

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

GREGORY MELTON,

Complainant,

v.

POUGHKEEPSIE CITY SCHOOL DISTRICT,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10115263

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 August 21, 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.

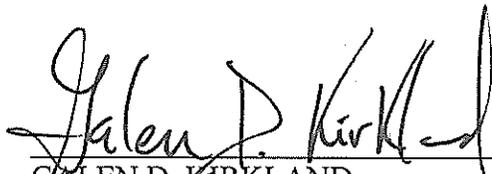
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **OCT 27 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

GREGORY MELTON,

Complainant,

v.

**POUGHKEEPSIE CITY SCHOOL
DISTRICT,**

Respondent.

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

Case No. **10115263**

SUMMARY

Complainant alleges that he was denied employment with Respondent because of his race and because he complained about Respondent's alleged discriminatory practices to the NAACP. Complainant has failed to establish that Respondent's failure to hire him was either discriminatory or retaliatory. As a result, his claims must be dismissed.

PROCEEDINGS IN THE CASE

On December 15, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent 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. 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. Public hearing sessions were held on May 14, 2009 and May 15, 2009.

Complainant and Respondent appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondent was represented by Steven M. Latino, Esq.

Permission to file post-hearing briefs was granted. Respondent’s attorney filed a timely submission.

FINDINGS OF FACT

1. Complainant is Black. (ALJ Exhibit 2; Tr. 17)
2. Complainant has experience and training as a computer programmer and network administrator. He has been working with computers since he was in high school in the 1970’s. (Tr. 18-19)
3. In the summer of 2006, Complainant filed a discrimination complaint against Respondent with the Northern Dutchess Branch of the National Association for the Advancement of Colored People (“NAACP”). Among other things, Complainant complained that Respondent’s hiring practices were racially discriminating. (ALJ Exhibit 2; Complainant’s Exhibit 4; Tr. 47-49)
4. The NAACP investigated Complainant’s claims of discrimination and determined that his complaint was “unfounded.” (Complainant’s Exhibit 4; Tr. 47-49)
5. In the fall of 2006, Respondent sought to fill a network analyst position. A network analyst is a civil service position, subject to civil service rules. (Complainant’s Exhibit 1)

6. In response to the network analyst opening, Complainant submitted a resume to Respondent's personnel department. (Tr. 26-27) A civil service exam for the network analyst position had been scheduled. The deadline for applying for the exam was August 7, 2006. Complainant neither applied for nor took the exam. (Tr. 68-69, 106)

7. When Respondent began its hiring process, there was no civil service list available for the position of network analyst. (Respondent's Exhibit 2) There was, however, a "list of qualified applicants" who had signed up for the upcoming civil service exam. That list was provided to Respondent by Dutchess County Personnel Department ("County Personnel"). The list did not include Complainant. (Respondent's Exhibit 2)

8. Under civil service rules, Respondent could have only hired Complainant to the position provisionally and it would have been required to terminate his employment once a list of candidates who passed the exam was promulgated. Therefore, County Personnel does not recommend hiring someone who is not on the list of qualified applicants and is otherwise ineligible for a permanent civil service position. (Tr. 102-03)

9. On November 1, 2006, Jose Carrion, Assistant Superintendent for Human Resources, sent Complainant a letter notifying him that because he had not signed up for the upcoming civil service exam, Complainant would not be considered for the position. Carrion mistakenly thought he could not hire Complainant because he had confused the list of qualified applicants with the list of eligible candidates, which had not yet been established. (Complainant's Exhibit 3; Tr. 197-98)

10. Carrion sent identical letters to two other applicants who were not on the list of qualified applicants, one of whom was Carol Melton, Complainant's wife. (Respondent's Exhibits 33 & 34)

11. Even though Carrion had confused the two lists, Carrion said it would not be “responsible management” to hire a candidate who is not on the list of qualified applicants. (Tr. 193)

12. The list of qualified applicants that Carrion received does not indicate any of the candidates’ races. (Tr. 194)

13. Respondent hired Brian Cook, who is Caucasian, for the network analyst position. Like Complainant, Cook had sent an application to Respondent’s personnel department. (Respondent’s Exhibits 7 & 9; Tr. 113-14, 184)

14. When Respondent was in the process of hiring a network analyst in the fall of 2006, Cook was a permanent network analyst for the Poughkeepsie Public Library. Therefore, he was eligible to be hired for the position with Respondent, without having to be appointed provisionally, even though Cook was not on the list of qualified applicants, nor was he on the list of eligible candidates that was established on March 21, 2007. (Respondent’s Exhibit 7 & 8; Tr. 113-14, 117-18, 184)

15. Evan Panagiotopoulos, library media and technology director, made the decision to hire Cook. Panagiotopoulos hired Cook because of Cook’s expertise and because he had already been a network analyst for several years. In addition, Panagiotopoulos had done some work with Cook in the past and found Cook’s work to be “impeccable, excellent.” (Tr. 224-25)

