



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ALEXANDER J. JANKOWIAK,

Complainant,

v.

**CRANDALL AUTO PROTECTION LLC, D/B/A
ZIEBART OF JAMESTOWN, KYLE CRANDALL,
OWNER, PEDRO ROBLES,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10203682

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 17, 2024, by Alexander Linzer, 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 DENISE M. MIRANDA, ACTING 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: 04/23/2024
Bronx, New York



DENISE M. MIRANDA
ACTING COMMISSIONER



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v.

**CRANDALL AUTO PROTECTION LLC,
D/B/A ZIEBART OF JAMESTOWN, KYLE
CRANDALL, OWNER, PEDRO ROBLES,**
Respondents.

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

Case No. **10203682**

SUMMARY

Complainant alleged that Respondents unlawfully discriminated against him based on his conviction record. Complainant has failed to prove his claim of unlawful discrimination. This case is dismissed.

PROCEEDINGS IN THE CASE

On September 9, 2019, Complainant filed a complaint with the New York State Division of Human Rights (“Division”), charging Respondents “Ferrara Enterprises LLC d/b/a Ziebart of Jamestown,” “Kyle ‘Doe’, Owner,” “Pedro ‘Doe’, Manager,” and “Nicholas Ferrara” with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On October 1, 2019, the Division amended the complaint to change the name of Respondent “Ferrara Enterprises, LLC d/b/a Ziebart of Jamestown” to “Crandall Auto Protection LLC d/b/a Ziebart of Jamestown” and Respondent “Kyle ‘Doe’, Owner” to “Kyle Crandall, Owner.” (ALJ’s Exhibit 1).¹

On March 5, 2020, the Division amended the Complaint to correctly name Respondent “Pedro ‘Doe’, Manager” as “Pedro Robles.” (ALJ’s Exhibit 1).

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 Alexander Linzer, an Administrative Law Judge (“ALJ”) of the Division. A virtual public hearing session was held on August 30, 2023.

Complainant and Respondents appeared at the hearing. The Division was represented by Michael Adeyemi, Esq., Senior Attorney. Respondents were represented by Dana A. Lundberg, Esq., and Myra V. Blasius, Esq., of Lundberg Price P.C.

Permission to file post-hearing briefs was granted. Respondents timely filed a post-hearing brief which was considered and, where appropriate, adopted.

¹ The October 1, 2019, amendment also removed Respondent Ferrara from the case. Pursuant to 9 N.Y.C.R.R. § 465.4(a), “No party may be removed by amendment.” Ultimately, however, the removal of Respondent Ferrara had no impact on this case; Complainant did not allege in his complaint or during the hearing that Respondents Ferrara or Ferrara Enterprises, LLC engaged in any conduct whatsoever towards him or were involved in any way in the events alleged in the complaint.

FINDINGS OF FACT

1. In 2015, Complainant was convicted of a felony for unlawfully manufacturing methamphetamine. (Tr. 15, 21, 151)
2. During the relevant period, Respondent Crandall Auto Protection LLC, d/b/a Ziebart of Jamestown (Respondent “Crandall Auto”) operated “Ziebart,” a business located in Jamestown, New York that performed automotive services, including automotive detailing, which involves cleaning a vehicle using basic tools. (Tr. 111-12, 133-34, 155)
3. During the relevant period, Respondent Kyle Crandall owned Respondent Crandall Auto. (Tr. 111-12, 133-34)
4. During the relevant period, Respondent Crandall Auto employed Respondent Robles as a manager. (Tr. 13, 58)
5. In or around 2019, Complainant applied for a vehicle detailer position posted by Respondents on Indeed.com, a job search website. (Tr. 10-12)
6. On June 27, 2019, Respondents telephoned Complainant and asked him to come to Ziebart in person to interview for the position. (Tr. 11-12)
7. That day, Complainant went to Ziebart and was interviewed by Respondent Robles and Donna Crandall, store manager. (Tr. 12-14, 64-65, 76, 116-17)
8. During the interview, Complainant was not asked whether he had any criminal convictions and was not asked to fill out a written application. (Tr. 14-15)
9. On June 28, 2019, Respondents telephoned Complainant and asked if he would be able to start work on July 1, 2019. (Tr. 14-16)
10. Respondents also asked Complainant to bring various documents, including his driver’s license, birth certificate, and social security card. (Tr. 16)

11. Complainant later called Respondent Crandall and left a voicemail stating that it would take him about a week to obtain the requested documents. Respondent Crandall telephoned Complainant, told him not to worry about the documents as long as he could obtain them, and asked him to start work on July 1, 2019, at 10:30 a.m. (Tr. 16)

