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**IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA**

TAHEERA S. HEARD,

Plaintiff,

v.

GENESIS HEALTHCARE, LLC and
GENESIS ADMINISTRATIVE SERVICES
LLC,

Defendants.

NO. 15-10406-IR

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

2015 DEC 28 PM 2:54

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**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS OF DEFENDANT
GENESIS ADMINISTRATIVE SERVICES LLC**

Pursuant to Pa. R. Civ. P. 1028, C.C.R.C.P. 1028(c) and C.C.R.C.P. 210, Defendant Genesis Administrative Services LLC (“Genesis”) submits the following brief in support of its preliminary objections to Plaintiff Taheera Heard’s Complaint:

I. INTRODUCTION.

This case concerns Plaintiff Taheera Heard's criminal record, and Genesis Administrative Services, LLC's alleged use of that record in deciding whether to hire her as a Senior IT Auditor. On November 10, 2015, Ms. Heard filed this lawsuit alleging that Genesis Administrative Services, LLC ("Genesis") violated the Pennsylvania Criminal History Record Information Act ("CHRIA" or the "Act"), 18 Pa. C.S. § 9101 *et seq.* Although Ms. Heard asserts three different "claims" under the Act, each corresponding to a different subsection of § 9125, the reality is they all involve the same central allegation – that Genesis improperly denied her employment based on a criminal record that Ms. Heard deems not relevant to the position for which she applied. As explained below, Ms. Heard is wrong. Genesis did not violate the Act in any respect. Consequently, this Court should grant Genesis's preliminary objections and dismiss this action.

II. RELEVANT BACKGROUND AND FACTUAL ALLEGATIONS.

Genesis is a subsidiary of Genesis HealthCare LLC, one of the nation's largest skilled nursing and rehabilitation therapy providers. (Compl. ¶ 9). (Compl. ¶ 10). In Spring 2015, Ms. Heard applied for a position as Senior IT Auditor at Genesis. Genesis conditionally offered her the job, and she accepted, "contingent on the successful completion of background checks and a drug screen." (Compl. ¶¶ 20-21). Ms. Heard gave Genesis permission to obtain a criminal background report on her through a third party company, General Information Services, Inc. ("GIS"). (Compl. ¶ 22).

By letter dated July 17, 2015, GIS notified Ms. Heard that it had created a background report on her and enclosed a copy of that report. (Compl. ¶ 30). On or about July 20, 2015, shortly after having received her report, Ms. Heard notified GIS in writing that she disputed certain information contained in that initial report. (Compl. ¶ 31). As a result of her dispute, GIS sent Ms. Heard a revised background report. (Compl. ¶ 32; *see also* Background Report,

Exhibit A). The revised background report did not include a misdemeanor stalking conviction that the original report had included. (See Background Report, “Customer Added Comments,” Ex. A at 2-3). The revised background report did, however, show that Ms. Heard had been charged with a misdemeanor related to her receipt of welfare benefits in 1998 and a misdemeanor related to the alleged harassment of her ex-fiancé in 2010. (See Compl. ¶¶ 14, 16, 23, 32). Specifically, the report reflected a misdemeanor conviction for violation of the Public Assistance Act and a misdemeanor conviction for Harassment – Communication, Lewd, Threatening, and Language. (Background Report, Ex. A, at 4-5).

By letter dated October 28, 2015, GIS notified Ms. Heard that Genesis had decided not to hire her based at least in part on the information contained in her revised background report. (Compl. ¶ 36). Specifically, *inter alia*, Genesis believed her misdemeanor for violation of the Public Assistance Act, which equates to welfare fraud, relevant to her suitability for the Auditor position for which she applied.¹ This lawsuit followed on November 10, 2015.

III. QUESTIONS PRESENTED.

1. Has Plaintiff failed to state a claim for a violation of the Pennsylvania CHRJA, § 9125, subpart (a)?

Defendant’s Suggested Answer: YES

2. Has Plaintiff failed to state a claim for a violation of the Pennsylvania CHRJA, § 9125, subpart (b)?

Defendant’s Suggested Answer: YES

¹ Apart from Genesis deeming aspects of her criminal record relevant to her suitability for employment as a Senior IT Auditor, also relevant was the fact that Ms. Heard misrepresented her criminal history to Genesis. As part of the on-boarding process, Ms. Heard completed and signed an Attestation of Good Moral Character. In response to a question asking her to disclose any convictions, she told Genesis that she had a “civil judgment” from 1998. She specifically stated that this “civil judgment” was not a “charge of Misdemeanor Felony.” Genesis does not hire individuals who lie on their employment applications or supporting materials.

