

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
OAL DOCKET NO. CRT 7370-05  
(OAL DOCKET NO. CRT 7149-03 - Remanded)  
AGENCY DOCKET NO. EG13CB 45919

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TRACY SWINT,

Complainant,

v.

DISTINCTIVE MARKETING, INC.  
and DIANE SPENCER,

Respondents.

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**APPEARANCES:**

Brian O. Lipman, Deputy Attorney General, for the complainant (Anne Milgram, Attorney General of New Jersey, attorney)

Rosemary DiSavino, Esq. for the respondents

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 Tracy Swint (“Complainant”) alleging that Distinctive Marketing, Inc. and Diane Spencer (“Respondents”) terminated her because of her creed in violation of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 to -49. After a hearing, the Honorable Ken R. Springer, Administrative Law Judge (“ALJ”), issued his first initial decision in this matter concluding that Complainant’s termination was due to her poor job performance and Respondents’ severe business

downturn, and that Complainant had not satisfied her burden to prove that she was terminated because of her creed. Subsequently, the Director issued an order remanding this matter to the ALJ for supplemental findings to resolve material factual disputes that were not addressed in the initial decision.

The ALJ took additional testimony and issued a second initial decision in which he again concluded that Complainant was not terminated for discriminatory reasons. Having independently reviewed the entire record in this matter, the Director adopts the ALJ's recommended decision and dismisses the complaint.

#### PROCEDURAL HISTORY

On June 28, 2000, Complainant filed a Verified Complaint with the Division alleging that Respondent terminated her employment because of her creed in violation of the LAD. Specifically, Complainant alleged that Respondent Spencer advised her that she would be terminated if she wore Muslim attire to work, and subsequently terminated Complainant's employment. After an investigation by the Division, the Director issued a finding of probable cause on September 30, 2002, and the Division transmitted this matter to the Office of Administrative Law ("OAL") as a contested case. A hearing was conducted on September 1, 2004, and on March 3, 2005, the ALJ issued his first initial decision dismissing Complainant's complaint.

By order entered on May 31, 2005, the Director remanded the matter to OAL for supplemental findings on four specific factual issues whose resolution depended upon critical credibility determinations to be made by the ALJ. The Director concluded that issues to be addressed on remand were as follows:

1. Did Diane Spencer tell complainant that she could not come to work in Muslim attire?
2. When complainant did report to work in Muslim attire, did Diane Spencer move complainant's assigned workstation? If so, was complainant's workstation out of public view?
3. Did Diane Spencer make a statement to the effect that she could not tolerate everyone's religion?
4. Did Diane Spencer terminate complainant's employment before or after she announced her conversion to Islam and her intention to wear Muslim attire to work?

In accordance with these instructions, the OAL took additional testimony on March 28 and April 18, 2006. Both sides filed post-hearing briefs on or before June 21, 2006, when the record closed. The ALJ issued a second initial decision on September 5, 2007 dismissing the complaint. On October 18, 2007, Complainant filed exceptions to the initial decision, and on October 18, 2007, Respondents filed a reply to Complainant's exceptions. Because the parties were granted extensions of time for these submissions, the Director requested and was granted an extension for filing this order, which is now due on December 6, 2007.

#### THE ALJ'S DECISION

#### THE ALJ'S FINDINGS OF FACT

This order will address only those four issues that were considered by the ALJ on remand. The ALJ generally found that during the hearing on remand, Complainant drastically changed her story and admitted that crucial portions of her prior testimony were

inaccurate or grossly exaggerated. ID:2<sup>1</sup>

1. Did Diane Spencer tell Complainant that she could not come to work in Muslim attire?

The ALJ looked to the credibility of both Complainant and Respondent Diane Spencer (Spencer), as they were the only parties to the telephone conversation in which this topic came up. On or about Sunday, June 18, 2000, Complainant informed Spencer that she had converted to Islam and would be wearing Muslim clothing to work from that point forward. In her original complaint, Complainant alleged that Spencer informed her that “if she wore Muslim attire to the office that she would be discharged.” At the initial hearing, Complainant stated that she did not go to work on that Monday after the telephone conversation, as Spencer had “told me that I couldn’t come to work like that, I wasn’t following her dress code.” ID:3. Throughout her testimony, Spencer consistently denied telling Complainant that she could not wear Muslim clothing at work. Ibid.

