



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

AMIROU B. SOW,

Complainant,

v.

UNIPARK SERVICES CORPORATION,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10203413

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 June 24, 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.

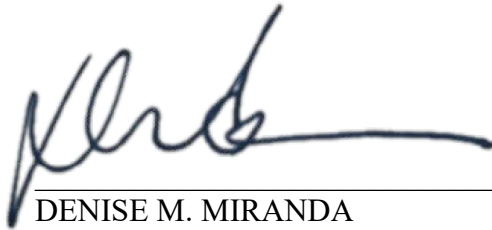
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE DENISE M. MIRANDA, ESQ., ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, NY 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, NY 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: 10/07/2024
Bronx, NY

A handwritten signature in black ink, appearing to read "DMR", is written over a horizontal line.

DENISE M. MIRANDA
ACTING COMMISSIONER



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on the Complaint of

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v.

UNIPARK SERVICES CORPORATION,

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

Case No. 10203413

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against him based on his arrest and conviction records. Complainant has failed to meet his burden of proof and this case is dismissed.

PROCEEDINGS IN THE CASE

On August 22, 2019, Complainant filed a 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 Alexander Linzer, an Administrative Law Judge (“ALJ”) of the Division. Virtual public hearing sessions were held on February 26, 2024 and February 27, 2024.

Complainant and Respondent appeared at the hearing. The Division was represented by Michael Adeyemi, Esq., Senior Attorney. Respondent was represented by Joel S. Silberman, Esq.

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

FINDINGS OF FACT

1. On May 10, 2016, Complainant pleaded guilty to a felony charge of attempted arson in New York State Supreme Court. (Tr. 22-23)
2. Complainant served a prison sentence of approximately three years and was released on or about February 25, 2019. (Tr. 23-24)
3. Complainant was on probation following his release until 2021. (Tr. 24, 51-52)
4. Respondent provides valet and shuttle services for the Hilton Hotel located in Rye Brook, New York. (Tr. 34, 116, 176)
5. Respondent is owned by Jude Okoro. (Tr. 116, 172-73)
6. Okoro is a retired probation officer and has hired employees with felony records to work at the Hilton Hotel. (Tr. 175)

7. During the relevant period, Respondent employed Felix Gyamfi as the onsite manager at the Hilton Hotel. (Tr. 116, 178)
8. In July 2019, Complainant applied for a valet parking job with Respondent. (Tr. 11-13, 125)
9. On July 12, 2019, Gyamfi interviewed Complainant for the valet position at Respondent's premises. (Tr. 12-13, 125; Complainant's Exhibit 8)
10. Gyamfi asked Complainant to fill out an application, and Complainant did so while at Respondent's premises. (Tr. 13, 127; Complainant's Exhibit 1)
11. The application asked whether the applicant had ever been convicted of a felony. Complainant answered "yes." (Tr. 19; Complainant's Exhibit 1)
12. Complainant also provided three references and his employment history on the application. (Tr. 25-27; Complainant's Exhibit 1)
13. After Complainant completed the application, Gyamfi showed him around the premises and told him that he would contact him. (Tr. 13)
14. Respondent trains its new employees over a three-week period. (Tr. 119)
15. During the three-week training period, Okoro reviews the employee's job application. (Tr. 119)
16. On July 14, 2019, Gyamfi sent a text message to Complainant that stated, "I see you say you were charged with a felony. My boss was asking about that." (Tr. 20, 120-21; Complainant's Exhibit 8)
17. Complainant responded, "It's ok, [y]es I was charged with that a few years ago in 2016 it's the only one I ever got [f]or attempted arson... in my old apartment when I was living in

[M]anhattan, my ex-girlfriend got us a Christmas tree and it caught fire. Is that going to be a problem?" (Complainant's Exhibit 8)

18. Gyamfi responded, "I can talk to him about it. As long as it's not for something crazy if you know what I mean." (Complainant's Exhibit 8)

19. Complainant stated, "Yes that's it nothing else... I don't get into anything and I don't break any rules." (Complainant's Exhibit 8)

20. Gyamfi then asked Complainant why his driver's license abstract stated that his license was suspended in 2016. Complainant responded that his license was suspended for an unpaid ticket and that he addressed the suspension as soon as he learned of it. (Tr. 120; Complainant's Exhibit 8)

21. Complainant asked Gyamfi if he could continue training for the job and Gyamfi replied, "yes sir." (Complainant's Exhibit 8)

22. Complainant worked for Respondent under Gyamfi's supervision for approximately the next two weeks. (Tr. 121)

23. On July 31, 2019, Respondent received a complaint from a Hilton Hotel manager via email concerning Complainant that stated, "Very weak no name tag. Un tucked shirt. We had to ask him for help. Not good arrival experience. Also lights should be on in walk way[.]" (Tr. 31, 121-22; Complainant's Exhibit 8)

24. That day, Gyamfi forwarded a screenshot of the Hilton Hotel manager's email to Complainant via text message. (Tr. 99; Complainant's Exhibit 8)

