

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALBERT DUNN, individually and on behalf
of all others similarly situated,

Complainant,

v.

INTEGRITY STAFFING SOLUTIONS and
AMAZON.COM, INC.,

Respondents.

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: PHRC Case No: 201004267
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: EEOC Case No: 17F201161500
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FIRST AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

Complainant ALBERT DUNN, through his undersigned counsel, respectfully files this First Amended Complaint against Respondents INTEGRITY STAFFING SOLUTIONS ("ISS") and AMAZON.COM, Inc. ("Amazon") (collectively "Respondents") on behalf of himself and all others similarly situated. Complainant complains and alleges as follows:

1. Complainant brings this action against Respondents ISS and Amazon pursuant to the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963 ("PHRA"). This action is dual-filed with the EEOC for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e.

2. This action challenges Respondents' policy and/or practice of excluding Complainant and similarly situated individuals from employment on the basis of a prior criminal conviction, despite a lack of business necessity for this policy and/or practice. This policy and/or practice has a disparate impact on Complainant, as well as similarly situated minority individuals, including, for example, African-American, Native-American and Latino individuals.

The exclusion of Complainant and similarly situated individuals from employment with Respondents constitutes unlawful discrimination on the basis of race, ethnicity, color, and/or national origin under the PHRA and Title VII.

JURISDICTION

3. Jurisdiction is proper pursuant to the PHRA, 43 P.S. §§ 951-963.

PARTIES

4. The Complainant herein is:

Albert Dunn
204 South Third Street
Reading, PA 19602

5. The Respondents herein are:

Integrity Staffing Solutions
5925 Tilghman Street, #600
Allentown, PA 18104

Amazon.com, Inc.
5925 Tilghman Street, #600
Allentown, PA 18104

6. Respondent ISS is an employment and human resources consulting and staffing agency, which operates throughout the country, including in Pennsylvania. According to its website, ISS is one of the fastest-growing privately held companies in the Greater Philadelphia region. Respondent ISS's headquarters are located at 750 Shipyard Drive, Suite 300 Wilmington, DE 19801.

7. Respondent Amazon is a multinational online retailer with approximately 33,700 employees, and it is one of the largest online retailers in the United States. Amazon operates throughout the country, including in Pennsylvania. Respondent Amazon's headquarters are located at 410 Terry Avenue North, Seattle, WA 98109. Respondent Amazon operates

fulfillment centers and warehousing throughout the United States, including in Carlisle, Hazleton, Allentown and Lewisberry, Pennsylvania.

BACKGROUND

8. Criminal background checks have become a routine part of the hiring process throughout Pennsylvania and the United States.

9. Whereas 51 percent of large employers used criminal background checks in 1996, 80 percent of large employers utilized them in 2003, and the percentage is likely even greater today.

10. Because of the increased use of criminal background checks for screening prospective and current employees, a growing number of Americans are being excluded from employment opportunities on the basis of having a criminal record.

11. While such hiring policies are facially neutral, they produce a severe disparate impact on racial minorities, including African Americans, Native Americans, and Latinos, because of the significantly higher rates of criminal convictions experienced by these populations.

12. Current data from Pennsylvania indicates that racial minorities have significantly higher rates of conviction and incarceration than Caucasians and that this in-state racial disparity is significantly more pronounced than the national average.

13. For example, the Pennsylvania incarceration rate for African Americans is 9.2 times higher than the incarceration rate for Caucasians in state prisons and local jails.

14. The Pennsylvania incarceration rate for Latinos is 5.6 times higher than the incarceration rate for Caucasians in state prisons and local jails.

15. Although minorities compose less than 14 percent of the Pennsylvania population, they received 32 percent of the convictions issued in 2007.

16. At the federal level, the Equal Employment Opportunity Commission ("EEOC") has issued a Policy Statement advising that hiring policies that exclude individuals from employment on the basis of a prior conviction are "unlawful under Title VII in the absence of a justifying business necessity."

17. Recognizing the severity of the problem, the PHRA has adopted a Policy Guidance, by which it presumes that the Complainant has established the disparate impact element of a *prima facie* case of unlawful discrimination when challenging an employer's policy or practice of excluding individuals from employment on the basis of a prior criminal conviction.

FACTUAL BASIS

18. Complainant is a fifty-six year-old African-American man.

19. Complainant's felony convictions were in 1981 and 1983 – over 25 years ago. In 1981, when Complainant was twenty-six years old, he was convicted for aggravated assault for shooting a man who had threatened him and his family. The victim later died, leading Complainant to be re-convicted for the same incident with an additional involuntary manslaughter charge.

