegal discrimination.” (ID 7, citing Fuentes v. Perskie, 32 F.3d 759, 764 (3rd Cir. 1994).

With regard to the mortgage sales representative position, the ALJ concluded that Complainant failed to produce any concrete evidence that, if accepted as true, would allow a reasonable fact-finder to conclude that age was a motivating factor in Respondent’s decision-making process (ID 9). Specifically, the ALJ found that Complainant never contended that he did well in the interviews or provided any proof to dispute Respondent’s assessment of his performance in the interviews. Similarly, the ALJ noted that Complainant provided no circumstantial evidence to refute Ms. Spiritoso’s assessment of his attitude toward the CMC position or to challenge Jones’ certification that he had no part in the decision not to hire Complainant for the CMC position.

The ALJ held that this “failure to call into legitimate question the evidential basis for the employer’s legitimate reason for rejection is a heavy blow to complainant’s attempt to avoid an adverse ruling on these motions.” (ID at 10).

The ALJ then concluded that the fact that the human resources representative who interviewed Complainant also rejected other applicants who were “significantly older” than Jones does not create a genuine question regarding his motivation for terminating. Instead, the ALJ found Complainant’s arguments in this regard to be unclear and unsupported by a proffer of evidence that

could support a finding in Complainant's favor on this issue. Significantly, the ALJ noted that Complainant did not refute Respondent's evidence that in the same month in which Respondent rejected Complainant for the mortgage sales position, Respondent hired mortgage sales consultants who were aged 40, 44, 47, 48, 53 and 57. In addition, Jones certified that he personally selected ten individuals over the age of 40 for hire during the surrounding time period, namely, from September through December 1998. Complainant did not dispute this evidence. Accordingly, the ALJ concluded that Complainant's allegations that Jones had a propensity for rejecting older applicants were insufficient to create a genuine factual dispute regarding Respondent's motives for refusing to hire him.

Finally, the ALJ determined that Complainant "merely asserts that he was better qualified than others who were hired" and provided no tangible evidence to dispute Respondent's business judgment regarding his suitability for employment (ID at 11). The ALJ noted that, with respect to the mortgage sales position, both Jones and Forrest interviewed him and rated him negatively, finding his answers vague and ineffective in responding to customers (ID 3). By way of contrast, the ALJ noted that Respondent gave higher ratings to a successful younger candidate cited by Complainant as less qualified, and found the younger applicant to provide "far more specific" responses than Complainant. Ibid. The ALJ determined that Complainant's subjective belief that he was more qualified than the younger individuals whom Respondent hired does not "create an issue of fact." Ibid. (citations omitted).

On this record, the ALJ determined that Complainant's unsupported assertions of age discrimination and his subjective assertion that he was better qualified than others who Respondent hired was not enough to establish the existence of a genuine factual dispute which, if resolved in Complainant's favor, would permit a fact-finder to reasonably conclude that Respondent's articulated reasons for not hiring him were pretextual (ID 10). Accordingly, the ALJ concluded that

summary decision in favor of Respondent was appropriate in this case and found good cause to dismiss the complaint (ID 11).

IV. THE PARTIES' EXCEPTIONS AND REPLIES

A. Complainant's Exceptions

Complainant takes exception to the ALJ's determination that summary decision in favor of Respondent is warranted in this matter. Complainant argues that the U.S. Supreme Court decision in Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000) mandates that in determining whether a party is entitled to a judgment as a matter of law, a court should not make credibility determinations or weigh the evidence, and should "give credence to the uncontradicted and unimpeached evidence favoring the non-moving party, " "at least to the extent that evidence comes from disinterested witnesses." Id. at 2110 , quoting Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986). In this instance, Complainant contends that the question of motivation is a matter of credibility that precludes summary dismissal of his claims.

Moreover, Complainant contends that the ALJ improperly accepted Jones' certification as undisputed evidence of Respondent's true reasons for rejecting Complainant. Complainant asserts that Jones was not a disinterested witness and that his certification is additionally unworthy of belief because it is internally inconsistent (Ce 3-4). Specifically, Complainant argues that Jones' statement that Complainant did not perform successfully in the second and third interviews is inconsistent with the fact that Complainant would not have reached the third interview if he had not been successful in the second interview (Ce 4). Accordingly, Complainant argues that Jones' certification should not be given any credence (Ce 3).

