EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Rick Jackson
309 1/2 W Milwaukee St
Janesville WI 53548

Complainant

vs.

Ruan Transportation
4802 Pflaum Rd
Madison WI 53718-6724

Respondent

HEARING EXAMINER'S DECISION AND ORDER ON DISPOSITIVE MOTIONS

CASE NO. 20122079

EEOC CASE NO. 26B201200054

BACKGROUND

On May 1, 2012, the Complainant, Rick Jackson, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). Jackson charged that the Respondent, Ruan Transportation a.k.a. Ruan Transportation Management Systems, failed or refused to hire him because of his race and his conviction record in violation of the Equal Opportunities Ordinance Sec. 3.39(8) Mad. Gen. Ord. The Respondent contended that it did not discriminate against the Complainant on any basis because the Complainant did not submit an application for employment.

Subsequent to an investigation by a Division Investigator/Conciliator, the Investigator/ Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in employment on the basis of his conviction record. The Initial Determination also concluded that there was no probable cause to believe that the Respondent had discriminated against the Complainant in employment on the basis of his race. The Complainant did not appeal the finding of no probable cause. The issue for which there was a finding of probable cause was transferred to conciliation.

Efforts at conciliation proved unsuccessful. The complaint was transferred for further proceedings to the Hearing Examiner.

The Hearing Examiner held a Pre-Hearing Conference on October 9, 2012 at which the parties agreed to a statement of the issues for hearing and agreed to various dates including a date for the hearing and other interim dates. On October 11, 2012, the Hearing Examiner issued a Notice of Hearing and Scheduling Order embodying the discussion held during the Pre-Hearing Conference. During the Pre-Hearing Conference, the Complainant also wished to move for judgment on the pleading. The Hearing Examiner indicated that such a process was not contemplated by the procedures utilized by the Department, but that both parties would be given the opportunity to file dispositive motions during the period prior to hearing.

In the Scheduling Order, the Hearing Examiner set forth the date for filing dispositive motions as November 9, 2012. On October 17, 2012, the Complainant filed materials with the Hearing Examiner which appear a continuation of the Complainant's request for a finding of liability based upon the record at that time. On November 5, 2012, the Respondent filed a response to the material submitted by the Complainant on October 17, 2012.

On November 8, 2012, the Respondent filed a dispositive motion requesting that the complaint be dismissed due to a lack of standing. The Complainant submitted additional materials on December 20, 2012. These materials might be in response to the Respondent's motion or to supplement his own request.

DECISION

The Hearing Examiner cannot grant relief to either party as requested in their respective submissions. Essentially the requests of both parties are forms of motions for summary judgment. As the Respondent recognized in its November 5, 2012 submission, the Hearing Examiner informed both parties at the Pre-hearing Conference that the Commission did not accept motions for summary judgment unless they went to the jurisdiction of the Department. This has been the position of the Department as far back as 1989. In the case of Rhone v. Marquip, MEOC Case No. 20967 (Ex. Dec. on summary judgment 4/5/89), the Hearing Examiner found that the Rules of the Equal Opportunities Commission state a preference for hearing once a complaint has been certified to hearing. In Rhone, the Complainant moved for summary judgment, but the Hearing Examiner held that such motions were not available. The decision in Rhone has been followed by subsequent Hearing Examiners. See Vivas v. Summit Credit Union, MEOC Case No. 20112019 (Ex. Dec. 05/09/12, Ex. Dec. on jurisdiction 05/09/12).

The Complainant's request is based entirely upon his interpretation of state law involved with the procedures of the Department of Workforce Development Equal Rights Division (ERD). These processes and procedures are entirely inapplicable to complaints filed with the Department of Civil Rights. The Complainant fails to understand the nature of concurrent jurisdiction and the limitations of precedent between different, but similar jurisdictions. As the Court of Appeals finds in McMullen v. LIRC, 148 Wis. 2d 270, 434 N.W.2d 830 (Ct. App. 1988), the ultimate question facing any agency is interpretation of the provisions of its enabling legislation. Case law developed under different statutes may be useful in assisting a decision maker to the extent that similar purposes and similar language may be helpful in enlightening interpretation of a piece of legislation. However, for the most part, decisions interpreting different laws do not have binding results on the interpretation of a law at a different level of government.