The ALJ found that, at the remand hearing, Complainant dramatically changed her earlier statements and admitted that Spencer had not threatened to discharge her. ID:3. On cross-examination, Complainant retracted her earlier charge in response to a question about Spencer’s alleged threat, replying, “Well, she didn’t say -- when I spoke to her that night, she just said, ‘Oh, okay,’ and that was it. So then I came to work that Monday. But I don’t even think I stayed at work that whole day.” ID:3. The ALJ thus found that Complainant’s own testimony directly refuted her allegation of a threatened discharge.

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<sup>1</sup>ID shall refer to the Initial Decision of ALJ Ken R. Springer, dated September 5, 2007; TR1 shall refer to the transcript of the hearing dated September 1, 2004; TR2 shall refer to the transcript of the hearing dated March 28, 2006; TR3 shall refer to the transcript of the hearing dated April 18, 2006; Ce shall refer to Complainant’s exceptions; and Re shall refer to Respondents’ reply.

ID:3.

The ALJ also considered testimony that Spencer had hired other employees in the past who had come to work in Muslim attire. ID:4. One former employee, Kitura Ali, testified that she herself had reported to work “every day” dressed in Muslim attire, and that Spencer never said anything about the way she was dressed or did anything to make her feel unwelcome. ID:4. Another former employee testified that Ali came to work in Muslim attire. A current employee testified that she was aware of at least two other employees who regularly came to work in Muslim attire, and that she had never heard Spencer express any criticism. ID:5. The ALJ concluded that Respondent’s witnesses - including Spencer - provided credible testimony, in contrast to Complainant, who made “demonstrably false or misleading assertions.” ID:5. Accordingly, the ALJ found that Spencer never threatened to discharge Complainant upon learning that she would report to work in religious attire. Ibid.

2. When Complainant did report to work in Muslim attire, did Spencer move Complainant’s assigned workstation? If so, was Complainant’s workstation out of public view?

The ALJ recalled Complainant originally testified that, upon reporting to work in Muslim attire, Spencer had moved her from the front office to the back office where she would be kept from public view. ID:6. On remand, however, it was established through the testimony of Spencer, as well as that of a former employee, that Complainant had always divided her time between the two offices and had never been stationed exclusively in the front office. ID:6. Confronted with this contradiction, Complainant conceded that she had often been assigned to work in the back office, but was unwilling to estimate what

percentage of time she had spent in each location. ID:6-7.

Complainant also complained that one of her supervisors offered to fax or photocopy any documents she might need, and both machines were located in the front office. Complainant interpreted this offer as a way of keeping her out of the front office. However, she admitted on cross-examination that nobody told her she could not go into the front office or confined her to the back office. She also could not recall whether she needed anything faxed or photocopied that day. ID:7.

Based on the testimony, the ALJ concluded that Complainant's room assignment had not been changed as a result of wearing Muslim attire, since she did not have a regular room assignment either before or after her conversion to Islam. The ALJ further found that the supervisor's offer to help with office tasks did not provide proof of unlawful intent to discriminate. Rather, the ALJ concluded that Complainant's testimony on remand altered the nature of the original complaint and undermined the allegations of discrimination. ID:7.

3. Did Diane Spencer make a statement to the effect that she could not tolerate everyone's religion?

The ALJ found that Complainant gave slightly differing accounts of the circumstances under which Spencer allegedly told her she could not tolerate everyone's religion. ID:7. In the original complaint, Complainant claimed that Spencer uttered this statement during the telephone conversation on Sunday, June 18, 2000, when Complainant first announced that she would be wearing Muslim clothing to work. ID:7. In her testimony at the original hearing, however, Complainant accused Spencer of making this statement on the day Complainant came to work wearing Muslim clothing. Complainant did not call any corroborating witness, and neither Carol Beckett nor David Bullock, both of whom were

employed by Respondent at that time, heard Spencer make this comment. ID:7.

Further, the ALJ found that Spencer vigorously denied telling Complainant, or anyone else, that she could not tolerate everyone's religion. To the contrary, Spencer had employed several workers who practice Islam, and had never expressed any objection to their wearing Muslim attire at work. ID:8. The ALJ concluded that it would have been totally out of character for Spencer to have made such a remark, in that her past conduct belied the charge that she could not tolerate people of other faiths. As Complainant's testimony on this subject seemed confused and contrived, the ALJ found that Spencer did not state that she could not tolerate others' religions. ID:8.