Complainant argues that the facts preclude summary decision in Respondent's favor. Specifically, the fact that he had 15 years of sales experience in a similar "call center" environment, which was far greater than the experience of younger applicants who had 0-2 years experience, demonstrates that Respondent's reasons are unworthy of belief and should be tested at hearing

(Ce 4). Similarly, Complainant alleges that Jones' propensity for rejecting older applicants creates a genuine issue of material fact regarding Respondent's motive that can only be resolved at a hearing (Ce 5).

Complainant also takes exception to the ALJ's characterization of Respondent's evaluation of Complainant's suitability for employment as a legitimate business judgment. Complainant contends that accepting this premise on summary decision would allow any employer to engage in discriminatory conduct under the guise of "business judgment" and will "eviscerate the protective provisions of the [LAD]." (Ce 5-6). Finally, Complainant does not take exception to the ALJ's denial of his motion for summary decision on the question of liability.

A. Respondent's Reply

Respondent argues that the ALJ correctly applied the appropriate standard for summary decision as provided by Reeves, supra, and that Complainant has misinterpreted the Court's ruling in Reeves, supra. According to Respondent:

The Reeves Court's reference to "disinterested witnesses" merely states that the court must give credence to uncontradicted and unimpeached evidence that comes from disinterested witnesses . . . But Reeves does not hold that the court may give credence only to such evidence.

[Rr 2.]

Moreover, according to Respondent, Jones is no longer employed by Respondent, is not an individual defendant, and therefore, is not an interested party (Rr 3-4). Consequently, the ALJ was not obligated to disregard Jones' certification. Respondent also argues that even without Jones' certification, the documentary evidence supports the ALJ's finding that Respondent's reasons for refusing to hire Complainant were legitimate and non-discriminatory (Rr 3). In particular, Respondent urges the Director to accept the ALJ's finding that there is no material issue of fact regarding its motives because Complainant has not produced evidence to dispute the assessment of his performance in interviews by three independent interviewers or to otherwise

establish a factual dispute regarding Respondent's motives. Respondent also states that Complainant's statistics do not support Complainant's allegations that he was rejected because of his age, especially in light of evidence that it hired many older applicants at the time it rejected Complainant (Rr 8). In sum, Respondent contends that Complainant's failure to raise a material issue of fact regarding pretext requires summary decision in its favor.

IV. THE DIRECTOR'S FINDINGS AND DETERMINATIONS

Summary decision may be granted if "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5. To defeat a motion for summary decision, the opposing party must submit evidence demonstrating that there is a genuine dispute regarding material facts, which can only be resolved by an evidentiary hearing. Ibid. Therefore, the decision maker must determine whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged dispute in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). In particular, in the context of a discrimination claim, the party opposing the motion must present evidence which, if taken as true, would permit a reasonable fact-finder to conclude that the responding party's articulated reasons for the adverse employment actions are suspect and the employer was motivated by the unlawful motives alleged by the plaintiff. Kelly v. Bally's Grand, Inc., 285 N.J. Super. 422, 434-35 (App. Div. 1995).

The LAD prohibits discriminatory refusal to hire on the basis of age. N.J.S.A. 10:5-4; 10:5-12(a).² As a starting point for analyzing cases brought under the LAD, including failure to hire cases, the New Jersey courts have adopted the methodology established by the United States

²The LAD does permit an employer to refuse to hire or promote a person over 70 years of age, N.J.S.A. 10:5-12(a). That exception to the general prohibition against age discrimination in employment is inapplicable to the facts in the instant matter, as Complainant was 48 years old at the time Respondent refused to hire him.

