

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

PAUL H. SMITH

Complainant

and

EGC CONSTRUCTION COMPANY

Respondent

Complaint #9093

(CIN) 75041200 (28448) 062700

22A – A0 – 1912

**HEARING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATION
ON RESPONDENT'S MOTION TO DISMISS**

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HEARING EXAMINER'S REPORT BY:

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Complainant

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INTRODUCTION AND PROCEDURAL HISTORY

Paul H. Smith (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 27, 2000.

The Commission investigated and found probable cause that EGC Construction Company (EGC) (Respondent) engaged in unlawful discriminatory practices in violation of Revised Code (R.C.) 4112.02(A).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued Complaint #9093 on June 7, 2001. The Complaint alleged that Respondent discharged Complainant because of his race.

Respondent filed a timely Answer to the complaint, admitting certain procedural allegations but denying that it engaged in any unlawful discriminatory practices. In its Answer Respondent admitted that it was an employer but denied that it was Complainant's employer.

Respondent filed a Motion to Dismiss on November 19, 2001. Respondent attached Stipulation of Facts, signed by Counsel for the Commission and Counsel for Respondent (Exhibit A); the affidavit of Fred McCoy (Exhibit B); and three attachments to the affidavit – a handwritten statement from Complainant, a daily construction report, and a fax transmission to Green International Employment Service. The Commission did not file a response to the Motion to Dismiss.

FINDINGS OF FACT

1. Complainant filed a sworn charge affidavit with the Commission on June 27, 2000.

2. The Commission determined on May 17, 2001 that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. 4112.02(A).

3. Complainant is a black person.

4. Respondent is a corporation doing business in Ohio and an employer. Respondent provides construction and related work and services for its customers.

5. On May 11, 2000, Respondent was performing work for one of its customers, the Procter & Gamble Company (P&G), at P&G's Ivorydale facility in Cincinnati, Ohio.

6. Respondent had a contract with Green International Employment Service (Green), a minority contractor. Green provided workers to perform work for EGC at P&G's Ivorydale facility. Complainant was employed by Green and was assigned by Green to perform work for EGC at P&G's Ivorydale facility.

7. On May 11, 2000, Complainant became involved in an altercation with a Caucasian EGC employee.

8. P&G has a policy that requires that all persons who are involved in altercations must immediately leave P&G's premises. Pursuant to P&G's

policy, EGC requested both Complainant and the EGC employee to leave P&G's facility. Both Complainant and the Caucasian employee complied with this request.

9. The Caucasian employee was reassigned by EGC to another EGC customer. Green terminated Complainant's employment.

10. Complainant has never been employed by EGC.

CONCLUSIONS OF LAW AND DISCUSSION

1. In its Complaint the Commission alleges that Complainant was employed by Respondent and that Respondent discharged Complainant because of his race. However, the Stipulations state that Complainant was never employed by Respondent and Complainant was discharged from his employment with Green International Employment Service.

2. Based on the foregoing discussion, it would be impossible for Respondent to have discharged Complainant because Respondent was not Complainant's employer. It would also be impossible for Respondent to have

influenced the decision Green made to discharge Complainant because Respondent did not have any input into that decision. Likewise, Respondent did not have any input into the decision P&G made that persons involved in altercations on their premises were to leave the premises and not return. Since Respondent was not Complainant's employer and did not discharge him, the Complaint must be dismissed.

RECOMMENDATION

For all the foregoing reasons, it is recommended that the Commission issue a Dismissal Order in Complaint #9093.

FRANKLIN A. MARTENS
CHIEF HEARING EXAMINER

January 31, 2002