25. Complainant worked for Respondent on August 1, 2019. (Tr. 31-32)

26. At the hearing, the Division offered into evidence screenshots of Complainant's text messages with Gyamfi which did not contain legible dates. Complainant testified that the exhibit

represented “continuous text messages. From the first day [he] contacted [Gyamfi] to the last day [they] spoke.” (Tr. 38-39; Complainant’s Exhibit 3) The Division subsequently offered into evidence a different version of Complainant’s text messages with Gyamfi that included legible dates, as well as several text messages omitted from the original exhibit, including Gyamfi’s text message sending Complainant a screenshot of the Hilton Hotel manager’s complaint. (Tr. 224-26, 239; Complainant’s Exhibit 8)

27. The text message chain entered into evidence as Complainant’s Exhibit 8 has two instances where a date and time is shown with no text message beneath: July 21, 2019, at 6:58 p.m. and August 5, 2019, at 4:08 p.m. When Complainant was asked by Division counsel on redirect whether Complainant deleted text messages from the exhibit, Complainant testified that he was “not sure.” I do not credit this unpalatable testimony. (Tr. 233-35, 239-40; Complainant’s Exhibit 8)

28. At the beginning of August 2019, Okoro reviewed Complainant’s employment application. (Tr. 180-82, 210)

29. Okoro attempted to confirm Complainant’s employment history with the three prior employers Complainant listed in his employment application. (Tr. 137, 180-82; Complainant’s Exhibit 1)

30. Complainant’s employment application stated that Complainant previously worked for a Motel 6. Okoro telephoned the number that Complainant provided and reached a law office instead. (Tr. 182; Complainant’s Exhibit 1)

31. Complainant’s employment application stated that Complainant previously worked for a restaurant as a kitchen manager. Okoro telephoned the number that Complainant provided and there was no answer. (Tr. 185-87; Complainant’s Exhibit 1)

32. Complainant's employment application stated that Complainant previously worked for Duggal Visual Solutions. Okoro telephoned the number that Complainant provided and there was no answer. (Tr. 186; Complainant's Exhibit 1)

33. Okoro also drove to the address Complainant provided for Duggal Visual Solutions and the business was not there. (Tr. 186-87; Complainant's Exhibit 1)

34. Okoro did not attempt to contact the individuals Complainant listed as references. (Tr. 197-98)

35. Okoro determined that Complainant was not suitable for the position because Okoro was unable to confirm Complainant's employment history and because of the complaint Respondent received from the Hilton Hotel manager. (Tr. 122-23, 188-90)

36. On August 5, 2019, Okoro told Gyamfi to terminate Complainant's employment. (Tr. 122-23)

37. Okoro did not tell Gyamfi that Respondent was terminating Complainant's employment due to his felony conviction. (Tr. 122)

38. On August 5, 2019, Gyamfi sent a text message to Complainant stating, "Bro no need to come into tomorrow. I will conclude with the boss and let you know ASAP." (Complainant's Exhibit 8)

39. Complainant testified that, on August 5, 2019, Gyamfi telephoned him and said that Okoro had asked more questions about his conviction, which Complainant answered, and subsequently contacted him and told him that his felony conviction "did not look good" for the company. I do not credit this testimony, which was vague and confusing. Accordingly, I credit Gyamfi's testimony that he did not ask Complainant about his conviction after his inquiry via text message on July 14, 2019. (Tr 48-50, 111-12, 120-22, 138; Complainant's Exhibit 8)

40. Further, although Complainant sent a text message to Gyamfi on August 6, 2019, stating, “Bro so what’s the boss saying I can’t work now because of my felony after I’ve been working for like 3 weeks already,” Gyamfi credibly testified that he did not ask any questions to Complainant that prompted the text message. Given Complainant’s unpalatable testimony that he did not remember whether he deleted any messages from the text exchange entered into evidence as Complainant’s Exhibit 8, Complainant’s self-serving text message lacks probative value. (Tr. 142-44, 239-40; Complainant’s Exhibit 8)

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, 522 (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.

Complainant first informed Respondent that he had a criminal conviction on July 14, 2019, and Respondent continued to employ Complainant until August 5, 2019. The credible evidence established that Respondent terminated Complainant's employment on August 5, 2019, because Respondent received a complaint from a Hilton Hotel manager concerning Complainant and because Okoro was unable to confirm Complainant's employment history. Complainant's testimony that Gyamfi telephoned him on August 5, 2019, and told him Okoro said that his conviction "did not look good" for Respondent was not credible. Respondent did not violate the Human Rights Law, and this claim is dismissed.

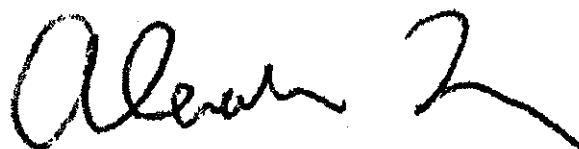
Complainant did not offer evidence that he was subjected to unlawful discrimination based on an arrest, and this claim is dismissed. *See* Human Rights Law § 296.16.

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: June 24, 2024
Bronx, New York

A handwritten signature in black ink, appearing to read "Alexander Linzer", followed by a large, stylized flourish or checkmark.

Alexander Linzer
Administrative Law Judge