Supreme Court in McDonnell Douglas Corp. v. Green³, 411 U.S. 792 (1973). However, the elements of a prima facie case are flexible, and will vary in differing factual circumstances. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). To establish a prima facie case of discriminatory failure to hire, a complainant must demonstrate that 1) he is a member of a protected class; 2) he was qualified for the position sought; 3) he was rejected despite his qualifications; and 4) the employer continued to seek applicants of similar qualifications for the vacancy after rejecting him. Anderson v. Exxon, 89 N.J. 483, 492-93 (1982). Once a complainant has established a prima facie case of unlawful discrimination, the burden of production shifts to the respondent to articulate a legitimate, nondiscriminatory reason for the adverse action. Texas, 450 U.S. at 255. To accomplish this, the respondent must clearly set forth, through the introduction of admissible evidence, the reasons for the failure to hire.

If the respondent presents such a reason, the burden shifts back to the complainant. To establish the existence of a genuine factual dispute regarding pretext for the purpose of defeating a motion for summary judgment, a complainant must present evidence which would permit, but not necessarily compel, a fact-finder to reasonably either: 1) disbelieve the respondent's articulated reasons for the adverse action; or 2) believe that discrimination was more likely than not a motivating or determinative cause of the adverse action. Fuentes v. Perskie, supra, 32 F.3d at 763.

A complainant must do more than demonstrate that the employer's decision was wrong or mistaken. "[T]he factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." Id. at 764. A complainant can present evidence of inconsistencies, incoherencies, implausibilities, or contradictions in the employer's articulated reasons which would permit a reasonable fact-finder to conclude that the

³Although the Division is not bound by federal precedent when interpreting the LAD, New Jersey courts have consistently "looked to federal law as a key source of interpretive authority" in construing the LAD. Grigoletti v. Ortho Pharmaceutical Corp., 118 N.J. 89, 97 (1990).

employer's reasons were unworthy of credence, and therefore the employer did not act for the nondiscriminatory reasons stated. Id. at 765. Moreover, on a motion for summary judgment, the decision-maker must determine whether the evidence challenging "the employer's proffered reasons for discharge reasonably could support an inference that the employer did not act for nondiscriminatory reasons, not whether the evidence necessarily leads to [the] conclusion that the employer did act for discriminatory reasons." Greenberg v. Camden County Vocational and Technical Schools, 310 N.J. Super. 189, 200 (App. Div. 1998), citing Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 900 (3rd Cir.), cert. dismissed, 483 U.S. 1052 (1987).

Applying these standards, the Director finds good cause to adopt the ALJ's initial decision granting Respondent's motion for summary dismissal even though Complainant has presented sufficient evidence to establish a prima facie case of discriminatory refusal to hire. Specifically, it is undisputed that Complainant is a member of a protected class, that he met the basic qualifications for the available positions, and that Respondent rejected him and continued to seek other applicants of similar qualifications. The Director also finds that Respondent proffered a legitimate nondiscriminatory reason for not hiring Complainant, which shifts the burden back to Complainant to present evidence of pretext.

Here, Complainant has not presented tangible evidence which, if believed, would permit a reasonable fact-finder to conclude that Respondent refused to hire him because of his age. With respect to the mortgage sales positions, Respondent utilized an interview process that consisted of an initial screening interview, a mock sales call, and a joint interview designed to assess the applicant's ability to handle situations he or she was likely to encounter as a sales representative (Exhibit C of Respondent's Reply Memorandum). In evaluating Complainant for the mortgage sales representative position, both Jones and Forrest rated Complainant at the lowest level for the second and third interviews (Exhibits D2C,E,F of Respondent's Reply Memorandum). Jones and Forrest determined that Complainant did not meet their expectations in the performance categories

entitled: “overcoming objections/persuasiveness; customer service aptitude (being helpful and responsive to customers); organization of thoughts; initiative (actively tries to influence events to achieve goals; and personality assessment (ability to determine personality type profile of another individual in a very short period of time, and adjust your behavior according to your assessment) (Exhibits D2DC and E of Respondent’s Reply Memorandum). With respect to Respondent’s consideration of Complainant for the customer service center job, Ms. Spiritoso wrote in her evaluation of Complainant: “too concerned when he will be in sales. I am afraid not interested in ... work in CMC” (Exhibit D2G of Respondent’s Reply Memorandum).

