

**STATE OF NEW JERSEY
DIVISION ON CIVIL RIGHTS
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EB29SB-65838**

Rachel Wainer Apter, Director,)
New Jersey Division on Civil Rights,)
and [REDACTED] [REDACTED],)
)
Complainants,)
)
v.)
)
SKYZIR Distributions,)
)
Respondent.)
)

Administrative Action

PARTIAL FINDING OF PROBABLE CAUSE

On March 18, 2016, out-of-state resident¹ [REDACTED] [REDACTED] (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging Skyzir Distributions, LLC (Respondent) discriminated against him based on his sex in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent, a privately-owned telecommunications company that offers consulting services to clients. The company was based in Leonia, New Jersey at the time of the complaint, but has since relocated to Fort Lee. The business currently has no employees and is operated by its co-owners, Justin Paradelo and James Park.

On October 25, 2015, Respondent posted a job opening for a Human Resources Manager/Recruiter on Indeed.com with the following description: “working towards a Bachelor’s degree in Human Resources or related field; possess and exhibit a strong and genuine interest in working with people, ability to interact at all levels of the organization; ability to handle confidential and sensitive information; and detail orientated with excellent written and verbal communication skills- Female candidate preferable.” DCR obtained a screen shot of the posting and confirmed that the posting contained the “female candidate preferable” language.

Complainant, who was living in Arizona at the time, claims that on October 25, 2015, he responded to the job posting via the Indeed website. On October 26, 2015, Complainant received an automated response via Indeed.com indicating it was from Paradelo notifying him that he was “not the right fit for the position at this time.” Complainant alleged that Respondent discriminated against him by refusing to hire him because he is male. Complainant bases his discrimination claim on the “female candidate preferable” language of Respondent’s job posting.

¹ Complainant was a resident of Arizona at the time he filed the complaint. He is now a New York Resident.

Respondent denied the allegation of gender discrimination in its entirety. Respondent indicated that it did not select Complainant because he did not specify his previous experience, job history or education on his application. Respondent alleged that Complainant instead submitted a resume that merely stated his name, email address, that he had “extensive recruiting and hiring experience,” and was “proficient at Microsoft products and social media.” The resume also included the following descriptive adjectives: “friendly and patient, team member, cheerful, self-starter, positive personality, trust-worthy, honest, detail oriented, reliable, responsible, helpful and resourceful.”

In a September 27, 2016 email to DCR, Park explained Respondent’s motivation in posting for this position: “We wanted to help the candidate intern to experience the real life in working in a working environment. Helping them to get ready for a salary job.” During a subsequent interview with DCR, Park explained that the position was an internship and that Respondent was looking to hire a college student who could work in exchange for college credits, a letter of recommendation and paid lunches.

On October 14, 2016, DCR again interviewed Park and asked him to explain the posting’s “female candidate preferable” language. Park responded, “I was thinking HR is best with a female because it’s a media stereotype” that females are better at secretarial positions and it was mainly a secretarial position. However, Park stated that this belief played no part in Respondent’s particular decision to reject Complainant’s application.

During DCR’s November 2, 2016 site visit, Respondent confirmed that it had posted the position to which Complainant applied on both Indeed.com and Craigslist.com. Respondent also produced a printout from Indeed.com for DCR’s review that identified 46 applicants, comprised of 18 males and 28 females. It said it interviewed seven people for the position. Respondent provided to DCR the individual resumes and email correspondence with the seven applicants setting up the interviews. The material indicates that Respondent interviewed five females and two males for the position.

Paradelo told DCR that Respondent did not hire any of the seven individuals interviewed because he and Park ultimately realized they were not qualified to determine which candidate of the seven could best help them grow their business. Paradelo went on to state that the business continued solely with him and his partner, James Park.

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

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. For purposes of that determination, “probable cause” is defined as a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that the LAD was violated. Ibid. If the Director 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). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

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, 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*.

The LAD makes it unlawful to discriminate against an employee in the “terms, conditions, or privileges of employment” based on sex. N.J.S.A. 10:5-12(a). It also makes it unlawful for “any employer ... to print or circulate ... any statement, advertisement or publication ... which expresses, directly or indirectly, any limitation, specification or discrimination as to ... sex ... unless based upon a bona fide occupational qualification.” N.J.S.A. 10:5-12(c).

Here, Respondent’s “female candidate preferable” language in the job posting violates N.J.S.A. 10:5-12(c) because Respondent introduced no evidence that being female was a bona fide occupational qualification of the internship. In addition, Park’s comments to DCR that “I was thinking HR is best with a female because it’s a media stereotype” that females are better at secretarial positions is also direct evidence of gender discrimination and a violation of the LAD. Therefore, based on the content of Respondent’s job posting and Respondent’s statements during the DCR investigation, the Director, pursuant to N.J.A.C.13:4-2.2(e), joins this action as a Complainant and finds **PROBABLE CAUSE** to believe that a violation of N.J.S.A. 10:5-12(c) has occurred.

However, the DCR investigation found that despite the discriminatory language in the job posting, Respondent did not discriminate against Complainant on the basis of his sex in failing to hire him for the Human Resource Manager/Recruiter position. Respondent conducted interviews with candidates of both genders and ultimately did not hire anyone for the position. Moreover, the investigation found that Complainant’s application did not receive further action, such as consideration for an interview, because Complainant failed to furnish sufficient specific information concerning education and job experience with his job application submission. Therefore, with respect to Complainant’s claim of failure to hire based on gender, this case will be closed with a finding of **NO PROBABLE CAUSE**.²

² As Complainant [REDACTED] was not deterred from applying for the position and there was not probable cause to credit his allegations that Respondent’s refusal to hire him was based on his gender, he is not an “aggrieved party” for purposes of the N.J.S.A.10:5-12(c) violation. See Hailes v. United Air Lines, 464 F.2d 1006, 1008 (5th Circuit 1972) (“we refuse to rule that a mere casual reader of a [discriminatory] advertisement ... may bring suit.)

Date: April 18, 2019



Rachel Wainer Apter, Director
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