To the extent that the Complainant asserts that provisions of the Wisconsin Fair Employment Act Wis. Stats 111.30 et seq. and decisions under that enactment mandate any particular outcome for a complaint filed under the Equal Opportunities Ordinance, he is mistaken. Review of the materials submitted by the Complainant does not reveal any other cognizable claim or argument that might form the basis for a dispositive motion in the present matter.

The Respondent's motion is essentially premised on a claimed lack of standing. It states, first that the Department is without standing because the record does not demonstrate that the Complainant ever actually filed an application for employment. Rather the Respondent argues that the investigative file really only demonstrates that the Complainant submitted an inquiry

about the Respondent's policies with respect to the hiring of individuals with conviction records and the possibilities of the Respondent paying for some other licensing requirements. The Respondent states that the Complainant never filed an actual application.

To the best that the Hearing Examiner can determine from review of the materials submitted by the Complainant, he does not directly contradict the assertions of the Respondent. However, it is important to note that the Complainant is unrepresented by counsel. The Department has an obligation to be somewhat more flexible in application of its procedures and processes where one party, be it Complainant or Respondent, is unrepresented.

The Hearing Examiner sees the Respondent's motion more as one for summary judgment rather than one contesting the jurisdiction over the complaint or the parties. The Respondent's arguments go to the sufficiency of the evidence in the record to date rather than to whether this is the type of complaint that can be heard by the Department or that all things being equal, the parties are the type that might be subject to the terms of the ordinance.

The Respondent's motion does not attack the geographic jurisdiction of the Department as in Zabbit v. Kraft Foods, et al., MEOC Case No. 22563 (Ex. Dec. 5/19/98), or the preemption of the ordinance by other authority as in Potter v. Madison Gospel Tabernacle, MEOC Case No. 21269 (Ex. Dec. 2/14/94), or Pagel v. Elder Care of Dane County, MEOC Case No. 22442 (Ex. Dec. 10/31/96). Really what the Respondent contends is that the Initial Determination's finding of probable cause was erroneous and that a hearing should not be required. The Rules of the Equal Opportunities Commission at rule 5.21 makes clear that only a finding of no probable cause is appealable. The rules are structured in this manner to protect the due process rights of both parties. The Complainant has the opportunity to challenge a finding of no probable cause that would otherwise dispose of the Complainant's interests. The Respondent's rights are protected by assuring it the right to defend itself at a hearing.

Given the record in this matter, the Hearing Examiner finds no merit in either party's motion. This matter will proceed to hearing as scheduled. In rendering this decision, the Hearing Examiner makes no determination of the merits of the complaint or the Respondent's defense. Both parties are reminded that each will need to carry their respective burdens of proof if either wishes to prevail at hearing.

ORDER

Both parties dispositive motions are dismissed. This matter will proceed to hearing as scheduled.

Signed and dated this 4th day of January, 2013.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Ann Barry Hanneman

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HEARING EXAMINER'S RECOMMENDED
FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

CASE NO. 20122079

EEOC CASE NO. 26B201200054

On February 5, 2013, Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell, III, held a hearing on the merits of the above-captioned complaint at 9:00 a.m. in room LL-120 of the Madison Municipal Building, 215 Martin Luther King, Jr. Blvd. The Complainant, Rick Jackson, appeared in person and without counsel. The Respondent appeared by its corporate representative, Susan Fitzsimmons, Vice-President and General Counsel, and by its attorney Brian A. Price of Jackson Lewis.

Based upon the record of the proceedings, the Hearing Examiner now issues his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant is a 62 year old male with a significant conviction record.

2. The Respondent is a provider of trucking services with a terminal located at 4802 Pflaum Road in Madison, Wisconsin. It employees numerous individuals within the City of Madison.

3. On or about April 18, 2012, the Complainant read job postings on the Respondent's website seeking truck drivers in Madison, Wisconsin and Wisconsin Rapids, Wisconsin.

4. The announcement on the Respondent's website indicated, in pertinent part, as follows, "No felonies, drug convictions, DUI's, or failed drug tests in the past 7 years."

5. On April 19, 2012, the Complainant wrote a letter addressed to the Respondent's terminal in Madison inquiring if his specified convictions which were approximately 30 years old, would eliminate him from consideration for the truck driver position despite the posting's indication that only conviction records within the last 7 years would be

automatically eliminated. The Complainant also indicated that he did not have access to a computer for submitting an online application despite having observed the posting while using a computer at his public library. He further indicated that he did not currently possess a HazMat certification and could not obtain one because of the lack of a credit card. The Complainant requested that if his conviction record would preclude him from employment would the Respondent please send him an indication of his application to demonstrate that he was seeking employment for purposes of maintaining certain, unspecified benefits.

