

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ED15SB-66987**

Jamie M. Dellinger,)
)
 Complainant,)
)
 v.)
)
 Active Fitness Center,)
)
 Respondent.)

Administrative Action

PARTIAL FINDING OF PROBABLE CAUSE

On May 9, 2018, Jamie M. Dellinger (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that Active Fitness Center (Respondent) discriminated against her based on sex and marital status 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. DCR’s investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent operates a fitness center located in Sewell, New Jersey. On or around January 20, 2018, Complainant, a single female, interviewed for a front desk and customer service position.

In the verified complaint, Complaint alleged that Assistant Manager James Fiederlein interviewed her and asked questions related to her gender and marital status, including: Are you married, single or in a relationship? Do you have children or are expecting to have children soon? Do you have any other commitments, such as a family or anyone who relies on you? She further claimed Fiederlein asked very few questions about her work experience and qualifications. Respondent did not hire Complainant for the position.

In its Position Statement responding to the complaint, Respondent denied that Fiederlein asked any of the alleged questions and denied that Complainant’s sex or marital status played any part in its decision. It asserted that Complainant was not selected for the position because of her interview. Specifically, Respondent’s Position Statement asserted that Complainant arrived late, kept to herself without elaborating on her personal qualities, lacked friendliness, made no eye contact, and did not show much interest in the position.

In an interview with DCR, Complainant said that she was on time for the interview and was very friendly at the beginning until the inappropriate questions were asked. She stated Fiederlein did not ask questions regarding her qualifications and experience and she was made to feel so uncomfortable with the questions that she may have been short with her answers and may have stopped making eye contact. Complainant stated she was more than qualified for the position.

She said she is very outgoing, in school for a Master's degree, has extensive experience as an administrative assistant and has played Division 1 sports. If her demeanor changed during the interview, it was based solely on the discriminatory questions. In addition to the questions in the verified complaint, she recalled Fiederlein also asking if she had a sick relative to care for.

DCR interviewed former [REDACTED]. The information she provided was inconsistent with the information provided in Respondent's Position Statement. In the position statement, [REDACTED] stated that Fiederlein conducted the first set of interviews in January 2018 and that he asked questions about the applicants' strengths and weaknesses, the reason they felt they were a good candidate for the position, and if the applicants had any other obligations in order to understand their personalities, interests and hobbies. Respondent's Position Statement stated that when Fiederlein asked Complainant if she had any other obligations they should know about, Complainant did not understand so he elaborated and asked, "Do you have any other commitments, such as another job, a need to be off on weekends or get out early due to sports, children's sport pick-up or other obligations?" [REDACTED], in the Position Statement, indicated that she conducted second round interviews with selected applicants. The Position Statement described in detail how Complainant interacted with Fiederlein, noting her lack of friendliness, blunt answers and not elaborating on answers.

However, during her interview with DCR, [REDACTED] stated that Fiederlein did not conduct any first interviews at all, and that it was Owner Michael Reis who conducted all first round interviews and she who conducted second round interviews. [REDACTED] said Reis told her about Complainant's first interview and that is why she did not get a second interview. [REDACTED] also said she answered the verified complaint after speaking with both Reis and Fiederlein. [REDACTED] further asserted that [REDACTED] told her Reis asked her similar questions to the questions that Complainant alleged Fiederlein asked her during her interview.

DCR interviewed James Fiederlein. He denied being involved with any of the hiring and interviews. He claimed he only greeted Complainant and that Reis interviewed her.

DCR reviewed Respondent's documents showing it received 13 resumes for the position in question. [REDACTED] said all applicants were given first round interviews. DCR contacted all applicants and was able to interview three: [REDACTED]. [REDACTED] said he did not attend the interview. [REDACTED] said she was interviewed by a woman and was not asked questions similar to those alleged by Complainant. [REDACTED] told DCR a man interviewed her, but she did not recall his name or title. She said she was asked if she was married, single or in a relationship, recalled being questioned about her children and how she was going to be able to both get to work and watch her kids. She also claimed the application itself asked if she was married or single. Respondent did not hire any of the three applicants interviewed by DCR.