12. On July 1, 2019, at 10:30 a.m., Complainant arrived at Ziebart and met with Respondent Crandall. (Tr. 16)

13. Respondent Crandall took Complainant for a tour of the facility and then took Complainant to Ziebart's garage. (Tr. 16-17)

14. Respondent Crandall briefly spoke with Complainant and asked him a series of questions from a checklist that Respondents ask new employees. (Tr. 16-17, 61-62, 141-43; Respondents' Exhibit 1)

15. Respondent Crandall asked Complainant if he could "pass a drug screen and background check," and Complainant replied, "Yes." (Tr. 17-18, 141-43)

16. Complainant answered "yes" to Respondent Crandall's question because of his "excitement for the job." (Tr. 18)

17. Complainant testified that he intended to disclose his conviction when he filled out a written job application and believed that he would be "okay" because he would "be telling the truth about [his] record on paper." (Tr. 17-18) However, on cross-examination, Complainant admitted that he lied when speaking with Respondent Crandall. (Tr. 43)

18. After Complainant spoke with Respondent Crandall, Respondent Robles asked Complainant to detail a vehicle for a "hands-on" interview. (Tr. 20-21, 40-41, 60, 130)

19. After Complainant finished detailing the vehicle, he asked Respondent Robles how Respondents "feel about felonies." Respondent Robles asked, "What is the felony for?" (Tr. 21)

20. Complainant responded that the felony was for drug charges. Respondent Robles replied, “They’re pretty strict about it, but as long as you’re not currently using you should be fine as long as you put it on your application.” (Tr. 21)

21. Respondent Robles then spoke with Respondent Crandall and informed him that Complainant had a conviction. (Tr. 130-31, 150)

22. After Respondent Robles informed Respondent Crandall that Complainant had a conviction record, Respondent Crandall concluded that Complainant had lied during their previous conversation. (Tr. 130-31, 150)

23. Respondent Crandall told Respondent Robles that he “wouldn’t employ a liar” and gave Respondent Robles \$20.00 to pay to Complainant for his time. (Tr. 130, 151)

24. Respondent Robles returned to speak with Complainant and told him that Respondent Crandall Auto would not hire him due to his felony conviction. (Tr. 21-22)

25. Respondent Robles then escorted Complainant off the premises. (Tr. 22)

26. Respondents have hired employees with criminal backgrounds in the past, including those with felony drug convictions. (Tr. 66-69, 118, 121-27; Respondents’ Exhibits 2, 4, 5)

27. Respondent Crandall decided to not hire Complainant because Complainant lied about having a criminal conviction. Respondent Crandall did not believe that Complainant’s criminal conviction would have prevented him from working for Respondents as a detailer. (Tr. 130-31, 151-52)

OPINION AND DECISION

N.Y. Exec. Law, art. 15 (“Human Rights Law”) makes it an unlawful discriminatory practice for an employer to deny any individual employment because that individual 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 of the Correction Law was enacted to “eliminate the effect of bias against ex-offenders which prevented them from obtaining employment,” and imposed “an obligation on employers . . . to deal equitably with ex-offenders while also protecting society’s interest in assuring performance by reliable and trustworthy persons.” *Matter of Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 611, 528 N.Y.S.2d 519 (1988) (internal citations omitted); N.Y. Correction Law §§ 752, 753.

Under Article 23-A of the Correction Law, an employer may not refuse to hire an individual by reason of his prior criminal convictions unless it is shown that there is a direct relationship between the criminal offenses and the employment sought, or there would be an unreasonable risk to property or the safety and welfare of specific individuals, or the general public. N.Y. Correction Law §752.

The credible evidence established that Respondent Crandall asked Complainant whether he could pass a background check, and that Complainant responded, “Yes.” Shortly thereafter, Complainant disclosed to Respondent Robles that he had a felony drug conviction. Respondent Robles informed Respondent Crandall about Complainant’s conviction, and Respondent Crandall concluded that Complainant lied to him concerning his conviction record and decided to not hire him.

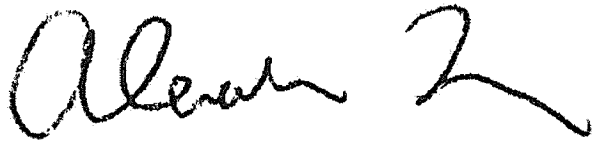
Respondent Crandall did not deny employment to Complainant because of his prior conviction, but rather because Complainant lied when asked whether he could pass a background check. Respondent Crandall’s conclusion that Complainant lied to him was reasonable, particularly given Complainant’s admission on cross-examination that he lied. Accordingly, Respondents did not violate the Human Rights Law and this claim 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 this case be, and hereby is, dismissed.

DATED: January 17, 2024
Bronx, New York

A handwritten signature in black ink, appearing to read "Alexander Linzer", with a stylized flourish at the end.

Alexander Linzer
Administrative Law Judge