

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**KHALID PRICE,**

Complainant,

v.

**SUTHERLAND GLOBAL SERVICES, INC.,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10114890

**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 23, 2009, by Edward Luban, 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.

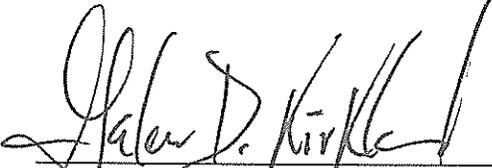
**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).** In accordance with the Division's Rules of Practice, a copy of this Order has been 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: **MAY 01 2009**  
Bronx, New York

  
\_\_\_\_\_  
GALEN D. KIRKLAND  
COMMISSIONER

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF  
HUMAN RIGHTS**

on the Complaint of

**KHALID PRICE,**

Complainant,

v.

**SUTHERLAND GLOBAL SERVICES, INC.,**  
Respondent.

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

Case No. **10114890**

**SUMMARY**

Complainant alleged that Respondent unlawfully denied him employment because of his conviction record. Because Complainant failed to sustain his burden of proof, the complaint should be dismissed.

**PROCEEDINGS IN THE CASE**

On November 17, 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 Edward Luban, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on January 7, 2009.

Complainant participated in the hearing by telephone; Respondent appeared in person. The Division was represented by Richard J. Van Coevering, Esq. Respondent was represented by Linda T. Prestegaard, Esq.

Complainant and Respondent filed proposed findings of fact and conclusions of law after the conclusion of the public hearing.

### FINDINGS OF FACT

1. Complainant was born on October 2, 1978. (Tr. 31)
2. Respondent is a business process outsourcer that provides telemarketing support, including technical help desk support and back office processing, for major companies. (Tr. 41)
3. Rebecca Klimek is Respondent's Associate Vice President for Human Resources ("HR"). (Tr. 40)
4. When Respondent finds that a job applicant has the skills and experience it is seeking, it makes a verbal conditional job offer, then submits the application to EBI, an outside company, for a background check. If the background check reveals a problem, HR pulls the applicant's file to see how the applicant addressed the issue in question. (Tr. 43-45)
5. Neither a criminal conviction nor a firearms conviction automatically disqualifies the applicant. Rather, HR reviews the conviction and applies the eight factors set forth in New York Correction Law §753. (Tr. 45-46, 48, 51)
6. On December 17, 1999, Complainant was convicted of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §924(c)(1). Complainant was sentenced to a term of imprisonment and supervised release. (Tr. 21; Respondent's Exh. 1)

7. On August 4, 2006, Complainant applied for a position with Respondent's Hewlett-Packard ("HP") program. Complainant disclosed his conviction on his application. During his interview, he discussed his criminal record, his sentence, and the fact that he was under supervised release. (Tr. 8, 12, 15-16; Joint Exh. 2)

8. On August 4, 2006, Respondent conditionally offered Complainant a position with the HP program. (Tr. 8,14; Respondent's Exh. 16)

9. HP requires both a credit check and a criminal records check. The credit check is conducted first. If an applicant is disqualified because of the credit check, Respondent reviews the conviction record to see if the applicant is suitable for employment with another of its programs. (Tr. 47-48, 56-57)

10. Kelly Rowan, an HR manager, reviewed the background report on Complainant and determined that Complainant's credit check disqualified him from an HP position. (Tr. 47, 54)

11. Rowan then reviewed Complainant's criminal record and discussed it with Klimek. They considered Complainant's age at the time he was convicted and the nature and seriousness of his conviction. The most critical factor for Klimek was the seriousness of Complainant's conviction. The position for which Complainant was being considered was an entry-level position. The work force was young, and many employees lived from paycheck to paycheck. Respondent has had drug and disciplinary issues in the workplace. Because Complainant's conviction involved a firearm in furtherance of a drug-trafficking crime, Klimek felt he could pose a safety risk to Respondent's employees. (Tr. 48-49, 50-54)

12. Rowan and Klimek decided that Complainant was not eligible for other employment with Respondent. Respondent rescinded its initial offer of employment. (Tr. 8, 48, 53)

13. In August and September 2006, Respondent called Complainant for interviews for two other positions. This was an administrative error; the recruiter failed to check Respondent's records about Complainant's eligibility. Respondent offered Complainant a position with its Cox Communications program, then rescinded the offer approximately two days later. (Tr. 14, 54-55; Joint Exh. 1)

### OPINION AND DECISION

It is an unlawful discriminatory practice for an employer to deny employment to any individual because he has been convicted of a criminal offense, when such denial is in violation of article 23-A of the Correction Law. Human Rights Law § 296.15. Article 23-A prohibits an employer from denying employment to an individual because of a criminal conviction, unless there is a direct relationship between the offense and the specific employment sought, or granting the employment "would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public." Correction Law §752. In making this determination, the employer must consider:

- a. The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- b. The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- c. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- d. The time which has elapsed since the occurrence of the criminal offense or offenses.
- e. The age of the person at the time of occurrence of the criminal offense or offenses.

- f. The seriousness of the offense or offenses.
- g. Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- h. The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

Correction Law §753.1.

The record shows that Respondent did not automatically deny Complainant's application based on his conviction. Rather, Rowan reviewed Complainant's conviction and considered the factors set forth in Correction Law §753.1. She then discussed the matter with Klimek, who herself considered the factors and determined that employing Complainant would involve a safety risk to Respondent's employees. Respondent was concerned about the relationship of Complainant's conviction, which involved a firearm and drug trafficking, and a youthful work force which already had drug and disciplinary problems.

Complainant failed to rebut the evidence that Respondent considered the relevant factors in making its determination, and he presented no evidence that Respondent's analysis was a pretext for discrimination. Accordingly, the complaint must be 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 complaint be and the same hereby is dismissed.

DATED: February 23, 2009  
Syracuse, New York

A handwritten signature in black ink, appearing to read "Edward Luban", with a long horizontal flourish extending to the right.

Edward Luban  
Administrative Law Judge