4. Did Diane Spencer terminate Complainant's employment before or after she announced her conversion to Islam and her intention to wear Muslim attire to work?

The ALJ recognized the difficulty in establishing exact dates of events with any degree of precision, and acknowledged that the credibility of the witnesses would be crucial in answering this question. ID:8. Complainant in her testimony seemed relatively certain that the telephone call with Spencer took place on Sunday, June 18, 2000, and that her termination from employment happened at work on the following Tuesday, Wednesday or even Thursday. However, Complainant's "pre-interview information" sheet, signed by her at the Division's office on Tuesday, June 20, 2000, refers to the act of discrimination as having occurred on Monday, June 19, the day after the telephone conversation. Therefore, the ALJ found that both parties agreed that Complainant did not come to work on that Monday, and that on Tuesday she visited the Division office. ID:8,9. From this, the ALJ concluded that if Complainant did not come to work on Monday and complained to the

Division on Tuesday about her wrongful discharge, then logically her termination would have had to occur sometime prior to the telephone conversation on Sunday. ID:9.

The ALJ determined that although less confident on precise dates and times, Spencer's version of what transpired fit better with the surrounding circumstances. ID:9. At the first hearing, Spencer explained that her business became less successful by the end of 1999 and that by April of 2000 she had started to discharge staff. ID:9. Spencer kept Complainant on the payroll as long as possible because she was a family member, but that sometime before June 18, she told Complainant that she would have to let her go. ID:9. On remand, Spencer's testimony was fully consistent with this earlier version. In or around May of 2000, Spencer told many of her employees that she could no longer afford to keep them and that they should start looking for other jobs. Spencer testified that she had advised Complainant in May to begin looking for another job, and that her best recollection was that she gave Complainant two weeks notice on Thursday, June 15, 2000, three days prior to the telephone conversation. ID:9.

The ALJ indicated that Spencer had many valid non-discriminatory reasons for terminating Complainant's employment, including her poor job performance and record of excessive absenteeism and lateness, as well as the economic downturn and Spencer's view that Complainant would be unable to generate any new business. ID:9-10. The ALJ also found that Respondents' purported deteriorating financial situation was consistent the fact that several employees had their status changed to that of "consultant" since consultants do not receive a full-time salary or benefits and are paid only for the sales they generate. ID:10. The ALJ thus found that Respondent Spencer was more credible than Complainant, and concluded that Spencer terminated Complainant's employment before

Complainant announced her conversion to Islam. ID:10.

### THE ALJ'S LEGAL CONCLUSIONS

Complainant alleged that Respondent wrongfully discharged her due to her creed. The ALJ found that an employee may attempt to prove employment discrimination either by direct or circumstantial evidence. Bergen Commercial Bank v. Sisler, 157 N.J. 188, 208-210 (1999). Testimony on remand served to strengthen the fact-finding reached as a result of the original hearing in that Complainant was unable to prove discrimination through direct evidence that Spencer told her not to come to work in Muslim attire; that Spencer moved her assigned workstation; or that Spencer said she could not tolerate everyone's religion. ID:12.

The ALJ also found that Complainant failed to prove discriminatory intent through circumstantial evidence. While Complainant was able to pass the preliminary hurdle of establishing a prima facie case, Spencer presented legitimate, non-discriminatory reasons for the termination, which caused any presumption in Complainant's favor to "disappear." ID:12, citing Bergen Commercial Bank, supra at 210. Complainant was unsuccessful in satisfying her ultimate burden of proving by a preponderance of the credible evidence that the reasons articulated by Spencer were not the true reasons for the employment decision, but merely a pretext for discrimination. Accordingly, the ALJ concluded that Complainant's claim must fail. ID:12.

### THE DIRECTOR'S DECISION

## THE DIRECTOR'S FACTUAL FINDINGS

The Director made various findings of fact relative to this matter in his first order issued on May 31, 2005. (Tracy Swint v. Distinctive Marketing, Inc. and Diane Spencer, OAL Dkt. No. CRT 7149-03). Those findings are incorporated into this order. In addition, the Director concludes that, with a single exception, the ALJ's factual findings recited herein are supported by sufficient evidence in the record. Under the Uniform Administrative Procedure Rules, the Director may reject or modify the ALJ's findings of fact, but must clearly state the reason for doing so. N.J.A.C. 1:1-18.6(b). Moreover, it is well settled that an agency head must give due deference to the ALJ's factual determinations because the ALJ had the opportunity to hear the live testimony of witnesses, observe their demeanor, and judge their credibility. Clowes v. Terminix, 109 N.J. 575, 587-88 (1988). Thus, an agency head may not reject or modify any finding of fact based on the credibility of a lay witness unless it first determines from a review of the record that the finding is arbitrary, capricious or unreasonable, or is not supported by sufficient, competent, and credible evidence in the record. N.J.A.C. 1:1-18.6(c).