20. Complainant was granted early parole and was released from prison after serving his sentence in December 1983. Complainant was described by the Assistant Warden as "an exemplary inmate."

21. During his period of incarceration, Complainant consistently maintained employment with General Electric Corporation through a work release program, and Complainant's supervisor was in consistent contact with the court, the probation office, and prison officials, extolling Complainant's virtues as an employee of General Electric Corporation.

22. Complainant served ten years' probation. Complainant completed his term of probation without incident and has never been arrested or convicted of another crime.

23. Complainant has a Bachelor's Degree in Business Management from Alvernia College. He also received a real estate license in 1992 from Berks Real Estate Institute.

24. Since being incarcerated, Complainant has lived as a model citizen. He raised his two children on his own after his wife passed away in 1991. Complainant frequently speaks at community events to youth, counseling them about the repercussions of getting in trouble.

25. Complainant worked for GE/Lockheed Martin for twenty-three years as an Administrator, until he was laid off as part of a reduction in workforce. Lockheed Martin is a federal government contractor, and Complainant was required to, and did obtain and maintain Extended Background Investigation ("EBI") and Department of Defense ("DOD") security clearances from the federal government.

26. Respondents advertised in the November 28, 2010 edition of the *Reading Eagle* newspaper that ISS was hiring employees for "Receiving, Picking, Packing & Shipping" positions for Amazon.

27. The advertisement stated that the requirements for the positions included "steady work history, clean background check and drug screen, and a HS diploma or GED."

28. On or around December 1, 2010, Complainant applied for employment as a packer in the Allentown Amazon Fulfillment Centers.

29. Complainant completed Respondents' job application on a computer. Complainant truthfully answered that he had not been convicted of a felony in the previous seven years.

30. While continuing to complete the application, Complainant was asked if he had "murdered" or "killed" anyone, to which he truthfully answered "yes."

31. Complainant then received a computer prompt, which told him to speak to the receptionist.

32. While Complainant spoke with the receptionist, she ran a background check on Complainant and learned that his criminal record contained a conviction for aggravated assault in 1981 and involuntary manslaughter in 1983.

33. Complainant told the receptionist that he had answered "no" on the question about felonies in the previous seven years because the convictions were more than seven years old.

34. The receptionist told Complainant to complete the application on the computer.

35. After completing the application, Respondents interviewed Complainant and administered a drug test. Complainant took and passed Respondents' drug test.

36. Respondents gave Complainant a conditional offer of employment and told him that his start date would be December 3, 2010.

37. Also on or around December 1, 2010, Complainant attended an unpaid orientation for his employment with Respondents. The orientation lasted approximately one and one half hours.

38. When Complainant reported to the work site on December 3, 2010 to begin his employment, Respondents' representative singled Complainant out to go to a separate line with between eight and twelve other individuals.

39. With the exception of two individuals who were Caucasian, all of the people in the line were African American or Latino.

40. Respondents' representatives told Complainant and the other individuals in the line that they would not be hired based on information in their background check, but the representatives did not provide any reason as to why Complainant would not be hired.

41. Respondents gave Complainant a telephone number to call to discuss why he would not be hired.

42. On December 6, 2010, Complainant called the telephone number provided by Respondents.

43. Respondents' representative, Beth, told Complainant that he "couldn't work for them any time with that charge."

44. Respondents' representative, Barbara, confirmed that Respondents did not hire Complainant because his criminal conviction violated Respondents' "Integrity Policy."

45. Barbara did not provide Complainant with an adequate opportunity to explain the circumstances of his criminal convictions, which both stemmed from a single incident.

46. Barbara was unwilling to consider the fact that Complainant had obtained federal government clearances when working at his job at Lockheed Martin.

47. Barbara told Complainant that, even though his criminal conviction was over seven years old, "it never goes away," and they could not hire Complainant because of "integrity issues."

48. Later in December 2010, Complainant received a "Pre-Adverse Action Notice" in the mail from the Human Resources Department of ISS. The letter states that, based on a Criminal Record Search, "we have decided to revoke your conditional offer of employment."

49. The Pre-Adverse Action Notice was dated December 3, 2010, the same day that Respondents took the adverse action against Complainant.

50. Also later in December, 2010, Complainant received a "Final Notice of Adverse Action," from ISS, dated December 10, 2010, stating that "we cannot give you any further consideration for employment."

51. Complainant has suffered profound embarrassment and humiliation at being targeted in front of all of the other employees and refused employment based on his criminal record.

CLASS ALLEGATIONS

52. Complainant brings this class-wide charge of disparate-impact race discrimination on behalf of himself and all other similarly situated individuals.