DCR interviewed Owner Michael Reis. He said he has conducted all interviews since he opened his facility about 11 years ago and that he interviewed all applicants around January 2018. He makes the final decision on hires and, depending on the number of applicants, may conduct second interviews. Reis denied having any application for applicants to fill out and said he only requested resumes. He said he did not remember Complainant and would not remember any applicant unless they made a big impression. He did not recall Complainant's interview. He

denied ever asking the alleged questions to any applicants and said neither sex nor marital status are ever factors in his hiring decisions. He stated he hires based on personality, looking for extroverted, friendly and outgoing people for the front desk position. He also stated that at times when he ran late for an interview he asked whoever was working the front desk to meet with the applicant until he arrived and that he had a feeling it was Fiederlein in this instance.

Respondent's position statement asserted that in the past two years at least eight females and one male were hired for the front desk position: [REDACTED]. On January 12, 2018, [REDACTED] was hired for the front desk position. According to [REDACTED] she was hired because of her outgoing and positive personality, passion for helping others, and because she was bilingual. [REDACTED] said that around this same time an applicant named [REDACTED] was also hired but she was a no-call, no-show. Soon thereafter, Respondent hired [REDACTED] because a fill-in employee was needed for the front desk. [REDACTED] left for a better-paying job in or around December 2018, according to Reis.

DCR also interviewed [REDACTED], a married female, who was hired as a front desk employee in June 2018. She denied telling [REDACTED] that Reis asked the questions Complainant alleged but claimed Reis may have asked similar questions only after she was already hired in order to determine if there were scheduling conflicts. [REDACTED] and [REDACTED] pointed out that Respondent has hired single and married employees, and that many of their front desk employees are college students in relationships but not married.

In response to the evidence presented by Respondent regarding the person who interviewed her, Complainant told DCR she did her own research after her interview and found Fiederlein's Facebook profile picture, and she was positive that the person who interviewed her was Fiederlein. DCR shared this picture with Reis and he confirmed that it was his employee, James Fiederlein.

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

ANALYSIS

At the conclusion of an investigation, the DCR 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(a). "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." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director 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,

¹ DCR requested [REDACTED] last name but Reis and [REDACTED] said that Respondent did not find records and they could provide it.

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.

However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

a. Failure to Hire because of Sex and Marital Status

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the “terms, conditions or privileges of employment” based on sex and marital status. N.J.S.A. 10:5-12(a).

Here, the investigation did not find sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on her sex when it refused to hire her. According to records and witnesses’ statements, most of Respondent’s front desk employees are female. The applicant hired over Complainant, along with several other subsequent front desk hires, were also women.

The investigation also did not find sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant because she was unmarried. According to [REDACTED] and [REDACTED], Respondent has hired single and married applicants, and most of the front desk employees were, like Complainant, unmarried.

b. Violation of N.J.S.A. 10:5-12(c)

The LAD makes it unlawful for any employer to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to marital status or as to sex unless sex is a bona fide occupational qualification for the position. N.J.S.A. 10:5-12(c).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent inquired about Complainant’s marital status and inquired if she had or was planning to have children, both of which violate the LAD. Applicant [REDACTED] corroborated that similar questions were asked by a male interviewer at her interview. In addition, the investigation found reason to question the veracity of Respondent’s representations to DCR, since its Position Statement is inconsistent with information obtained during interviews with Fiederlein, Reis, and [REDACTED], and information provided during those interviews are inconsistent with each other. Moreover, Respondent was unable to provide definitive evidence as to who conducted the interview let alone what took place at Complainant’s interview. Reis admitted that at times when he ran late for an interview he asked whoever was working the front desk to meet with the applicant until he arrived, and he had a feeling it was Fiederlein in this instance. While Fiederlein denied participating in the interview, Complainant identified Fiederlein from his Facebook page as the person who interviewed her. There is thus a reasonable suspicion that, as Complainant alleges, Fiederlein conducted the interview, and inquired about Complainant’s marital status and whether she had or was planning to have children.

CONCLUSION

Based on the investigation, DCR finds that **NO PROBABLE CAUSE** exists as to the allegations of failure to hire based on sex and marital status. However, DCR finds that there is a sufficient basis to support the allegations that Respondent violated the LAD by inquiring about Complainant's marital status and sex and that this matter should "proceed to the next step on the road to an adjudication on the merits" on this ground. Frank, 228 N.J. Super. at 56. Therefore, the Director finds **PROBABLE CAUSE** to support Complainant's allegations that Respondent violated N.J.S.A. 10:5-12(c).



Rachel Wainer Apter, Director
New Jersey Division on Civil Rights

DATE: May 6, 2019