6. The Complainant's letter to the Madison terminal did not specifically request that he be sent a job application.

7. On April 19, 2012, the Complainant sent a similar letter to the Respondent's Wisconsin Rapids terminal. It differed from the one sent to the Madison terminal in that it specifically requested a copy of a job application.

8. The Complainant's April 19, 2012 letter that was sent to the Madison terminal was forwarded to the Des Moines, IA offices of the Respondent for response. Ultimately, Nathan L. Schmidt, Director of Human Resources, determined that no response to the Complainant's letter was required. The Complainant's April 19, 2012 letter was filed without response.

9. The Complainant's April 19, 2012 letter that was sent to the Wisconsin Rapids terminal was forwarded to Roxana Myers, the Respondent's Driver Recruiter, on April 23, 2012. On that date, she forwarded the Complainant a job application package.

10. The Complainant states that he did not receive a copy of the job application package.

11. After April 19, 2012, the Complainant did not contact the Respondent again.

12. One must complete a job application in order to be employed by the Respondent. There have been no exceptions to this requirement.

13. Job applications may be completed online from any computer with an internet connection or on a computer at the Respondent's terminals. Additionally, the Respondent will provide paper applications upon request over the phone, made in writing or made in person.

14. The webpage which the Complainant viewed on April 18, 2012 has a button to "Apply Now" and the Complainant could have completed the application process at that time.

15. At no time did the Complainant complete or submit an application for employment to the Respondent.

CONCLUSIONS OF LAW

1. As an individual with a conviction record, the Complainant is subject to the protections of the Equal Opportunities Ordinance.

2. The Respondent is an employer within Madison, Wisconsin and is subject to the requirements of the Equal Opportunities Ordinance.

3. The Respondent did not discriminate against the Complainant on the basis of his conviction record because he did not apply for employment with the Respondent.

4. The Respondent did violate the Equal Opportunities Ordinance by publishing a statement that expresses a prohibition of employment on a basis that is protected by the ordinance, conviction record.

5. The Complainant suffered no damages as a result of the Respondent's violation of the ordinance.

ORDER

1. The Respondent is ordered to cease and desist from printing or publishing any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination, based on any protected class membership, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based arrest or conviction record when an employer may lawfully consider or rely upon such arrest or conviction record pursuant to Section 39.03(8)(i)3. through 39.03(8)(i)(6)., MGO.

2. The allegation that the Respondent discriminated against the Complainant in employment on the basis of his conviction record by failing or refusing to offer him employment is dismissed.

3. The parties shall bear their own costs.

MEMORANDUM DECISION

While the Commission customarily utilizes the McDonnell Douglas/Burdine burden shifting method to determine the outcome of complaints under the ordinance, the Hearing Examiner believes that a somewhat more direct approach is warranted in the present matter. *McDonnell Douglas Corp. v.Green*, 411 U.S. 792 (1973); *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed. 2d 207 (1981). The fact that the Complainant was not represented by counsel makes reference to some legalistic modes of analysis difficult and unnecessary.

The Hearing Examiner will address two separate and distinct claims of discrimination. First, the Complainant asserts that the Respondent failed or refused to hire him because of his conviction record for a position as a truck driver in 2012. Second, the Complainant contends that the Respondent published or otherwise printed or circulated an advertisement that expressed either intent to discriminate on the basis of a protected class, conviction record, or expressed an illegal preference for those outside of that protected class. The first claim was explicitly stated in the Notice of Hearing issued by the Hearing Examiner on October 11, 2012. The second claim was not explicitly stated in the Notice of Hearing, but clearly formed part of the basis for the Initial Determination's finding of probable cause to believe that discrimination had occurred (Initial Determination, 08/01/2012). Though the Respondent contests the Hearing

Examiner's conclusion that the "publication" claim formed a part of the basis for the Initial Determination's finding of probable cause, it did indicate at the time of hearing that it was prepared to defend against such a claim.

The Hearing Examiner will first address the claim that the Respondent failed or refused to hire the Complainant because of his conviction record. In many respects this claim is the most clear.