53. Respondents' policy and practice of using a pre-employment screen that deters or excludes applicants with irrelevant criminal histories from seeking and obtaining employment effectively imports severe racial and ethnic disparities from the criminal justice system into the employment process, thereby multiplying the negative impact on minorities, including African-American, Latino, and Native-American job applicants with criminal conviction histories.

54. Based on information and belief, Respondents have applied and continue to apply the same policy and practice of using a pre-screen that deters or excludes applicants with irrelevant criminal histories from obtaining employment opportunities to other similarly situated applicants.

55. Respondents' policy and practice is neither job-related nor a business necessity.

56. Even if this policy and practice could be justified by business necessity, less-discriminatory alternatives exist that would equally serve any legitimate purpose that might exist.

**COUNT I
DISPARATE IMPACT DISCRIMINATION
FAILURE TO HIRE
(AGAINST RESPONDENTS ISS AND AMAZON)**

57. The foregoing paragraphs are incorporated herein by reference as though set forth in full.

58. Complainant brings this claim on his own behalf and on behalf of the Class.

59. Respondents Amazon and ISS are employers within the meaning of Section 4(b) of the PHRA.

60. Respondents' overbroad policy and practice of denying employment opportunities based on applicants' criminal backgrounds harmed Complainant and the Class and constitutes unlawful race and/or national origin discrimination in violation of Section 5(a) of the PHRA and Title VII.

61. Complainant and the class are now suffering, and will continue to suffer, irreparable injury from Respondents' discriminatory acts and omissions.

62. Respondents' conduct has caused, and continues to cause, Complainant and the Class substantial losses in earnings and other employment benefits.

63. Complainant prays that Respondents be required to provide all appropriate remedies under § 9 of the PHRA.

**COUNT II
DISPARATE IMPACT DISCRIMINATION
FAILURE TO REFER FOR EMPLOYMENT
(AGAINST RESPONDENT ISS)**

64. The foregoing paragraphs are incorporated herein by reference as though set forth in full.

65. Complainant brings this claim on his own behalf and on behalf of the Class.

66. Respondent ISS is an employment agencies within the meaning of section 4(e) of the PHRA.

67. Respondent ISS's overbroad policy and practice of denying employment opportunities and/or failing to refer for employment based on applicants' criminal backgrounds harmed Complainant and the Class and constitutes unlawful race and/or national original discrimination in violation of Section 5(f) of the PHRA.

68. Complainant and the Class are now suffering, and will continue to suffer, irreparable injury from Respondent ISS's discriminatory acts and omissions.

69. Respondents ISS's conduct has caused, and continues to cause, Complainant and the Class substantial losses in earnings and other employment benefits.

70. Complainant prays that Respondent ISS be required to provide all appropriate remedies under § 9 of the Pennsylvania Human Relations Act.

**COUNT III
DISPARATE IMPACT DISCRIMINATION
AIDING AND ABETTING
(AGAINST RESPONDENT AMAZON)**

71. The foregoing paragraphs are incorporated herein by reference as though set forth in full.

72. Complainant brings this claim on his own behalf and on behalf of the Class.

73. Based on the information and belief, Respondent Amazon was directly involved in creating and/or approving the policy and/or practice of using a pre-employment screen that deters or excludes applicants with irrelevant criminal histories from seeking and obtaining employment with Respondents.

74. By creating and/or approving this policy and/or practice, Respondent Amazon aided and abetted an unlawful discriminatory practice, in violation of 43 Pa. Cons. Stat. Ann. § 955(e).

75. The Complainant prays that Respondent be required to provide all appropriate remedies under § 9 of the Pennsylvania Human Relations Act.

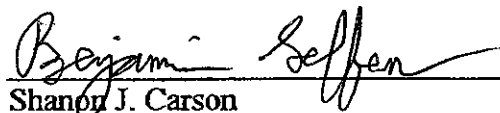
DUAL FILING

76. The Complainant requests that this First Amended Complaint be dual filed with the U.S. Equal Employment Opportunity Commission, for class-wide violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(c), *et seq.* based on race, ethnicity, color, and/or national origin disparate-impact discrimination.

Dated: ~~May~~, 2011

June 1, 2011

Respectfully submitted,



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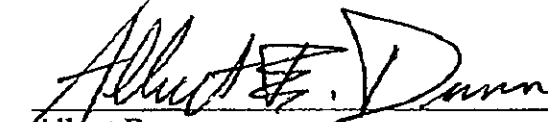
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Attorneys for Complainant and the Class

VERIFICATION

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 P.A.C.S. § 4904, relating to unsworn falsification to authorities.

Date: May 31, 2011


Albert Dunn