

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
OAL DOCKET NO.: CRT 1957-00  
DCR DOCKET NO.: EB62NB-36199-E  
DATED: JANUARY 2, 2004

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CEDOMIR MOKRIC, )  
 )  
Complainant, )  
 )  
v. )  
 )  
KRIVAJA BEECHBROOK CORP., )  
 )  
Respondent. )  
\_\_\_\_\_ )

ADMINISTRATIVE ACTION  
FINDINGS, DETERMINATION AND ORDER

**APPEARANCES:**

Cedomir Mokric, pro se.

Mirsad Suljic, appearing pursuant to N.J.A.C. 1:1-5.4(a)(5), for the respondent.

**BY THE DIRECTOR:**

**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, Cedomir Mokric (Complainant), alleging that the respondent, Krivaja Beechbrook Corporation (Respondent), subjected him to unlawful discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On November 17, 2003, the Honorable Irene Jones, Administrative Law Judge (ALJ), issued an initial decision<sup>1</sup> dismissing the complaint. Having independently reviewed the record, the

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<sup>1</sup>Hereinafter, "ID" shall refer to the written initial decision of the ALJ; "Ex. P" and "Ex. R" shall refer to Complainant's and Respondent's exhibits admitted into evidence at the administrative hearing, respectively.

Director adopts the ALJ's initial decision as modified herein.

### **PROCEDURAL HISTORY**

On April 23, 1993, Complainant filed a verified complaint with the Division alleging that Respondent discriminated against him and terminated his employment based on his national origin (Serbian) in violation of the LAD. Respondent filed an answer denying the allegations of unlawful discrimination. The Division conducted an investigation, and on February 16, 1996, issued a finding of no probable cause. Complainant filed an appeal of the no probable cause determination with the Appellate Division of the Superior Court of New Jersey. On the Division's motion, the Appellate Division granted a temporary remand to conduct additional investigation.

After supplemental investigation, the Director vacated the finding of no probable cause and issued a finding of probable cause on November 12, 1996. The appeal was subsequently withdrawn, and the Appellate Division issued orders of dismissal on January 23, 1997 and March 21, 1997. Respondent filed a motion for reconsideration of the Director's probable cause finding, which was denied on August 17, 1998.<sup>2</sup> On February 7, 2000, after attempts to conciliate this case failed, the Division transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case.

A motion to consolidate this matter with another former employee's LAD claim against

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<sup>2</sup>Respondent's December 9, 1996 motion for reconsideration of the Division's probable cause finding in part argued that the Division was estopped from re-litigating matters already adjudicated in an action Respondent filed against Complainant in the Law Division of the Superior Court of New Jersey to collect unpaid loan balances (*Krivaja Beechbrook Corp. v. Cedomir Mokric*, Docket No. BER-L-4487-93). By order of the Law Division dated May 10, 1996, judgment was entered in favor of Respondent and against Complainant in the amount of \$14,157.94 (Ex. R-1). The May 10, 1996 order also dismissed Complainant's counterclaims, which alleged that Respondent breached a duty to provide medical insurance coverage for Complainant and his family, and that Respondent terminated Complainant's employment in violation of the LAD (Ex. R-1, R-4). In his decision denying Respondent's motion for reconsideration of the probable cause finding, the former Director concluded that Complainant's LAD claims had not been addressed in the Law Division ruling.

Respondent (OAL Docket No. CRT 10369-99) was denied by ALJ Diana Sukovich. Respondent's attorney filed a motion to withdraw as counsel, and on or about June 27, 2003, ALJ Jones issued an order permitting Respondent to appear pro se pursuant to N.J.A.C. 1:1-5.4(a)(5). The ALJ conducted a hearing on the merits on July 24, 2003, and was granted two extensions to file her initial decision, which was issued on November 17, 2003. No exceptions or replies were filed by the parties. The Director's final determination in this matter is due on January 2, 2004.

## **THE ALJ'S DECISION**

### **Factual Determinations**

The ALJ made detailed factual findings, which are set forth at pages 3 - 7 of the initial decision. Those findings are briefly summarized as follows.

Complainant worked for Respondent's parent company in Belgrade, Yugoslavia in various positions for a number of years (ID 3). In 1987, while Complainant was working as head sales manager for that company, his son was diagnosed with leukemia (ID 3-4). Complainant sought more advanced treatment for his son than was available in Yugoslavia, and elected to seek treatment at Sloan Kettering in the United States (ID 4). Complainant was given a four year assignment in Respondent's Teterboro, New Jersey plant; he was initially a forklift operator and was later promoted to assistant plant manager (ID 4). As with other employees assigned to the U.S., Respondent gave Complainant an advance to buy furniture and a car (ID 5). Complainant's advance was in the amount of \$8,173.36, and he agreed to repay this amount to Respondent (ID 5). Respondent's parent company paid a \$30,000 deposit which Sloan Kettering required to begin treating Complainant's son (ID 4). Complainant agreed to repay both the Sloan Kettering deposit and the furniture/car advance in monthly installments with 8% interest (ID 5). Complainant received donations to help defray his son's medical expenses, which were credited against the \$30,000

Sloan Kettering advance (ID 5). Complainant sought and was granted modifications of the loan terms and extensions of time to repay the loans (ID 5). Despite reduced payments and extended terms, Complainant failed to make the monthly payments and would not agree to have payments deducted from his paychecks (ID 5). Respondent terminated Complainant's employment on December 15, 1992 (ID 4).

