

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MARCY S. GROSS,

Complainant,

v.

**COMBINED COMPUTER RESOURCES, INC.,
BROADRIDGE, INC.,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10121985

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 12, 2009, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

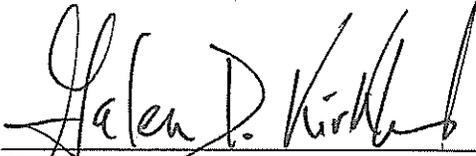
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **JUL 08 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
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**COMBINED COMPUTER RESOURCES,
INC., BROADRIDGE, INC.,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10121985**

SUMMARY

Complainant, who worked as a consultant for Respondent Broadridge, Inc., through a contract with Respondent Combined Computer Resources, Inc., charged both Respondents with unlawful discrimination based upon age. Respondent Broadridge, Inc. refused to hire Complainant as a permanent employee after it made an inquiry about her age. Because Complainant has made no causal connection between the inquiry and the refusal to hire her, the case against Respondent Broadridge, Inc. must fail. At hearing, Complainant withdrew her claims against Respondent Combined Computer Resources, Inc.

PROCEEDINGS IN THE CASE

On November 14, 2007, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A public hearing was held on October 22, 2008.

Complainant and Respondents appeared at the hearing. Complainant was represented by Locksley O. Wade, Esq. Respondent Broadridge, Inc. was represented by Jeremy M. Brown, Esq., of Proskauer Rose, LLP. Respondent Combined Computer Resources, Inc. was represented by Joseph Asaro, Esq. of Riker, Danzig, Scherer, Hyland, Perretti, LLP.

At the public hearing, Complainant, through her attorney, withdrew her claims as they relate to Respondent Combined Computer Resources, Inc. (Tr. 86)

FINDINGS OF FACT

1. Complainant is 45 years of age. She was born on May 13, 1963. (ALJ Exhibit 2; Tr. 85)
2. Respondent Combined Computer Resources, Inc (CCR) is a computer consulting firm. Respondent Broadridge, Inc. (“Broadridge”) is a financial services firm. (Tr. 20-22)
3. Complainant applied for a project manager position with CCR in July, 2007. The position was a temporary consulting position for Broadridge. Complainant’s term of employment was scheduled to end on October 26, 2007. (ALJ Exhibit 2)

4. In 2007, Broadridge was engaged in a “data center migration project,” which involved moving all of Broadridge’s computer servers from their New Jersey location to Georgia. (Tr. 114)

5. John Magrini, senior director, led the data migration project. Magrini reported to Ken Szeto, vice president of product development. Complainant assisted Magrini. (Tr. 35, 90, 114)

6. After she began working at Broadridge, Complainant sought a more permanent position with Broadridge. (ALJ Exhibit 2)

7. John Vidal is in charge of management recruiting at Broadridge. (Tr. 127) Vidal was informed by Frank Castellano, director of project management, that Broadridge wanted to make a job offer to Complainant. (Tr. 130)

8. Complainant submitted an employment application to Vidal but, because Complainant omitted her social security number and made pen and ink changes, Vidal asked for another application. Complainant provided a second application on August 20, 2007. (Tr. 131-33)

9. During the application process, Vidal asked Complainant for her date of birth so that a background check could be done. A background check is required as a condition of employment for all of Broadridge’s new employees. The check cannot be performed on a candidate without the candidate’s date of birth. (Tr. 134, 138)

10. Vidal did not share the information with anyone. (Tr. 142-43)

11. A conditional offer of employment was made to Complainant on September 4, 2007. (Joint Exhibit 2; Tr. 133)

12. Despite the fact that an offer was made, Szeto did not think Complainant was “providing the level of work of a senior project manager,” and felt she “didn’t really understand some of the things” that they were doing. (Tr. 96-97)

13. Magrini felt that although Complainant did what she was instructed to do, he “would have liked to see a little more initiative” from Complainant. (Tr. 116)

14. Based upon the observations of Szeto and Magrini, Szeto decided against offering permanent employment to Complainant. (Tr. 97-98) Castellano then told Complainant that the offer of employment had been rescinded. (Tr. 41) He also communicated that decision to Vidal via email on October 15, 2007. (Respondent’s Exhibit 9)

15. Neither Magrini nor Szeto knew Complainant’s age when the decision not to hire Complainant was made. (Tr. 100, 118)

16. Vidal did not participate in the decision to rescind the offer of employment to Complainant. (Tr. 144-45)

17. Magrini is 57 years of age. Szeto is 48 years of age. (Tr. 100, 119)

18. Between 2006 and 2007, Broadridge hired 18 individuals who, like Complainant, had been consultants for Broadridge. Of those 18 new employees, nine were over 40 years of age. Six of the 18 were older than Complainant was in October of 2007. (Respondent’s Exhibit 11; Tr. 148-49)

OPINION AND DECISION

It is unlawful for an employer to deny employment to an applicant because of that applicant’s age. Human Rights Law §296.1(a). In order to prevail on a claim of age discrimination, a complainant must first make out a prima facie case.

To make out a prima facie case of unlawful discrimination under the Human Rights Law a complainant must show (1) she is a member of a protected class; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) the adverse employment action

occurred under circumstances giving rise to an inference of unlawful discrimination. *Ferrante v. American Lung Association*, 90 N.Y. 2d 623, 629, 665 N.Y.S. 2d 25, 29 (1997); *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295, 305, 786 N.Y.S. 2d 382, 390 (2004).

If Complainant establishes a prima facie case of discrimination, the burden shifts to Respondent to present a legitimate, non-discriminatory reason for its action. If Respondent does so, Complainant must show that the reasons Respondent has presented were merely a pretext for discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d 295, 305, 786 N.Y.S. 2d 382, 390 (2004). The ultimate burden of proof always remains with Complainant. *Ferrante*, 90 N.Y. 2d at 630, 665 N.Y.S. 2d at 29.

Complainant in the instant complaint has established a prima facie case of discrimination. She sought employment with Respondent, was asked her age by Respondent's human resources person, and was denied the position after it had already been offered to her. However, the fact that Respondent asked her age does not, by itself constitute discrimination. In order to prevail, Complainant must show a causal connection between the inquiry and the denial of her employment application. *Matter of Delta Airlines v. New York State Division of Human Rights*, 91 N.Y.2d 65, 74 (1997).

Complainant has failed to make such a showing. Vidal testified credibly that he did not share the information regarding Complainant's age with anyone and Magrini and Szeto, who are both older than Complainant, did not know Complainant's age. Since Magrini and Szeto were the ones responsible for rescinding the employment offer, there can be no connection between the inquiry and the rescission of the employment offer.

Szeto and Magrini both stated that Complainant's expertise and knowledge were not up to the standards they sought. As a result, Szeto declined to hire Complainant and Respondent

rescinded the offer that had been made. Complainant has not shown that Szeto's reasons are pretextual and, therefore, her claim must be dismissed. See, *Ferrante*, at 630.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the case be, and the same hereby is, dismissed.

DATED: January 12, 2009
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas S. Protano". The signature is stylized and written in a cursive-like font.

Thomas S. Protano
Administrative Law Judge