There is no question that the Complainant is an individual with a conviction record. Equally, there is no doubt that the Respondent was aware of the Complainant's conviction record. In two separate letters sent to the Respondent on or about April 19, 2012, the Complainant detailed his convictions, all of which occurred approximately 30 years prior. There is no question that the Complainant's convictions were substantial, but equally, there is no question that they all occurred in the distant past. At hearing, the Complainant did add two relatively minor traffic violations that had occurred in the past 10 years. It does not appear that the Respondent knew of these infractions.

The Complainant's position seems to be that because his conviction were admittedly serious, e.g., house breaking, unlawful restraint, armed robbery, aggravated battery, etc. that the Respondent would naturally not wish to hire him. He bases this conclusion in part, upon his belief that a statement in the Respondent's job posting demonstrates a presupposition to not hire those with felonies and his experience with other employers' rejection of his application. See Exhibit 1.

The Respondent defends against this charge by stating that the Complainant never did apply for employment. There appears to be no question that the Complainant did not complete either the online application form or a paper application form. The Respondent convincingly demonstrated at hearing that it has never hired any individual who had not first filed out the application in some form. Review of the application package (Exhibit 4) indicates that it requires much information that would generally appear appropriate to such a position. In terms of the McDonnell Douglas/Burdine approach, this would appear to be a legitimate, nondiscriminatory explanation for not hiring or considering the Complainant.

The Complainant states that he was without a computer and was unable to complete the application online and that the Respondent did not send him a paper copy of the application form thus affirmatively preventing him from applying for the position in which he was interested.

There are several difficulties presented by the record in this matter to a successful claim by the Complainant. As stated above, there is no question that the Complainant never completed the Respondent's application form. The only contact that the Complainant had with the Respondent is the two letters sent to two different terminals of the Respondent on April 19, 2012. These two letters are interesting in themselves. In the letter sent to the Madison terminal (Exhibit 2), the Complainant seems most interested in determining whether his past convictions would preclude his consideration as an applicant. He also expresses difficulty over being able to complete the online application because of his lack of a computer. The letter also outlines several other potential problems including the lack of a current certification necessary to haul hazardous materials and the inability to obtain the needed certification without financial help of the Respondent. Finally, the Complainant requested the Respondent to, in the event that his convictions would prove to be a bar to his application, send him an indication that he had

applied or inquired about employment. In the letter, the Complainant indicates that such a statement would help him to maintain unspecified benefits that require a demonstration of seeking employment.

While the letter sent to the Wisconsin Rapids terminal (Exhibit 3) was essentially the same as the one sent to the Madison terminal, it differed in that the Wisconsin Rapids letter clearly requests that the Complainant be sent a copy of the application. Daniel Coopman, the manager of the Madison terminal, sent the letter sent by the Complainant to the Respondent's Human Resources Department at the corporate headquarters in Des Moines, IA because he did not know how to respond to the requests made by the Complainant. The letter sent to the Wisconsin Rapids terminal (Exhibit 3) was also sent to the Respondent's corporate headquarters but went to Roxana Myers, the Respondent's Driver Recruiter, because it requested a paper copy of the application.

The Complainant's letter that was sent to the Madison terminal was ultimately given to Nathan Schmidt, the Respondent's Director of Human Resources, for determination of a proper response. Schmidt decided that no response was required. In this regard, Schmidt might be legally correct, but displayed a significant lack of courtesy and good business sense by failing to acknowledge the Complainant's interest and questions. Though it is mere speculation, it seems that a response to the Complainant's letter setting forth the Respondent's policy with respect to employment of those with conviction records and providing the Complainant with a copy of the application might well have obviated this complaint.

The letter sent to the Wisconsin Rapids terminal received Myers' prompt response. Exhibit 3 indicates in a handwritten note in Myers' handwriting that an application package was sent on the same day as Myers received the letter. The Complainant testified that he did not receive the package sent to him by Myers. The Hearing Examiner will address this factual issue later in this memorandum.