Complainant is Serbian Orthodox, and Respondent's Director of Finance, Mirsad Suljic, is Muslim (ID 6). Respondent has closed five of its nine USA plants due to a slow economy (ID 6).

### **Analysis and Conclusions of Law**

The ALJ concluded that Complainant presented a prima facie case of employment discrimination, as he established that he is a member of a protected group (Serbian), he performed his job duties in a satisfactory manner, and was nonetheless discharged from his position (ID 8). The ALJ concluded that Respondent discharged Complainant because he defaulted on his loans and failed to repay them, and not because of his Serbian origin (ID 8,10). The ALJ specifically found no merit in Complainant's assertion that he was not in default of his loans (ID 9). The ALJ found that Complainant failed to prove that employees retained by Respondent were Muslim and non-Serbian, or that Respondent treated Muslims and/or Croatians more favorably than Serbians (ID 8-10). Regarding Complainant's contention that Respondent also terminated other Serbian employees because of their Serbian origin, the ALJ concluded that Respondent discharged those employees due to decreasing sales and because their visas had expired (ID 9-10). The ALJ also rejected Complainant's contention that Respondent wrongfully denied him health insurance coverage for his family, concluding that the health insurance issue was fully litigated in a Superior Court action (ID 7,9).

### **THE DIRECTOR'S DECISION**

## **Findings of Fact**

The Director adopts the ALJ's factual findings as set forth in the initial decision and summarized above. In addition, based on the ALJ's summary of the witness testimony and the Director's review of the documentary evidence, the Director makes the following additional findings of fact.

In May 1992, the parties agreed to revised terms for repayment of Complainant's loans. As a result, Complainant was to make payments of \$442.76 monthly beginning in May 1992 on one loan, and payments of \$401.00 monthly beginning in May, 1993 on the other loan (Ex. P-10). By letter to Respondent dated August 19, 1992, Complainant requested a reduction in his loan payments because of his own medical expenses and tuition expenses for his son, but stated that he would repay the loan within the time frame set by the parties' agreement (Ex. P-11). In October and November of 1992, Complainant tendered to Respondent checks in the amount of \$100 and \$150, respectively, which Respondent returned to Complainant uncashed, asserting that the amounts paid did not meet Complainant's monthly obligations under the loan agreements (Ex. P-12, P-14).

## **The Legal Standards and Analysis**

An employee may attempt to prove employment discrimination by direct evidence, or more commonly, by circumstantial evidence. Bergen Commercial Bank v. Sisler, 157 N.J. 188, 208 (1999). The standards for circumstantial evidence rather than direct evidence are applicable in this case.

As a starting point for analyzing LAD cases relying on circumstantial evidence, the New Jersey courts have adopted the burden-shifting methodology established by the United States

Supreme Court in McDonnell Douglas Corp. v. Green<sup>3</sup>, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Clowes v. Terminix International, Inc., 109 N.J. 575, 595 (1988). A complainant first bears the burden of establishing a prima facie case, which requires proof that the complainant is a member of a protected class, that he or she was performing the job at a level which met the employer's legitimate expectations, that he or she was terminated, and that the employer thereafter sought others to perform the complainant's job duties. Clowes v. Terminix, supra, 109 N.J. at 597. The Director agrees with the ALJ's conclusion that Complainant established a prima facie case of unlawful discrimination.

Once a complainant has established a prima facie case of unlawful discrimination, he or she has created a presumption that discrimination has occurred. The burden of production, but not the burden of persuasion, then shifts to the employer to articulate some legitimate nondiscriminatory reason for the adverse action. Texas Dep't of Community Affairs v. Burdine, supra, 450 U.S. at 253-54; see Andersen v. Exxon Co., 89 N.J. 483, 493 (1982). Here, Respondent asserts that it discharged Complainant because he defaulted on the loans he received for his son's medical treatment and to buy furniture and a car in the U.S. (ID 6). The Director concludes that Respondent met its burden of articulating a legitimate non-discriminatory reason for terminating Complainant's employment.

Consequently, in order to prevail, Complainant must prove by a preponderance of the evidence that Respondent's articulated reason for its action was pretextual. He may do this either directly by showing that the employer was more likely than not motivated by a discriminatory reason or indirectly by showing that the employer's articulated reason is unworthy of credence. Bergen Commercial Bank v. Sisler, supra, 157 N.J. at 211.

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<sup>3</sup>Although 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).