3. Has Plaintiff failed to state a claim for a violation of the Pennsylvania CHRIA, § 9125, subpart (c)?

Defendant's Suggested Answer: YES

IV. LEGAL ARGUMENT.

A. STANDARD OF REVIEW.

Genesis preliminarily objects to all three of Ms. Heard's claims based on their legal insufficiency. (*See* Preliminary Objections of Defendant Genesis Administrative Services LLC, filed Dec. 7, 2015); Pa. R. Civ. P. 1028(a)(4). Preliminary objections in the nature of a demurrer "test[] the legal sufficiency of the challenged pleadings." *Composition Roofers Local 30/30B v. Katz*, 398 Pa. Super. 564, 568, 581 A.2d 607, 609 (1990). A court should sustain such objections where, as here, taking all the facts stated in the complaint as true, the plaintiff has nonetheless failed to allege "a legally cognizable cause of action." *Kirschner v. K & L Gates LLP*, 2012 PA Super 102, 46 A.3d 737, 747 (Pa. Super. Ct. 2012), *appeal denied*, 619 Pa. 723, 65 A.3d 414 (2013); *Lerner v. Lerner*, 2008 PA Super 183, 954 A.2d 1229, 1234 (Pa. Super. Ct. 2008).

B. THE FACTS ALLEGED IN THE COMPLAINT DO NOT GIVE RISE TO A CHRIA CLAIM.

Ms. Heard's Complaint asserts what purport to be three separate claims. Each claim, however, concerns the same statutory provision, § 9125 of the Pennsylvania CHRIA. Ms. Heard simply breaks down § 9125, and asserts one count under each of its three subsections, § 9125(a) (Count I), § 9125(b) (Count II), and § 9125(c) (Count III). The efficacy of such pleading aside, each "Count" fails on its own as a matter of law.

1. Count I Fails Because An Employer Cannot Violate Subpart (a).

In Count I, Ms. Heard alleges that Genesis violated subsection (a) of the Act. This subsection simply provides: "whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information

for the purpose of deciding whether or not to hire the applicant only in accordance with [§ 9125].” See § 9125(a). It is readily apparent that subpart (a) does nothing more than state that an employer may only use criminal history record information “in accordance with” other, specific rules outlined in the subsections that follow. It does not in and of itself set forth any rule(s) that an employer can violate, much less provide an express cause of action when it is claimed such a rule is violated. Accordingly, Count I does not state a legally cognizable cause of action. The Court should therefore sustain Genesis’ preliminary objection as to Count I.²

2. Count II Fails Because Genesis Reasonably Believes Ms. Heard’s Public Assistance Act Conviction Relates To Her Suitability For Employment As A Senior IT Auditor.

Count II fails no better than Count I, though for different reasons. In Count II, Ms. Heard alleges that Genesis violated subsection (b) of § 9125, which specifically describes when employers are permitted to use criminal history record information in making hiring decisions. Subsection (b) provides that employers may consider felony and misdemeanor convictions “to the extent to which they relate to the applicant’s suitability for employment in the position for which he has applied.” See § 9125(b). Thus, for example, the Commonwealth Court of Pennsylvania found that the Commonwealth’s Department of Conservation and Natural Resources properly considered an applicant’s felony convictions for possession of child pornography, because “they related to his suitability for employment in the State Park system, where large numbers of children congregate, employees are left unsupervised for extended periods of time, and children may be unattended by adults or may be disrobing in report locations.” *Frankowski v. State Civil Serv. Comm’n (Dep’t of Conservation & Nat. Res.)*, No. 1706 C.D. 2012, 2013 WL 3198733, at *4 (Pa. Commw. Ct. June 25, 2013).

² Ms. Heard loses nothing if the Court does so. The allegations in Counts I and II are nearly identical. (*Compare* Compl. ¶¶ 41-48, *with* Compl. ¶¶ 49-56).

