

Commission on Human Rights and Opportunities ex rel.	: Connecticut Commission on Human Rights and Opportunities
	:
Betty Gabriel	: CHRO No. 0620141
	: EEOC No. 16aa600013
	:
Rose Ann Carlson	: CHRO No. 0620142
	: EEOC No. 16aa600014
v.	:
	:
Town of Fairfield	: June 30, 2009

Ruling re: the respondent's motion in limine to preclude evidence

I

On June 15, 2009, the respondent filed a "motion in limine to preclude evidence of qualifications unknown to the decision-maker, Joseph Devonshuk". The commission filed its objection on June 29, 2009. For the reasons set forth, the respondent's motion is granted.

II

In March 2005, Josephine O'Halloran, Betty Gabriel, Rose Ann Carlson and Matt Decker applied for the position of zoning inspector in the Town of Fairfield's (respondent) planning and zoning department. They were interviewed by Joseph Devonshuk, who was the sole decision-maker. Decker was the successful candidate. Thereafter, in September 2005, Gabriel and Carlson filed affidavits of illegal

discriminatory practice with the commission. They alleged that the respondent violated Title VII and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) when it refused to hire them for the position of zoning inspector because of their sex. The respondent now moves to preclude from the public hearing information about Gabriel, Carlson and Decker that was unknown to Devonshuk at the time he made his hiring decision.

Essentially, the respondent argued the “after-acquired evidence” doctrine. “After-acquired evidence may not be used to prove an employer’s motivation with respect to a prospective or current employee because the employer did not have those facts before it at the time it made the contested decision.” *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 422 n. 19 (2008). In addition, General Statutes § 4-178 provides in relevant part that in “contested cases: (1) Any oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence”. Clearly, information about Gabriel, Carlson and Decker that was unknown to the decision-maker at the time he made his decision could not have influenced his decision and, therefore, such information is irrelevant as to his motivation in selecting Decker.

III

It is ordered:

1. the respondent’s motion is granted;

2. on or before July 30, 2009, the commission and the respondent shall file and serve revised witness and exhibit lists and serve proposed exhibits reflecting the granting of this motion;
3. on or before August 20, 2009, the commission and the respondent shall file and serve objections to the proposed exhibits and witnesses; and
4. on September 2, 2009 at 10:00 AM a prehearing conference will be held in Conference Room A , 3rd floor, 21 Grand Street, Hartford. The commission and the respondent shall appear. The complainants may appear but their absence is excused.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Ms. Betty Gabriel
Ms. Rose Ann Carlson
Cheryl A. Sharp, Esq.
Eileen Kennelly, Esq.
Robin B. Kallor, Esq.