Further, Complainant has not established that Respondent was aware of his age. Respondent used an employment application that does not contain any reference to age (Exhibit D2B of Respondent’s Reply Memorandum). In addition, Respondent’s interview checklist used in the employment interview does not contain any questions that would solicit or reveal an applicant’s age (Exhibit D2D of Respondent’s Reply Memorandum). Indeed, Complainant does not allege that Respondent made any derogatory comments related to his age or that Respondent asked him about his age.

Applying the applicable legal standards, the Director finds that even considering the evidence in the light most favorable to Complainant, a reasonable fact-finder could not find sufficient evidence that age was a motivating factor in Respondent’s refusal to hire Complainant. In support of his claim, Complainant offers little more than his allegations that Respondent’s illegal motive may be surmised from the fact that Respondent hired younger applicants with less sales experience than Complainant. Specifically, Complainant contends that at the time Respondent rejected him for the mortgage sales position, Jones hired a twenty-four year old man who had no sales experience as well as a former colleague of Complainant who was also in his mid-twenties and had only two years of experience as compared to Complainant’s 15 years in the same job. Ibid. The record reveals that Respondent evaluated these comparatives as possessing greater sales

skills than Complainant. With respect to Complainant's former coworker David Ott, Jones rated him on his Interview Checklist as being a 4 out of 5, with 5 being the highest, in categories of professionalism, communication skills and overall rating. Additional records of Ott's interviews reflect that on his Telephone Evaluation form he was rated as a 2 or 3 in all but one category, with 3 being the highest rating. Moreover, Respondent wrote "good communication skills, enthusiastic" on his pre-screening record. Similarly, James Webb, who Complainant also cites as being less qualified, received ratings of 4's and 2's during his interviews. By way of contrast, Respondent rated Complainant lower on the Telephone Evaluation form, scoring him as 1 for most categories, which signifies that he was below expectations for a mortgage services salesperson. Moreover, Jones and Forrest, the other interviewer for the mortgage sales position, both rated Complainant negatively and found that his responses to be vague and ineffective, while Ott's responses were "far more specific." (ID at 3).

On this record, the fact that Complainant had 15 years experience in travel sales while one successful younger candidate had no sales experience and another had 2 years of experience similar or identical to Complainant's former position does not overcome the undisputed evidence that Respondent evaluated these applicants' performance in simulated sales calls and made decisions based on these ratings, hired and rejected applicants of diverse ages and that three separate interviewers rated Complainant as unacceptable for employment based on his performance in interviews.

The cornerstone of Complainant's exceptions is his allegation that Jones is not a disinterested witness and therefore the ALJ improperly accepted Jones' certification regarding his motives as true rather than allowing the matter to go to hearing for a credibility determination. The Director is not persuaded that the ALJ unduly relied upon Jones' certification as Complainant alleges. Jones' certification was only one among several items of evidence considered by the ALJ. The ALJ also considered the evaluations done by Forrest and Spiritoso, as well as Complainant's

failure to present, by way of certification or affidavit, any evidence that he did well during any of his the interviews or any other evidence regarding his superior abilities. Indeed, the ALJ reasoned that Complainant “never denies the assessment presented in Jones’ certification [and] presents absolutely no evidence that attacks the *bona fides* of the Jones/Forrest assessment of his skills, or lack thereof, as demonstrated in the interview process.” (ID 10). For all these reasons, the Director finds that the ALJ accorded proper weight to Jones’ certification for the purpose of determining whether there Complainant presented evidence which, if accepted as true, would permit a reasonable fact-finder to disbelieve the respondent’s articulated legitimate reasons or believe that a discriminatory reason was more likely than not a motivating cause of Respondent’s refusal to hire him. Fuentes, supra, 32 F.3d at 765.