16. On December 18, 2006, Complainant applied for a position as a microcomputer technician, for which Respondent had an opening. In order to be considered, he had to take and pass a civil service examination administered by the County Personnel. (Respondent’s Exhibit 3; Tr. 76-77)

17. County Personnel denied Complainant's application for the position based upon his failure to meet the minimum qualifications. Complainant did not take the exam for the position of microcomputer technician, which was given on January 6, 2007. (Tr. 93-94, 125)

18. After the exam for microcomputer technician was given, a list of three eligibles was established. Respondent canvassed the three candidates and found that none of the eligibles were interested in the position. (Respondent's Exhibit 12; Tr. 128-29)

19. Because there were no eligibles for the microcomputer technician position, County Personnel gave Respondent permission to hire a provisional employee for the position. (Respondent's Exhibit 13; Tr. 130)

20. Respondent subsequently posted notices that it was seeking to hire a provisional microcomputer technician. The qualifications included being "eligible according to Civil Service regulations." Complainant never submitted an application in response to that posting. (Respondent's Exhibit 4, Tr. 79-80)

21. Jeffrey Kover was appointed to the position as a provisional employee. Kover is Caucasian. (Tr. 92, 95, 130)

22. Respondent never received an application from Complainant for the provisional microcomputer technician position. (Tr. 191, 231)

23. Complainant also made several unsubstantiated allegations. He claimed Respondent tried to force him out as PTA president, but he admitted that he was not forced out. (Tr. 83-84) He also expressed his "belief" that Panagiotopoulos created new job titles to avoid civil service rules, but provided no credible examples to support that allegation. (Tr. 62-64) Complainant also said that Respondent was "going after" his family because of his complaints about "the

hiring practices” prior to his NAACP complaint but he never indicated when he complained or to whom; nor did he explain how Respondent was “going after” his family. (Tr. 44-46)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer to discriminate against an individual in the terms, conditions, or privileges of employment because of that individual’s race or in retaliation for having made a complaint of discrimination. Human Rights Law §§ 296.1(a) & (e).

To make out a prima facie case of unlawful discrimination under the Human Rights Law, a complainant must show (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. *Ferrante v. American Lung Ass’n*, 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). In order to establish a prima facie case of retaliation, a complainant must show that (1) he engaged in activity protected by Human Rights Law § 296; (2) the respondent was aware that he participated in the protected activity; (3) she suffered from an adverse employment; and, (4) there is a causal connection between the protected activity and the adverse action. *Pace v. Ogden Svcs. Corp.*, 257 A.D.2d 101, 103, 692 N.Y.S.2d 220, 223 (3d Dept. 1999) (citing *Fair v Guiding Eyes for the Blind*, 742 F Supp 151, 154 (S.D.N.Y. 1990); *Matter of Town of Lumberland v New York State Div. of Human Rights*, 229 AD2d 631, 636 (3d Dept. 1996).

If a complainant can establish a prima facie case of discrimination or retaliation, the respondent must then articulate a legitimate, non-discriminatory business reason for its actions.

If the respondent does so, then the complainant must show that the proffered reason is a pretext for discrimination. *Pace University v. N.Y. City Comm. on Human Rights*, 85 N.Y.2d 125, 128, 623 N.Y.S.2d 765 (1995); *Pace v. Ogden Svcs. Corp.*, at 103.

With respect to the network analyst position, Complainant makes out a prima facie case for discrimination. He was a member of a protected class, who was qualified for the position and he was refused employment in favor of a Caucasian applicant. Similarly, he makes out a claim for retaliation in that he complained to the NAACP and was denied the position shortly thereafter.

The burden thus falls to Respondent to articulate a legitimate, non-discriminatory reason for refusing to consider Complainant for the network analyst position. Respondent has done so. The evidence shows that Carrion rejected Complainant, along with two other applicants, when he noted that they did not appear on the list of eligibles. Even though he misunderstood the significance of the list, he has stated that it would not be "responsible management" to hire a candidate who, like Complainant, had not signed up for the impending civil service exam. Carrion restricted the pool of candidates to those who were eligible to become permanent, or, in the case of Cook, who were already permanent. Panagiotopoulos interviewed the candidates and chose Cook based on Cook's expertise, experience and Panagiotopoulos' familiarity with his work. Complainant has not shown that race or retaliation factored into this decision in any way and he has not presented any evidence that would suggest Respondent's stated reasons for hiring Cook over Complainant are pretextual particularly given the fact that Carrion had no knowledge of the races of the candidates.

With respect to the microcomputer technician position, Complainant has not made out a prima facie case for race discrimination or retaliation. According to County Personnel, not

Respondent, Complainant lacked the minimum qualifications for the position. Therefore, he cannot satisfy his burden with respect to Respondent's refusal to consider him for that position.

Complainant's other allegations with respect to the PTA and his family and the changing of job titles are without merit. The allegations lack any semblance of support by evidence.

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: August 21, 2009
Bronx, New York

A handwritten signature in black ink, appearing to read 'Thomas S. Protano', written in a cursive style.

Thomas S. Protano
Administrative Law Judge