Ms. Heard claims that her own “convictions did not relate to her suitability for employment in the position at Genesis for which she applied,” (Compl. ¶ 52), but the factual allegations underlying her Complaint reveal otherwise. The background report on Ms. Heard shows a misdemeanor conviction for a Public Assistance Act Violation. (Background Report, Ex. A, at 4-5). As Ms. Heard well knows (because Genesis told her), Genesis reasonably believes that this conviction relates to her “suitability for employment” in the position of Senior IT Auditor.

The position for which Ms. Heard applied objectively requires honesty and trustworthiness. Indeed, any auditor position requires honesty and trustworthiness. *Cf. Dean v. S. Dakota Dep't of Labor*, 367 N.W.2d 779, 781 (S.D. 1985) (upholding denial of unemployment compensation benefits where clerk in county auditor’s office was terminated because of shoplifting convictions that “involved conduct which did not satisfy the high standard of public trust, reliability and honesty required of workers in that office”). A senior IT auditor typically secures company information technology systems and infrastructures and works with high-level management to ensure compliance of such systems and infrastructures with federal and state law. *See* Typical Job Description for a Senior Information Technology Auditor, <http://www.itbusinessedge.com/itdownloads/it-careers/job-description-senior-information-technology-auditor.html> (last visited Dec. 23, 2015). This kind of position requires a particularly high level of honesty, trustworthiness and professionalism, particularly in the healthcare industry. The healthcare industry is highly regulated, and an individual in a senior IT audit position is exposed, and has access, to volumes of private and confidential personal protected health and financial information.

Genesis concluded that Ms. Heard's Public Assistance Act conviction directly bears on her character for honesty and trustworthiness. Pennsylvania's Public Welfare Code makes it a crime to fraudulently secure or attempt to secure Federal food stamps. Specifically, the statute provides:

Any person who . . . by means of a wilfully false statement or misrepresentation, or by impersonation or by wilfully failing to disclose a material fact regarding eligibility or other fraudulent means, secures, or attempts to secure . . . Federal food stamps, commits a crime

62 Pa. Stat. Ann. § 481. Genesis was thus well within the bounds of the CHRIA in considering Ms. Heard's Public Assistance Act conviction. *Cf. McCorkle v. Schenker Logistics, Inc.*, No. 1:13-CV-3077, 2014 WL 5020598, at *6 (M.D. Pa. Oct. 8, 2014) (finding plaintiff's claims that she did not have to disclose convictions to be without merit, because, "[e]ven assuming, *arguendo*, that the convictions were unrelated to the position [for which she applied], such a determination is to be made by the *employer*, not the applicant") (citing 18 Pa. Con. Stat. § 9125(b) (emphasis added). Accordingly, Ms. Heard has failed to state a legally cognizable CHRIA claim and the Court should thus sustain Genesis's preliminary objection as to Count II.

3. Count III Fails Because Genesis Notified Ms. Heard In Writing That It Did Not Hire Her Based In Part On Criminal History Record Information.

Finally, in Count III, Ms. Heard alleges that Genesis violated subsection (c) of § 9125, which relates to the "Notice" that an employer must provide when it uses an applicant's criminal record history in the decision-making process. Specifically, this part of the Act requires that an employer notify an applicant in writing if the employer decides not to hire the applicant and "the decision . . . is based in whole or in part on criminal history record information." *See* § 9125(c).

Count III fails according to Ms. Heard's own allegations. She expressly alleges that she received a letter which stated: "Based on information in a recently obtained consumer report on

you, Genesis Healthcare has elected not to extend you an offer of employment or continue your employment.” (Compl. ¶¶ 35-36). That is, she expressly alleges that Genesis complied with the plain language of the CHRIA. Accordingly, Ms. Heard has not stated a legally cognizable claim for a violation of § 1925(c). *See, e.g., McCorkle v. Schenker Logistics, Inc.*, No. 1:13-CV-3077, 2014 WL 5020598, at *6 n.5 (M.D. Pa. Oct. 8, 2014) (finding defendant complied with CHRIA notice requirement where “Defendant notified Plaintiff by letter that it was revoking his conditional offer and that its decision ‘was influenced in whole or in part by a consumer report’”). The Court should therefore sustain Genesis’ preliminary objections as to Count III.

V. CONCLUSION.

For all of the foregoing reasons, the Court should sustain Genesis’ preliminary objections to Counts I, II, and III of Ms. Heard’s Complaint and dismiss the Complaint in its entirety and with prejudice.

Dated: December 28, 2015

Respectfully Submitted,

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