As to the credibility of the witnesses, the ALJ believed that after hearing their testimony twice - once at the original hearing and again at the remand - he was in an excellent position to assess their demeanor and credibility. ID:5. The ALJ found that Spencer gave "coherent and convincing testimony that was consistent with the known facts, such as [Complainant's] inadequate job performance and the economic downturn in [Respondent's] business." ID:5. In marked contrast, the ALJ found that Complainant made "demonstrably false or misleading assertions." Ibid. Based on these very clear and unequivocal determinations respecting credibility, the Director specifically adopts the ALJ's

findings concerning the issues addressed on remand.

The Director notes, however, an ambiguity concerning the ALJ's finding that "both parties agree that Complainant did not come to work on that Monday (June 19<sup>th</sup>, 2000)." ID:8-9. This was the day after the telephone conversation in which Complainant advised Respondent of her conversion to Islam. Complainant first testified at the original hearing that she did not report to work that day. TR1:18. At the remand hearing, Complainant first testified that she had come to work that day, subsequently could not remember whether she did or not, and then finally testified that she did report to work that day but did not stay the whole day. TR2:87-88. Respondent Spencer, on the other hand, testified at the original hearing that Complainant did not report to work that Monday, based on her reading of Complainant's time sheet compilation. TR1:215, 216. Spencer also testified that she herself was not in the office that Monday because she was at her own outside full-time job. TR1:217<sup>2</sup>. Hence, it is not undisputed, as the ALJ concluded, that Complainant did not report to work on Monday, June 19. Nevertheless, Spencer's absence from the workplace on June 19<sup>th</sup> casts doubt on Complainant's argument that she was fired by Spencer on that date, and supports the ALJ's ultimate finding that Complainant was terminated before announcing her conversion to Islam.

#### THE DIRECTOR'S LEGAL ANALYSIS AND CONCLUSIONS

The LAD makes it unlawful for an employer to discriminate based on creed. N.J.S.A. 10:5-12(a). In order to establish a prima facie case of discrimination using direct evidence, the quality of the evidence required is that "which if believed, proves the existence of a fact

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<sup>2</sup>Spencer testified without contradiction that by this point in time (the week of June 19<sup>th</sup>, 2000) she was only coming in to Respondents' place of business at most one day per week. TR1:215-217.

in issue without inference or presumption.” Bergen Commercial Bank v. Sisler, 157 N.J. 188, 208 (1997), citing Castle v. Sangamo Weston, Inc., 837 F.2d 1550, 1558 (11<sup>th</sup> Cir. 1988)<sup>3</sup>. In a claim for wrongful discharge, the employee must show by direct evidence that the decisionmaker placed substantial negative reliance on an unlawful criterion - in this case Complainant’s religion - in making the decision to terminate employment. Sisler, supra, citing Fischer v. Allied Signal Corp., 974 F.Supp. 797, 804 (D.N.J. 1997). The Director finds that in accordance with the ALJ’s determinations concerning the credibility of Complainant and witnesses who testified on behalf of Respondents, Complainant failed to provide any direct evidence of discriminatory intent or “substantial negative reliance” on Complainant’s religion in terminating her employment.

In order to establish a prima facie case based on circumstantial evidence, an employee must prove that he or she (1) was a member of a protected class; (2) was performing in the position from which she was terminated; (3) nevertheless was fired; and (4) in the case of a reduction in force, the employee must show that other workers were retained. Zive v. Stanley Roberts, 182 N.J. 436 (2005). Once a prima facie case is established, the burden shifts to the employer to show a legitimate, non-discriminatory reason for terminating the employee. Anderson v. Exxon Co., 89 N.J. 483, 493 (1982). The complainant must then prove that the employer’s proffered reason is a pretext for a discriminatory reason. Id. If the employer demonstrates a legitimate reason for the adverse action, the employer is not liable for discrimination. Id at 497.

