

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO: EC06RB-66100**

<b>Kashan Davis,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	<b><u>Administrative Action</u></b>
<b>v.</b>	)	
	)	<b>PARTIAL FINDING OF</b>
<b>PRC Management Company, Inc.,</b>	)	<b>PROBABLE CAUSE</b>
	)	
<b>Respondent</b>	)	

On, September 13, 2016, Kashan Davis (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that PRC Management Company, Inc., (Respondent) failed to promote and terminated him based on race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. The DCR investigation found as follows.

Complainant initially made only the aforementioned allegations, but during the course of DCR’s investigation, evidence was revealed that could also give rise to a claim of hostile work environment due to race. Accordingly, the verified complaint is hereby amended to add a claim of hostile work environment per N.J.A.C. 13:4-2.9. Respondent denied the allegations of discrimination in their entirety. The DCR investigation found as follows.

**Summary of Investigation**

Respondent is a real-estate management company that provides administrative and property management services for the Willow Pointe Apartments, located in Burlington, New Jersey. Complainant, a Black male, was hired on March 23, 2009, as a part-time Maintenance Mechanic, and was promoted to a full-time role in August 2010. Complainant assumed the duties of a Maintenance Supervisor from August 2013 until February 2016, during that time directing a team of four Maintenance Mechanics. Complainant alleged that Respondent refused to formally promote him into the role, and instead hired a less-qualified, less-experienced, non-Black individual into the Maintenance Supervisor position. Complainant also alleged that he was terminated due to his race on July 5, 2016.

Respondent denied discriminating against Complainant on the basis of race. Respondent alleged that Complainant was not formally promoted, after a multi-year trial period, because he was not qualified for the Maintenance Supervisor position. Respondent alleged that Complainant was discharged due to poor performance, a negative attitude, and insubordinate behavior. Specifically, Respondent alleged Complainant made threatening comments to other members of the maintenance team and this, coupled with a history of verbal and written warnings, led to the decision to terminate him. Complainant initially denied being written up for poor performance,

and later alleged that his immediate supervisor, Property Manager Ericka Hughes, who is also Black, was under pressure from upper management to discipline him.

In an interview with DCR, Complainant stated that after he was informally moved into the role of Maintenance Supervisor in October 2013, two White Maintenance Mechanics, [REDACTED] and [REDACTED], refused to take orders from him due to his race. According to Complainant, [REDACTED] often referred to him as “chicken bones.” Complainant explained that this term referenced the stereotype that Black people enjoy eating fried chicken, and he found it offensive. Complainant reported that he complained on multiple occasions to Hughes and HR Director Diane Bellavia that [REDACTED] and [REDACTED] treated him poorly and refused to work with him due to his race.

In the Answer to the Verified Complainant, Respondent alleged that Complainant was never formally promoted to the supervisory role because it became apparent within the first months that he struggled with his new responsibilities. Specifically, Complainant had difficulty motivating the maintenance team to collaborate, and maintenance requests were not being resolved in an efficient manner. Respondent alleged that Complainant was provided with resources to improve his management skills, but failed to utilize them. In its Answer, Respondent denied that Complainant ever made complaints of racial harassment to human resources or anyone in management.

During a witness interview with DCR, Hughes stated that after Complainant assumed supervisory duties, she recalled him accusing [REDACTED] and [REDACTED] of purposefully undermining him due to his race. Hughes stated that she never personally witnessed any racial incidents, but recalled meeting with the Complainant, [REDACTED], and [REDACTED] as a group to discuss their issues. She also recalled Complainant reporting his complaints of racism directly to Bellavia.

Despite Hughes’ testimony, in an interview with DCR, Bellavia denied ever receiving complaints from Complainant of racial discrimination or harassment by [REDACTED], [REDACTED], or anyone else.

During Complainant’s time as maintenance supervisor, he received multiple disciplinary warnings from Hughes. In 2014, Complainant received three separate warnings for failing to complete maintenance requests in a timely manner. Additionally, on March 24, 2014, Complainant was written up for failing to adequately communicate with Hughes, and on August 11, 2014, Complainant was written up and suspended for insubordination.

In 2015, Hughes issued additional disciplinary notices to Complainant regarding work orders that were not completed in a timely manner. On September 28, 2015, Hughes stated that Complainant had “a total of 11 outstanding tickets dating back to 4/21/15.” On Complainant’s 2015 Annual Review, Hughes rated Complainant as “Fully Satisfactory,” but stated that he needed to improve his ability to communicate in a professional manner and accept constructive criticism. During her interview with DCR, Hughes acknowledged disciplining Complainant on multiple occasions and denied being under pressure from upper management to do so.