At hearing, the Complainant objected to the receipt of Exhibit 3 and testimony concerning it. The Complainant's point centered on the fact that the Wisconsin Rapids letter involved a job not within the City of Madison and was thus outside of the Commission's jurisdiction and was irrelevant to the proceedings. While the Complainant is correct with respect to any claim of discrimination involving the Respondent's actions relating to the Wisconsin Rapids position, the point made by the Respondent's offer of Exhibit 3 and the testimony of Myers goes to a different point. Really, the point made with respect to the Respondent's actions regarding Exhibit 3 is that when the Respondent received a request for a paper copy of the application, it responded by sending the paper copy. This point is intended to strengthen the fact that where the Complainant did not specifically request an application, i.e., Exhibit 2 (the letter sent to the Madison terminal), it did not send the application.

The Complainant's testimony that he did not receive a copy of the paper application sent by Myers does not indicate that Myers did not testify truthfully. At most, without further information, it indicates that the application did not arrive due to some reason outside of the control of either the Complainant or the Respondent. The additional possibilities which include that Myers testified falsely, that the Complainant testified falsely or that the Complainant did not remember receiving the application fall into the realm of speculation given this record. The Hearing Examiner will not engage in speculation.

While the uncontroverted fact that the Complainant failed to comply with a condition precedent to employment, the completion of a job application, should be sufficient to resolve the claim of a failure to hire, the Hearing Examiner will address the Complainant's claims of hindrance and one additional matter. First, the Hearing Examiner is disturbed that the record does not establish that the Complainant would have been qualified for employment absent the alleged discrimination of the Respondent. The only evidence in the record indicating that the Complainant was qualified to be a truck driver for the Respondent are the general statements contained in Exhibits 2 and 3 and some small testimony by the Complainant about his arrest for a driving violation in northern Wisconsin while driving a tractor trailer truck. From this meager testimony, it is not possible for the Hearing Examiner to conclude that the Complainant would be a qualified applicant even if he had applied for the position at the Madison terminal. Exhibits 2 and 3, in fact, clearly indicate that the Complainant lacked some of the necessary certifications for the position in which he was interested.

The Complainant argues that the Respondent failed to assist him in the application process and that this somehow demonstrates or establishes a claim of discrimination. First, the Hearing Examiner knows of no duty imposed by law or regulation that requires the Respondent to accommodate the limited means and circumstances of the Complainant. Had the Complainant made a claim of disability discrimination and contended that he needed an accommodation of his disability to complete the application process, it is possible that such a duty might exist. However, absence the circumstance of the duty to accommodate a disability, the Hearing Examiner knows of no requirement that the Respondent assist the Complainant through the application process. In fact, one could make an argument that the ability to complete the application process without assistance demonstrates some abilities or qualifications in itself.

There are additional reasons to doubt the Complainant's claim that the Respondent intentionally hindered his ability to complete the application process. First, the precise webpage that identified the Madison position to the Complainant contained the application. The Complainant's contention that he did not possess a computer or the necessary computer knowledge to complete the application process online is not credible given the "Apply Now" button that appears on the web page announcing the vacant position. See Exhibit 1. Presumably, the online process did not need the Complainant to print out any material for verification or to be mailed in. Since the Complainant had the online process a click away, his contention that he was unable to complete the process rings hollowly.

Second, the record is clear that had the Complainant called the Madison terminal to request a paper application, he would have been sent one. As Exhibits 3 and 4 demonstrate, had the Complainant requested an application when he sent Exhibit 2, the Respondent would have provided him with one in that circumstance also.

The Complainant asserts that the Respondent's statement in its job posting "no felonies … within the last 7 years" intimidated him from formally applying for the truck driving position. This argument will be further addressed in connection with the "publication" claim, however, the statement while likely violative of the ordinance does not state a blanket bar on employment for individuals with felonies. The Complainant's felonies, though serious, occurred substantially in the past, well beyond the 7 year period stated by the Respondent. There does not appear to have been a repetition of the conduct that resulted in those convictions. What appears to have been a greater motivation for the Complainant's failure to continue with the application process

is his experience with other employers rejecting his application. In this regard, the Complainant cannot unfairly judge the Respondent because of the harsh action of other employers. The results of those other applications and the claims of discriminations that followed are likely a more substantial factor in the decision of the Complainant not to pursue his application than the actions of the Respondent.

Given the record as a whole, the Hearing Examiner can find no basis for the Complainant's claim that the Respondent failed or refused to hire him because of his conviction record. Equally, there is no indication in the record that the Respondent took any steps to prevent or to discourage the Complainant from pursuing an application with the Respondent. There is no doubt that Schmidt's decision not to respond to the Complainant's letter originally sent to the Madison terminal reflects poorly on Schmidt and by extension the Respondent. However, Schmidt's decision by itself, does not indicate a discriminatory animus. The Claim for a failure to hire must be dismissed.