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<sup>3</sup>The New Jersey Supreme Court, in analyzing cases under the LAD, has typically looked to federal cases under Title VII of the Civil Rights Act of 1964 as a guide in interpreting the LAD. Grigoletti v. Ortho Pharm. Corp., 118 N.J. 89, 96-97 (1990).

The Director agrees with the ALJ that Complainant has established a prima facie case of discrimination based on creed. Complainant was a follower of the Islam religion; accordingly, she was a member of a protected class. Complainant was hired by Respondent in or around July, 1998, and her two-year tenure of employment meets the second element of a prima facie case. In accordance with the holding in Zive, it is enough for a plaintiff to show that she was employed and performing the job in question, without the burden of providing evidence as to the quality or level of her job performance at this stage. That burden does not fall on the employee until *after* the employer has proffered a legitimate, non-discriminatory reason for the termination. Zive, supra at 454,455. Finally, Complainant was terminated from her job, and the record establishes that Respondents retained other employees.

Because the elements of a prima facie case for discrimination were established, the burden shifts to the employer to offer a legitimate reason for termination. Respondents have provided evidence that Complainant's performance was unacceptable. Specifically, Respondents presented testimony indicating Complainant performed her job inadequately, ID:5; was a poorly qualified and inexperienced worker, ID:5; failed to improve despite extensive counseling, ID:9-10; and had a record of excessive absenteeism and lateness. ID:10.

Moreover, Spencer testified that her business had taken a significant downturn and she was no longer able to maintain many of her staff on payroll. ID:9-10. Spencer also testified that several employees had been let go or switched from full-time to either part-time or consultant status, due to loss of business, TR1:158-161, and that the staff now consisted of just two employees. TR1:172. Accordingly, the Director concludes that

Respondents have offered legitimate, non-discriminatory reasons for terminating Complainant.

The burden now shifts to Complainant to prove that the reasons Respondents offered were merely pretexts for religious discrimination. Though Complainant was a member of a protected class due to her creed, there was no credible evidence proffered by Complainant to establish that her creed had anything to do with the decision to terminate her. Respondents' witnesses credibly testified that Distinctive Marketing had employed other Muslims, one of whom dressed in Muslim attire, and that Spencer never criticized or objected to their wardrobe or religious beliefs. ID:4-5.

Complainant also failed to prove that Respondents' reliance on her poor work performance as a reason for termination was a pretext for discrimination. In his first initial decision, based on his assessment of the witnesses' credibility, the ALJ found that Complainant's work performance was unsatisfactory despite extensive counseling. He also found that Complainant was chronically late or absent. The Director specifically adopted these findings in the first order issued in this matter on May 31, 2005. Nothing in the record on remand alters this finding.

Moreover, it is undisputed that Distinctive Marketing was experiencing a financial crisis which forced reductions in staff. ID:9. Complainant testified at the original hearing that she knew of seven former employees who had left Respondent's employ before she herself was terminated, and that she was aware of only four full-time employees remaining. TR1:61-63, 71-73. Spencer herself had been compelled to take a full-time outside job in April of 2000 in order to keep Distinctive Marketing afloat financially. TR1:160. This uncontroverted testimony is as clear a description of a company in trouble as can be

provided, and establishes an inarguable business basis for downsizing staff.

Finally, the ALJ has found as fact, again based on the credibility of the witnesses, that Spencer made the decision to terminate Complainant before learning of Complainant's conversion to Islam. While Complainant in her filed exceptions argues against the validity of these findings, there is not enough to establish them as arbitrary, capricious or unreasonable, or not supported by sufficient, competent, and credible evidence in the record. N.J.A.C. 1:1-18.6(c). Based on the entire record, the Director concludes that Complainant has failed to prove that Respondents' articulated legitimate, non-discriminatory reasons for her termination were pretextual, and that the true reason she was terminated was because of her creed.

Complainant takes exception to the evidence provided by Respondents that Distinctive Marketing had employed other members of the Islam faith without incident, arguing that the one Muslim former employee who testified on behalf of Respondents wore her Muslim garb differently than Complainant, and also is not related to Spencer as is Complainant. Complainant contends that "(w)hile Spencer may have been tolerant of Muslims generally, it is reasonable to infer that the religious conversion of a family member affected Spencer differently." (Ce:13). This inference is totally without basis in fact. Further, Complainant's description of her status as a "token minority,"(Ce:14), is also completely unsupported by the evidence, as testimony was provided by Spencer, one former and one current employee, as well as Complainant herself that other practitioners of Islam had been hired by Respondent. She was clearly not a token.