In or around February 2016, Complainant’s supervisory duties were taken away from him and he was moved back into a Maintenance Mechanic role. The supervisor position was posted

and although Complainant expressed interest, Respondent did not consider him for the role. In March 2016, ██████████, a White male, was hired and discharged in less than a month for poor performance. In April 2016, Respondent promoted ██████████ to the supervisor position.

Complainant alleged that in the Spring of 2016, he reported to Bellavia that ██████████ texted pictures to another white employee in which Black people were depicted in a stereotypical manner, smoking menthol cigarettes and chasing a bucket of fried chicken. Complainant alleged that Bellavia stated she would look into the matter but never did so. As earlier noted, Bellavia denied receiving any complaints from Complainant.

Respondent stated that Complainant was discharged on July 5, 2016, after he threatened ██████████ and another employee for reporting a potential domestic abuse incident that involved Complainant's mother, who was a resident of the Willow Pointe Apartments. Complainant denied threatening either employee.

During her interview with DCR, Hughes explained that Complainant's mother and disabled sister lived in the complex, and ██████████ and a new maintenance employee called police to their residence after finding that the sister had been tied up. Hughes stated that the maintenance workers reported Complainant threatened them with bodily harm for calling the police and the new employee subsequently resigned. Hughes stated that Complainant was terminated on July 5, 2016, because he threatened his co-workers.

Information obtained during the investigation was shared with Complainant and, prior to the conclusion of the investigation, he was given an opportunity to submit additional information.

### **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. The procedure is not an adjudication on the merits but merely an initial “culling-out process” in which 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., 498 U.S. 1073. 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.

Under the LAD, a hostile work environment exists where an individual is subject to harassment based on a protected characteristic, and a reasonable employee of the same protected group would find the conduct severe or pervasive enough to alter the conditions of employment to make the working environment hostile or abusive. Taylor v. Metzger, 152 N.J. 490, 498 (1998). Additionally, when an employer knows or should have known of workplace harassment, it must take effective remedial measures reasonably calculated to end the harassment. Lehmann v. Toys 'R' Us, Inc., 132 N.J. at 623, 626 (1993).

The LAD also makes it unlawful for an employer to refuse to promote and/or terminate an employee due to race. N.J.S.A. 10:5-12(d). However, an inability to perform the essential functions of the position is a legitimate reason under the LAD for discharging or failing to promote an employee. See Fowle v. C & C Cola, 868 F.2d 59, 67 (3d Cir.1989) (lack of leadership or management skills is a valid reason not to promote an employee to a position of leadership or management).

In the present case, Complainant alleged that two of his white subordinates refused to take orders from him because he is Black, and he complained to management about the problem. Respondent acknowledged that Complainant frequently sought assistance on how to manage his subordinates, but denied that he ever complained about being mistreated due to his race. However, Respondent's denials are undermined by the fact that Complainant's immediate supervisor, Hughes, recalled that he complained to her on multiple occasions about [REDACTED] and [REDACTED] refusing to respect him due to his race. Hughes also recalled Complainant reporting his complaints of racism directly to Bellavia, directly contradicting Bellavia's testimony that Complainant never made any race-related complaints to her. Hughes stated that she attempted to meet with Complainant, [REDACTED] and [REDACTED] about the hostile racial environment, but this did not resolve the issues. Hughes then took no further action. The evidence obtained during the course of DCR's investigation suggests that Complainant was subject to a hostile work environment due to his race and Respondent failed to take adequate steps to stop or deter the harassment.

With regard to Complainant's failure to promote claim, the evidence supported Respondent's assertion that Complainant was not formally promoted due to poor job performance, entirely separate from any harassment from his subordinates. Complainant initially denied receiving any write-ups, but the evidence demonstrated that Complainant received multiple warnings during his time as supervisor due to the team's high number of outstanding service requests. The evidence also showed that Complainant was disciplined for matters unrelated to the performance of his subordinates, including unprofessional communication and insubordination. There was no evidence presented to suggest that Respondent's allegations of poor performance were pretextual or that discriminatory animus played a role in Respondent's refusal to formally promote Complainant.

Similarly, the evidence did not support Complainant's allegations that he was terminated because of his race. As stated above, the evidence demonstrated that Complainant had an extensive disciplinary history related not only to work performance, but also to professionalism. Additionally, Hughes attested to the fact that a maintenance team member quit after Complainant threatened him with bodily harm for calling the police after finding Complainant's sister tied up in her apartment at Willow Pointe Apartments.

Based on DCR's investigation, the Director finds there is PROBABLE CAUSE to support Complainant's allegations of hostile work environment, but NO PROBABLE CAUSE to credit the failure to promote or termination allegations of the complaint.

Date: February 25, 2019

A handwritten signature in blue ink, reading "Rachel Wainer Apter", enclosed in a thin black rectangular border.

Rachel Wainer Apter, Director  
NJ Division on Civil Rig

