



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

GLENN LIOU,

Complainant,

v.

**THE HORIZON GROUP, HORIZON
TEMPORARY SERVICES, CORP. D/B/A
HORIZON STAFFING SOLUTIONS,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10191307

Federal Charge No. 16GB800685

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 February 3, 2021, by Margaret A. Jackson, 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.


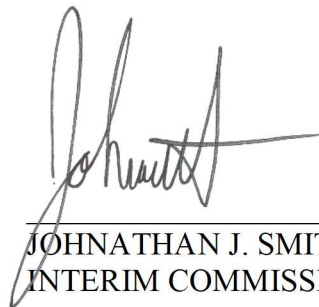
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has 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: **June 18, 2021**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER



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**THE HORIZON GROUP, HORIZON
TEMPORARY SERVICES, CORP. D/B/A
HORIZON STAFFING SOLUTIONS,**

Respondents.

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

Case No. **10191307**

Federal Charge No. 16GB800685

SUMMARY

Complainant alleged that Respondent published an unlawfully discriminatory advertisement and did not hire him because of his sex. Complainant has failed to meet his burden of proof, and the case is dismissed.

PROCEEDINGS IN THE CASE

On October 20, 2017, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the Horizon Group with unlawful

discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On April 19, 2018, pursuant to the provisions of § 297.4a of the Human Rights Law (Executive Law, Article 15) of the State of New York, and the New York State Division of Human Rights Rules of Practice § 465.4, the complaint was amended to correct Respondent’s legal name from THE HORIZON GROUP to. The Horizon Group; Horizon Temporary Services, Corp. d/b/a Horizon Staffing Solutions, and to include national origin “Taiwanese” and age as bases of discrimination.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent 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 Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on October 3, 2018.

Complainant and Respondent appeared at the hearing. The Division was represented by Senior Attorney Bellew S. McManus, Esq. Respondent was represented by Gregg M. Rosenberg, Esq.

On October 3, 2018, Complainant withdrew his complaint based on age and national origin. (Tr. 35)

On October 3, 2018, the parties also stipulated and agreed that the caption should be amended to read Glen Liou v. Horizon Temporary Services Corp, d/b/a Horizon Staffing Solutions. (Tr. 63-64)

Permission to file post-hearing briefs was granted. Neither party submitted a post-hearing brief.

FINDINGS OF FACT

1. Respondent is an executive search firm. Its sole purpose is to find and help companies find temporary staff. If the company hires them, Respondent receives a fee. (Tr. 40-41)
2. In August 2017, Respondent placed an advertisement on Indeed.com, a job search website. The advertisement sought to fill an assembly line worker position for Kiss Enterprises, a manufacturer of beauty products. (Tr. 8, 10, 45)
3. The advertisement stated, in part, that Respondent was seeking female workers in the Port Washington area to handle labeling, “pick-and-packing” and general labor. (Tr. 46)
4. On August 4, 2017, Complainant applied for the position by submitting his resume to Indeed.com. (Tr.11)
5. Complainant’s resume application consisted of a list of his education and experience as a United States Postal worker, customer service representative and as an insurance agent. (Tr.14; Complainant’s Exhibit 3)
6. Complainant received an acknowledgement that his resume was received from Indeed.com. (Tr. 12; Complainant’s Exhibit 2)
7. On May 9, 2018, Respondent’s manager Nancy Diaz, alerted the owner and managing partner Arthur Banks to the wording in the advertisement and its reference to female workers. (Tr. 46-49, Respondents’ Exhibit 2)
8. Complainant looked up a list of Respondent’s officers on-line and emailed his resume to Arthur Banks and another officer whose name he could not remember. (Tr. 15-16, 31)

9. Complainant did not receive a response from Respondent's officers or Banks. (Tr. 15-17, 32)
10. Banks was unaware that Complainant's application had been sent to Indeed.com or that it had been sent to Banks' email. (45)
11. Banks is responsible for authorizing the postings for employment. Banks did not authorize the posting and began investigating to find out who posted the advertisement. (Tr. 45)
12. Within a week of learning about the advertisement, Banks had the advertisement removed and learned that Gary Tibbs, a recruiter employed by Respondent, had posted it. (Tr.54)
13. The advertisement posted by Tibbs read, in pertinent part, "I am looking to staff female workers..." Banks immediately spoke to Tibbs. (Tr. 47-48)
14. After Banks spoke to Tibbs about the posting. Banks learned that Tibbs had posted the advertisement from Tibbs's personal account without the approval of the company. Further, it was written using the first-person pronoun. Banks told Tibbs' that he had jeopardized his employment with Respondent by posting the advertisement without approval. (Tr. 50).
15. Tibbs immediately left his employment with Respondent. (Tr. 54)
16. After receiving the instant complaint, Banks searched his emails and found Complainant's application in his junk mail. Banks did not refuse to hire Complainant and he was unaware of Complainant's application to Indeed.com. (Tr. 43)

OPINION AND DECISION

New York Exec. Law, art. 15 ("Human Rights Law") § 296.1(a) provides that it is an unlawful discriminatory practice for an employer "because of an individual's gender...to refuse to hire or employ...or to discriminate against such individual in compensation or in terms,

conditions or privileges of employment.”

To prevail, Complainant must first make out a prima facie case. To make out a prima facie case of unlawful discrimination, a complainant must show that (1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004) citing *Ferrante v. American Lung Ass’n*, 90 N.Y.2d 623, 665 N.Y.S.2d 25 (1997).

Complainant did not establish a prima facie case. Complainant is a male and is a member of a protected class. Having worked as a postal worker handling mail, he was qualified for an assembly line position and suffered an adverse employment action when Respondent did not hire him for that available position. His complaint fails because he cannot establish that any of Respondent’s recruiters forwarded Complainant’s application to Respondent or that he was treated differently because of his sex. Because Complainant has failed to make out a prima facie case, his claim that Respondent unlawfully refused to hire him because of his sex must be dismissed.

It is an unlawful discriminatory practice for employers and employment agencies “to print or circulate or cause to be printed or circulated any statement, advertisement or publication...which expresses directly or indirectly, any limitation, specification or discrimination, unless based upon a bona fide occupational qualification ...as to sex...” Human Rights Law § 296.1(d). The complaint here asserts that Respondent violated this provision when it sought only females.

Respondent has shown that recruiter Tibbs posted the advertisement without

Respondent's approval. Upon learning, within a week, about the advertisement Banks investigated and removed the posting. Respondent is not liable for posting the advertisement.

For the reasons stated above, Complainant has failed to prove his claim. The case, therefore, is dismissed.

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 claim be dismissed.

DATED: February 3, 2021
Hempstead, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the name.

Margaret A. Jackson
Administrative Law Judge