Complainant attempts to portray Spencer as less credible than Complainant, by highlighting statements made by Spencer at remand that were not as clearly expressed

during the initial hearing or during the period of investigation (Ce:5-8). In one example, Complainant addresses the issue of when, exactly, Complainant was terminated. During the original hearing, Spencer testified that she advised Complainant “about the middle of the month, the 15<sup>th</sup> or something like that” that she would have to let her go due to financial constraints and poor work performance. TR1:210-211. This was prior to the June 18, 2000 telephone call in which Complainant advised Spencer of her conversion to Islam. Spencer also testified that she had let other employees go during April and May of that year, had given them enough notice for them to find other jobs, and “had talked to [Complainant] about that sooner.” TR1:211. At the remand hearing, Spencer testified that she had initially advised Complainant she would not be able to continue employing her “probably being around, maybe May and early June.” TR2:49. Thus, Complainant’s description of Spencer’s testimony as “conflicting” and “inconsistent” is not borne out by a review of the record (Ce:8, 15). Assuming arguendo that Spencer did not actually terminate Complainant’s employment until after Spencer became aware of her conversion to Islam, the record establishes that Complainant was informed of her impending termination well before her announcement that she was now a practicing Muslim.

Complainant is also suspicious of Spencer’s “failure to divulge” that some of the former employees were hired as consultants in a “crafty” manner, characterizing this as “intentionally misleading.” (Ce:19, 20). Complainant argues that the employment relationships between these employees and Respondents had not ended, but rather had simply “morphed from employment to contractor.” (Ce:20). This suggests that these relationships changed in name only, and that the employees were still earning their full-time salaries and receiving full benefits. As already established, this is clearly not the case; this

change of status resulted in an appreciable cost savings to Respondent, which was arguably the whole point of the exercise. Based on the entire record, including a careful review of Complainant's exceptions, the Director sees no reason to reject the ALJ's findings as to Spencer's credibility.

More importantly, Complainant significantly changed her testimony at the remand hearing, particularly with respect to the four crucial questions that were the focus of the remand. Specifically, Complainant's testimony regarding Spencer's response to the news that she intended to come to work in Muslim attire, the issue of Complainant's workstation, the timing of Spencer's alleged statement regarding her intolerance for "everyone's religion", and the actual date of her termination all served to erode her credibility. The remand also established through credible testimony that Complainant was far from the only employee who practiced Islam and came to work in Muslim garb, and that the others who had done so had not experienced any discrimination from Respondents. There was also no substantiation for Complainant's claim that she was "told" not to work in the front office after coming to work in Muslim attire. Therefore, based on his review of the entire record, the Director finds no reason to disturb the ALJ's findings regarding Complainant's credibility.

Respondents in their reply to Complainant's exceptions requests additional relief against Complainant for having brought this frivolous, or "bogus" claim, potentially in the form of reimbursement of fees and costs (Re:3). Under New Jersey's frivolous claim law, "a prevailing party may be awarded costs if the non-prevailing party either brought the claim in bad faith... or knew, or should have known, that the complaint was without basis in law or equity. N.J.S.A. 2A:15-59.1(b)(2), as cited in Davitt v. Open MRI of Warren, 2007 U.S.

Dist. LEXIS 25230 (D.N.J.). Respondents argue that Complainant in this matter “is lying about the facts in this case,” (Re:3). However, despite the ALJ’s finding after two hearings that Complainant was not credible in her claims against Respondents, he did find both times that Complainant was able to sustain at least the preliminary hurdles of a prima facie case. ID:12. Further, the Division’s investigation resulted in a finding of probable cause, and the Director ordered a remand after the original initial decision. It cannot, therefore, be established that Complainant did not have a “reasonable” belief that Respondent committed unlawful discrimination; accordingly, Respondent’s request for costs and fees is denied.

CONCLUSION AND ORDER

Based on the foregoing, the Director concludes that while Complainant has established a prima facie case of discrimination based on creed, Complainant has failed to establish that Respondents’ legitimate, non-discriminatory reasons for terminating her were a pretext for discrimination. Thus, Complainant has failed to satisfy her burden to prove discrimination based on creed in violation of the LAD. Accordingly, the Director adopts the ALJ’s initial decision dismissing Complainant’s complaint.

December 4, 2007

Date  
Esq.

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J. Frank  -----  
Vespa-Papaleo,  
Director, Division on Civil Rights