Although Complainant asserts that he complied with his loan obligations, the ALJ concluded that Complainant was in default of his loan payments to Respondent (ID 9). The Director finds no basis for rejecting this conclusion, as the loan documents demonstrate that Complainant was to make monthly payments of specified amounts and Complainant failed to pay those amounts for at least two months (Ex. P-10 through P-14). Complainant further contends that Respondent did not terminate Muslim Croatians who were unable to repay their loans (ID 6). However, the Director's review of the record does not disclose any competent evidence of similarly situated non-Serbian employees who were granted more favorable loan repayment terms or were otherwise treated more favorably than Complainant. Where a party disputes the ALJ's findings based on witness testimony, it is that party's responsibility to provide the agency head with the specific portions of the hearing transcript relating to each disputed fact, identifying those portions which support alternate or additional factual findings. Matter of Morrison, 216 N.J. Super. 143, 157-58 (App. Div. 1987). Complainant has failed to do so here, and the Director finds no basis in the record for rejecting the ALJ's credibility determinations or to otherwise support the finding or conclusion that non-Serbian employees were retained despite defaulting on loans to Respondent.

Complainant further alleges that after war broke out in the former Yugoslavia, Respondent decided to discharge all of its Serbian employees, including him (Ex. P-19). Complainant submitted into evidence a document entitled "Workers - Delegates Employed by Krivaja-Beechbrook Corp.," which identifies the nationalities, dates of hire and, where applicable, termination dates of 24 named individuals (Ex. P-22). Respondent's Director of Finance, Mirsad Suljic, testified that the employees listed on Exhibit P-22 were terminated because their visas had expired and not because of their ethnicity (ID 6).

After admitting this document into evidence and hearing witness testimony, the ALJ was

not persuaded that the employees Respondent retained were non-Serbian (ID 8). The Director must give substantial weight to the ALJ's credibility determinations, since she had an opportunity to observe the witnesses and assess their demeanor. See Clowes v. Terminix, supra, 109 N.J. 575, 587(1988); Renan Realty Corp. v. Dept. of Community Affairs, 182 N.J. Super. 415, 419 (App. Div. 1981). The Director may not reject an ALJ's factual finding based on such credibility determinations unless the Director finds from his review of the record that the finding is arbitrary, capricious or unreasonable, or is not supported by competent and credible evidence in the record. Ibid; N.J.A.C. 1:1-8.6(c). Here, the Director finds insufficient evidence in the record to overturn the ALJ's credibility determination or her conclusion that Complainant failed to prove that the employees Respondent retained were non-Serbian (ID 8).

Moreover, even if Complainant had presented competent evidence to prove the national origins of specific terminated and retained employees, Complainant has not presented sufficient competent evidence to support his assertion that Respondent systematically targeted its Serbian employees for termination. Statistical evidence demonstrating that an employer had a policy, pattern or practice of treating employees of a complainant's protected class less favorably than other employees may be relevant to a showing that an employer's articulated reasons for terminating an employee are pretextual. See, e.g., McDonnell Douglas v. Green, supra, 411 U.S. at 804-805. However, to be probative, such evidence must, at a minimum, show not just the number of employees within Complainant's protected group who were subjected to adverse action, but must compare those employees to Respondent's employees outside the protected group. See, e.g., Greenberg v. Camden County Vocational and Technical Schools, 310 N.J. Super. 189, 206-207 (App. Div. 1998) (comparing the number of teachers in the plaintiff's age group who were denied tenure with the number of significantly younger teachers denied tenure).



Complainant has presented no comparative evidence regarding the number of non-Serbian employees in Respondent's workforce who were terminated or retained during the relevant period, and has failed to otherwise present competent statistical evidence to support the conclusion that Respondent disproportionately terminated Serbians as compared to non-Serbians. Accordingly the Director concludes that Complainant's evidence regarding the other employees terminated by Respondent during the relevant period is insufficient to prove that Respondent was motivated by unlawful discrimination in discharging Complainant.

Mirsad Suljic testified that Respondent closed five of its nine U.S. plants due to a slow economy, and the ALJ found that Respondent terminated some employees due to decreasing sales and revenues (ID 6, 8). The ALJ also found that Respondent terminated other employees because their work visas had expired (ID 8). Although Complainant contends that the four year tenure for employees with work visas was not enforced for non-Serbian employees (Ex. P-20), the ALJ noted that Complainant presented no credible evidence to support this contention (ID 9). After review of the record, the Director finds insufficient evidence to conclude that a decline in Respondent's business and the expiration of visas for certain employees were not Respondent's true reasons for terminating other employees who may have been of Serbian origin, or that Respondent was motivated by national origin discrimination in selecting employees for termination.

**CONCLUSION**

Based on all of the above, the Director concludes that Complainant has not met his burden of proving by a preponderance of the evidence either that Respondent's articulated reasons for terminating his employment were not its true reasons, or that Respondent terminated his employment based on his Serbian origin. Accordingly, the Director adopts the ALJ's dismissal of the complaint.

DATE: \_\_\_\_\_

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J. FRANK VESPA-PAPALEO, ESQ.,  
DIRECTOR