



**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.

**VIP LIMOUSINE GROUP CORP., LONG BEACH
V.I.P. LIMOUSINE INC.,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10191275

Federal Charge No. 16GB800655

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 March 3, 2020, 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.


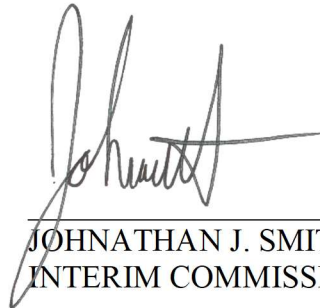
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has 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: **April 16, 2021**
Bronx, New York



JOHNATHAN J. SMITH
INTERIM COMMISSIONER



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**VIP LIMOUSINE GROUP CORP., LONG
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**AMENDED RECOMMENDED
FINDINGS OF FACT, OPINION
AND DECISION, AND ORDER**

Case No. **10191275**

Federal Charge No. 16GB800655

SUMMARY

Complainant alleged that Respondents unlawfully discriminated against him based on his age, gender and national origin when they posted an online advertisement through an on-line advertisement agency seeking a customer service representative for a limousine service and when Respondents did not hire him after he applied for the position. Respondents defaulted. Complainant failed to sustain his burden of proof. However, Respondents placed an advertisement that violated the Human Rights Law, and a civil fine and penalty is assessed payable to the State of New York.

PROCEEDINGS IN THE CASE

On September 20, 2017, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent VIP Limousine Group Corp. 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 Respondent had engaged in unlawful discriminatory practices.

On November 13, 2017, the Division amended the complaint to add Long beach V.I.P. Limousine Inc. as a Respondent.

On March 22, 2018, the Division amended the complaint to include Complainant’s Taiwanese national origin as a basis for his complaint. The Division thereupon referred the case as amended 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 notice of hearing was served on all parties on June 15, 2018. The notice of hearing notified the parties of the date, time, and location of the hearing scheduled for July 2, 2018. (ALJ Exhibit 3) None of the notices were returned to the Division, and they are presumed to have been delivered.

A public hearing session was held on July 2, 2018. Complainant appeared at the hearing. The Division was represented by Senior Attorney Bellew S. McManus, Esq. Respondents did not appear at the hearing. Respondents defaulted and an inquest was held pursuant to 9 N.Y.C.R.R. §

465.11(e). The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. § 465.12(b)(3).

On December 19, 2019, pursuant to Rule 20(a) of the Rules of Practice of the Division of Human Rights (9 N.Y.C.R.R. § 465.20(a)), due to errors, the Commissioner, on her own motion and in the interests of justice, hereby reopened the hearing record for the purpose of returning the case to the Administrative Law Judge for further proceedings for the issuance of an Amended Recommended Order. The hearing record was reviewed.

Permission to file post-hearing briefs was granted. Neither Complainant nor Division counsel filed a post-hearing brief.

FINDINGS OF FACT

1. Complainant's date of birth is August 30, 1960. (Tr. 29)
2. Complainant is a male of Taiwanese origin. (Tr. 28-29)
3. Both Respondents operate a limousine service and use the same corporate address.

(Complainant's Exhibit 2)

4. Respondents placed a job advertisement with the website Indeed.com seeking, in relevant part, a telemarketer with "experienced customer service skills to handle multiple reservation calls and able to use limo anywhere software. Preferred residence of Long Beach, Lido Beach, Island Park, Oceanside Areas. The position is immediate hire for the right candidate (FEMALE ONLY). Please text full name, where you live, age for interview (PARTTIME-FULL TIME) We will call you interview (516) 469-7909 for TEXT. Required education Bachelor's."

(Complainant's Exhibit 2)

5. Complainant was 56 years of age and living in the Bronx, New York when he submitted his resume to Respondents in consideration for employment. (Tr. 28; Complainant's Exhibit 3)

6. Complainant's educational background includes a bachelor's degree in electrical engineering and a Ph.D. in electrical engineering. (Complainant's Exhibit 3)

7. Complainant's resume also indicated that he had acquired customer service skills while working in a Chinese restaurant from 2007 through 2012 and that he owned a restaurant in 2011 and 2012. (Tr.13; Complainant's Exhibit 3)

8. Complainant's resume did not state that he was able to use "limo anywhere" software. (Complainant's Exhibit 3)

9. On July 9, 2017, Complainant submitted an e-mail application for the limo customer service position that Respondents advertised on Indeed.com. (Tr. 6, 25; Complainant's Exhibit 2)

10. When Complainant did not receive a response from Respondents, on September 19, 2017, at 10:01 a.m., Complainant sent Respondents a text message stating that he was "57 years old, living in the Bronx, NY." He also provided his cell telephone number and informed Respondents that he was "applying for cashier [sic] with Turkish at 104 Macdougall street." (Complainant's Exhibit 3)

11. On September 19, 2017, at 12:52 p.m., Complainant sent Respondents another text message stating, "Glenn Liou has a food safety certification." (Complainant's Exhibit 4)

12. On September 19, 2017, at 12:52 pm, Complainant received a text message from Respondents stating, "You want to work before limo job [sic] now cashier? What's the problem?" (Complainant's Exhibit 4)

13. On September 19, 2017 at 2:28 p.m. Complainant sent Respondents a text message stating "I am looking for a job. I did not hear any feedback regarding the limo customer service position. I am qualified for Turkish Cashier position." (Complainant's Exhibit 4)

14. In response, Respondents texted, “No thank you We don’t need [sic] anymore”.

(Complainant’s Exhibit 4)

15. On September 19, 2017, at 2:43 p.m., Complainant texted Respondents, “You do not need a cashier? You do not need a limo customer service?” (Complainant’s Exhibit 4)

16. Respondents responded, “Yes I don’t need [sic] thank you.” (Tr. 22-23; Complainant’s Exhibit 4)

17. Complainant became depressed because he was not hired. (Tr. 28)

OPINION AND DECISION

Respondents were given an opportunity to participate in the public hearing process. However, Respondents failed to appear before the Division to defend against the complaint. Therefore, Respondents defaulted pursuant to 9 N.Y.C.R.R. §465.11(e).

