

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

**OHIO CIVIL RIGHTS COMMISSION
[KATIKA L. THOMAS]**

Complainant

v.

**DIVERSIFIED TRANSPORTATION
SERVICE, INC.**

Respondent

Complaint No. 09-EMP-AKR-33531
(AKR) 73 (33531) 06062008
22A - 2008 - 04377-C

**ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

**RICHARD CORDRAY
ATTORNEY GENERAL**

David A. Oppenheimer, Esq.
Associate Attorney General
Civil Rights Section
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113
216 - 787 - 3030

Counsel for the Commission

Nasr Jaradeh
Diversified Transportation
Service, Inc.
2852 South Avenue
Toledo, OH 43609-1534

Statutory Agent for Respondent

ALJ'S REPORT BY:

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
State Office Tower, 5th Floor
30 East Broad Street
Columbus, OH 43215-3414
614 - 466 - 6684

INTRODUCTION AND PROCEDURAL HISTORY

Katika L. Thomas (Thomas) filed a charge affidavit in accordance with Revised Code (R.C.) 4112.05(B)(1) on June 6, 2008, alleging that Diversified Transportation Service, Inc. (Respondent) terminated her employment (laid her off) due to her race and sex.

The Commission investigated the charge and found no probable cause regarding Thomas's layoff allegation. However, the Commission's investigation, conducted in accordance with R.C. 4112.05(B)(2), resulted in a probable cause finding that Respondent used a form during its application process, the Criminal History File Search Authorization (CHRSA) form, that elicits or attempts to elicit information in violation of R.C. 4112.02(E).

The Commission attempted, but failed, to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint and Notice of Hearing No. 09-EMP-AKR-33531 on June 4, 2009.

The Complaint alleges Respondent utilizes the CHFSA form during its application process, which elicits or attempts to elicit information including, but not limited to, an applicant's race, date of birth, and sex.

Respondent failed to file an Answer to the Complaint.

The Commission filed a Motion for Default in September of 2009. This Motion is hereby **granted**.

The record consists of the previously described pleadings.

FINDINGS OF FACT

1. Katika L. Thomas filed a charge affidavit in accordance with R.C. 4112.05(B)(1) on June 6, 2008, alleging Respondent laid her off due to her race and sex.

2. The Commission conducted a preliminary investigation and found no probable cause as to the allegations of lay off.

3. During its investigation the Commission determined it was probable that Respondent used a form entitled "Criminal History File Search Authorization" during the application process and that this form elicited or attempted to elicit information prohibited by R.C. 4112.02(E).

4. The Commission attempted to conciliate this matter with Respondent but was unsuccessful.

5. Respondent is an employer that transacts business in Lucas County, Ohio.

6. Respondent has used, and continued to use throughout all times relevant to this matter, the CHFSA form during its application process.

7. The CHFSA form Respondent has used, and continued to use during all times relevant to this matter, during its application process contains a request for the applicant's race, date of birth, and sex.

CONCLUSIONS OF LAW

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected.

1. The Commission alleged in the Complaint that Respondent utilizes a CHFSA form during the application process that elicits or attempts to elicit information including, but not limited to, an applicant's race, date of birth, and sex.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(E) Except where based on a bona fide occupational qualification certified in advance by the commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following:

- (1) Elicit or attempt to elicit any information concerning the race, color, religion, sex, military status, national origin, disability, age, or ancestry of an applicant for employment or membership;
- (3) Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding race, color, religion, sex, military status, national origin, disability, age, or ancestry; but an employer holding a contract containing a nondiscrimination clause with the government of the United States, or any department or agency of that government, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain that proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(E) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G), 4112.06(E).

4. Respondent's CHFSA form does seek to elicit the following information:

- a. Race
- b. Date of Birth (Age)
- c. Sex

5. Respondent's use of its CHFSA form during the application process is a direct violation of R.C. 4112.02(E)(1) and (3).

RECOMMENDATIONS

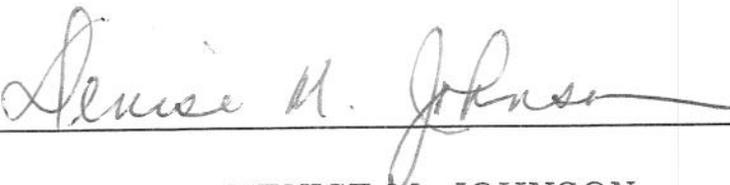
For all of the foregoing reasons, it is recommended in Complaint No. 09-EMP-AKR-33531 that the Commission issue a Final Order requirement the following:

1. That Respondent Cease and Desist from using the Criminal History File Search Authorization form during its application process;
2. That Respondent Cease and Desist from using any form during its application process that elicits information prohibited by R.C. 4112.02(E), *et.seq.*
3. That Respondent, within one hundred and twenty (120) days after receipt of the Commission's Final Order, provide a copy of those forms it uses during its application process which comply

with R.C. 4112.02(E) to the Commission's Office of Special Investigations (OSI);¹

4. That Respondent receive training within ninety (90) days from an agency certified to provide training to employers on Ohio's anti-discrimination law;² and

5. That Respondent, within ninety (90) days of receipt of the Commission's Final Order, provide to OSI documentation of completion of the employer training received on Ohio's anti-discrimination law.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

June 1, 2010

¹ Send documentation to Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, Ohio 43215-3414.

² The Ohio Civil Rights Commission provides training to employers on Ohio's laws against discrimination, especially regarding employment and housing issues. There is no cost for this service. The Commission's Compliance Department oversees these trainings.