Similarly, the Director is not persuaded by Complainant’s allegations that Jones’ certification should be disregarded because he is an interested party. The Director recognizes that self-interest, allegiances and fear of repercussions may sometimes influence the testimony of an employer’s witnesses, however, in the present case, Jones was only one of three interviewers, is no longer employed by Respondent, and has no stake in the outcome of this case. Accordingly, the Director finds insufficient evidence in the record to reject the ALJ’s conclusion that Jones’ certification supports Respondent’s proffered legitimate reasons and was not shown to be disputed by tangible evidence. Moreover, even if Jones’ certification is discounted, the remaining evidence, as discussed above, supports the ALJ’s finding that Complainant failed to present sufficient evidence of a genuine factual dispute regarding discriminatory motive.

In particular, the Director finds good cause to adopt the ALJ’s determination that Complainant’s “very limited statements and ‘analysis’” of candidates hired and rejected in 1998 did not create a material factual dispute regarding discriminatory animus or create a question regarding the veracity of Respondent’s articulated reasons (ID 10). The evidence reveals that in 1998, Respondent hired 12 applicants who were over the age of 40 (Complainant’s Exhibit H). Jones,

in particular, hired 10 individuals over 40 between September and December 1998 which is the same period in which Complainant was interviewed and rejected (ID 10). In this context, the fact that Jones rejected 7 applicants over the age of 40 is not sufficient evidence of discriminatory motive. Accordingly, the Director adopts the ALJ's conclusion that a reasonable fact-finder could not conclude this amounts to a propensity to reject older applicants.

The Director also rejects Complainant's argument that 15 years of experience rendered him more qualified than others for a position with Respondent. In this regard, the ALJ appropriately stated:

'A complainant's subjective belief that he/she was more qualified than other individuals does not create an issue of fact. The decision maker's perception, not that of the employee, is relevant . . . A court should not 'second-guess' an employer's 'business judgment' regarding who is more qualified for a position. A complainant must produce evidence from which a fact-finder could reasonably disbelieve the employer's articulated reasons or believe that ' invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.' (ID 10, quoting Cordeiro v. Bayway Refining Co., (OAL Dkt. No. CRT 4379-95, January 12, 2000, quoting Dungee v. Northeast Foods Inc., 618 F.2d 682, 689).

Even accepting as true Complainant's statement that he had more sales experience than younger applicants whom Respondent hired, the record does not reveal a factual dispute regarding motive. Two different people independently determined that Complainant's performance in interviews that included simulated sales calls was lacking. A third interviewer determined that Complainant was not sincerely interested in the available position and Complainant did not dispute this assessment. It is undisputed, and no reasonable fact-finder could conclude otherwise, that Respondent's interviewers reported that Complainant performed poorly in the interviews and that these interviewers also favorably evaluated other applicants who were Complainant's age and older and recommended them for hire. On this record, Complainant's statement that he has significantly more sales experience than younger applicants whom Respondent hired and his statement that Respondent rejected other applicants in his age group is insufficient to create a genuine dispute

of material facts regarding the impact of Complainant's age on the interviewers' perceptions of his particular suitability for the available positions or Respondent's true reasons for refusing to hire him. To survive summary decision a complainant must offer "tangible, meaningful evidence, rather than illusory suggestions of a 'genuine' clash of facts" (ID at 11, citing Brill v. Guardian Life Ins. Co. of America, supra, 142 N.J. at 539. Complainant has not done so in this instance.

In sum, the Director finds good cause to adopt the ALJ's initial decision dismissing the complaint on Respondent's motion for summary decision. The evidence of record, taken in a light most favorable to Complainant, presents insufficient evidence of discriminatory animus to cast doubt on the truthfulness of Respondent's reasons for its actions and does not create a genuine factual dispute regarding the material issue of pretext.

ORDER

Having given careful and independent consideration to the record, the Director concludes that Complainant failed to establish that Respondent subjected him to unlawful employment discrimination in violation of the LAD. Accordingly, the Director adopts the ALJ's initial decision denying Complainant's motion for partial summary decision, and grants Respondent's motion for summary decision, dismissing the verified complaint in this matter.

Date: _____

J. FRANK VESPA-PAPALEO, ESQ.
DIRECTOR

JFVP:SSG:KCB/gm