The hearing proceeded on the evidence in support of the complaint pursuant to 9 N.Y.C.R.R. §465.12(b)(3).

N.Y. Exec. Law art. 15 (the “Human Rights Law”) § 296.1(a) provides that it is an unlawful discriminatory practice, “for an employer... because of an individual’s age, gender or national origin...to refuse to hire or employ ... or to discriminate against such individual... in compensation or in terms, conditions, or privileges of employment.”

In order to establish a prima facie claim in the failure to hire context, Complainant must show: 1) membership in a protected class; 2) that he applied for and was qualified for a job for which Respondents were seeking applicants; 3) that despite his qualifications Complainant was rejected; and 4) after Complainant’s rejection, Respondents continued to seek applicants. *Classic Coach v. Mercado*, 280 A.D.2d 164, 166, 722 N.Y.S.2d 551, 553 (2d Dept. 2001), *citing*

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

If Complainant establishes a prima facie claim, the burden shifts to Respondents to articulate a legitimate, non-discriminatory reason for their challenged action. Then, if Respondents do so, the burden shifts back to Complainant to demonstrate that the reason is pretextual, which requires that he show both that Respondents' reason is false, and that discrimination was the real reason for their action. *See Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629-30, 665 N.Y.S.2d 25, 29 (1997). The ultimate burden of proof always remains with the complainant. *See Stephenson v. Hotel Employees and Rest. Employees Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.S.2d 633, 636 (2006).

Complainant failed to establish a prima facie case. Complainant is a member of protected classes, he was a 56-year-old Taiwanese male at the time he applied for the "limo" customer service position. However, Complainant was not qualified for the advertised customer service position because he did not have the "limo anywhere" software experience that Respondents sought as a requirement to filling the position. In addition, there was no evidence that Respondents continued to seek applicants irrespective of their age, gender or national origin to fill the position. Because Complainant has failed to establish a prima facie case of unlawful discrimination, his claim that Respondents refused to hire him because of his age, gender or national origin must be dismissed.

The Human Rights Law also makes it an unlawful discriminatory practice for an employer 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 as to ... age, gender or national origin...unless based upon a bona fide occupational qualification." Human Rights Law § 296.1(d).

Respondents violated the Human Rights Law when it advertised that it sought “FEMALE ONLY” applicants and asked the applicant to provide their full name, where they lived, and age for an interview. The evidence showed Respondents were looking to fill the customer service position with someone possessing customer service skills who was also able to use limo anywhere software. Complainant possessed customer service skills, but his resume did not indicate that he was able to use limo anywhere software.

Contrary to Complainant’s allegations at the public hearing, he was not negatively impacted by Respondents’ discriminatory job advertisement. The proof established that Complainant actively sought out, and applied to, this job advertisement with discriminatory language irrespective of his qualifications. In this instance, he did not fit the qualifications sought by Respondents. Complainant’s actions are inconsistent with Complainant’s claims of depression because he was not hired. Therefore, his claims for emotional distress are dismissed.

Human Rights Law § 297 (4)(c)(vi) permits the Division to assess civil fines and penalties, “in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.”

Human Rights Law § 297 (4)(e) requires that “any civil penalty imposed pursuant to this subdivision shall be separately stated and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.”

Pursuant to Human Rights Law § 297.4(e), “[a]ny civil penalty imposed pursuant to this subdivision shall be separately stated and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” There are several

factors that determine if civil fines and penalties are appropriate: the goal of deterrence; the nature and circumstances of the violation; the degree of respondent's culpability; any relevant history of the respondent's actions; the respondent's financial resources; other matters as justice may require. *See Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff'd*, *Sherwood Terrace Apartments v. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009); *119-121 East 97th Street Corp. v. New York City Comm'n on Human Rights*, 220 A.D.2d 79, 88-89, 642 N.Y.S.2d 638, 644 (1st Dept. 1996).

In this case, Respondents unlawfully posted a job advertisement seeking "Female ONLY" candidates and requested applicants to provide their age, in violation of Human Rights Law § 296.1(d). The goal of deterrence and the nature and circumstances of Respondents' violation of the Human Rights Law support the imposition of a civil fine. There was no proof that Respondents have committed any previous similar violation of the Human Rights Law or are incapable of paying any penalty.

A cumulative civil fine and penalty of \$1,000 is appropriate in this matter as a deterrence to Respondents from further engaging in discriminatory practices. *See Starr v. Hurlimann, et.al.*, SDHR Case No. 10146477, January 30, 2013, (awarded a \$1,000 civil fine against respondent-employer for posting a discriminatory advertisement).

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 Respondents, and their agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in employment; and it is further

ORDERED that Respondents shall take the following action to effectuate the purposes of the Human Rights Law and the findings and conclusions of this Order:

1. Within sixty (60) days of the date of the Commissioner's Order, Respondents shall pay a civil fine and penalty to the State of New York in the amount of \$1,000.00 for their violation of the Human Rights Law. This payment shall be made in the form of a certified check made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York, 10458. Interest on this award shall accrue at a rate of nine percent per year from the date of the Commissioner's Order until payment is made by Respondents; and

2. Respondents shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: March 3, 2020
Hempstead, New York



Margaret A. Jackson
Administrative Law Judge