Turning to the second claim, there is little doubt that the Respondent's job posting (Exhibit 1) violates the prohibitions of section 39.03(8)(e) Mad. Gen. Ord. It states a blanket prohibition from employment for any individual with a felony conviction in the last 7 years. By contrast, section 39.03(8)(i)3b indicates that an employer may not consider a conviction record if it is more than 3 years old. An employer may consider a conviction record of less than 3 years if the conviction to be considered is substantially related to the duties of one's job. See sec. 39.03(8)(i)3b.

Section 39.03(8)(e) makes it unlawful for a person to print or publish any notice or advertisement expressing a preference, limitation, specification or discrimination on the basis of any of the protected classes. The Respondent's advertisement represents a publication of a limitation or discrimination on the basis of conviction record in that it precludes consideration of applicants for a 4 year period beyond that specified in sec. 39.03(8)(i)3b. It also states a blanket prohibition for any felony in the past 7 years, where sec. 39.03(8)(i)3b permits exclusion of only those convictions which are substantially related to the circumstances of the proposed employment.

While the Respondent was not willing to concede that the "publication" claim was properly before the Hearing Examiner, it did seem to concede that the advertisement reflected in Exhibit 1 was likely in violation of the ordinance's provisions. The Hearing Examiner can find no argument that might save the advertisement in question from violation of the ordinance. The one possible exception would be if the requirement were somehow reflective of licensing or bonding requirements imposed upon drivers for the Respondent. However, nothing in the record indicates such a connection between licensing or bonding requirements and the Respondent's blanket ban on individuals with felonies within the last 7 years.

Given the record as a whole, the Hearing Examiner is compelled to find that the Respondent's advertisement as set forth in Exhibit 1 violates the ordinance. The fact that the Complainant asserts that the advertisement was intimidating and kept him from completing the application process is not an element of the violation, the mere publication is sufficient.

The Complainant's allegations concerning intimidation rather, go to a potential claim for damages. However, the record with respect to such a claim is nearly nonexistent and so speculative that it cannot serve as the basis for a claim of damages.

First, there is no basis for finding that absent reading the Respondent's advertisement that the Complainant would have been qualified for the advertised position. As noted above, the Complainant failed to demonstrate that he possessed the minimum qualifications for the position or that he possessed or could reasonably possess the necessary certifications or credentials for employment by the Respondent.

Second, even accepting the illegality of the advertisement, the Complainant's convictions fell well outside the period prohibited by the advertisement. The Complainant spoke at length about his experiences with other employers who found his convictions to be of such a nature that they were unwilling to process his application. He also spoke about his inability to receive a favorable judgment when challenging these employment decisions. As noted above, it seems likely to the Hearing Examiner that the Complainant was more motivated by his past experience with other employers than with a specific reticence to apply attributable to the wording of the advertisement. The Hearing Examiner does not mean to minimize the clearly stated animus towards those with recent felonies, however, neither does the Hearing Examiner wish to exclude the additional inference that the Respondent was only concerned with felonies in the last 7 years and was more open towards those with older conviction records.

Given the record as a whole, the Hearing Examiner cannot conclude that the Complainant experienced any compensable damages as a result of the Respondent's publication of the advertisement which is Exhibit 1. That the Complainant may not be awarded damages does not mean that the Respondent may continue without sanction. The Hearing Examiner does propose an order requiring the Respondent to cease and desist from publication of its illegal preference. Violation of that order will subject the Respondent to penalties as specified in the ordinance.

While the Hearing Examiner finds that the Respondent's stated preference not to hire recently convicted felons to be contrary to the letter and the spirit of the ordinance and a failure to recognize that those who have served their time have paid their debt to society as required by the law, the Hearing Examiner is sympathetic to the difficulty the Respondent faces in conforming its conduct including its advertising to the wide range of requirements that face a multi-state enterprise. However, there are many such employers subject to the jurisdiction of the Commission who manage to comply fully with the requirements of the ordinance. The Hearing Examiner encourages the Respondent to become fully cognizant of the requirements of the Equal Opportunities Ordinance and to conform its conduct to those requirements.

Signed and dated this 26th day of February, 2013.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Ann Barry Hanneman