

COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Andres ZAMUDIO, Complainant)	Case No. 2011E009
)	
v.)	Entered: June 23, 2014
)	
URBAN MINISTRIES INC., Respondent)	

ORDER

On February 18, 2011, Complainant Andres Zamudio (“Zamudio”) brought this action against Respondent Urban Ministries Inc. (“UMI”) for unlawful employment discrimination in violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). *See* Cook County Code of Ordinances (“County Code”), § 42-35(b)(1). Zamudio alleges that UMI failed to hire him because of his parental status, marital status and sexual orientation. Having completed its investigation into the charges, the Cook County Commission on Human Rights (“Commission”) now dismisses Zamudio’s complaint for a lack of substantial evidence.

Background

On July 16, 2010, Zamudio submitted his resume to Creative Circle Staffing Agency (“Creative Circle”). Compl. ¶ 1 (Count I). Creative Circle is a staffing agency that recruits, screens and links freelance advertisers, marketers, designers and other so-called “creative” industry workers with companies that have short- or long-term needs for workers with those specialized skill sets.¹ Zamudio is a creative. Cp Interview (July 31, 2013). He is also a homosexual and, at least at the time of these allegations, was unmarried and without children. *Id.* During this same time period, UMI was working with Creative Circle to retain a Creative Manager or Director. UMI publishes Sunday school and vacation Bible school curricula, books, movies, websites and other publications for use by African American churches. Questionnaire Resp. No. 1. Zamudio’s headhunter at Creative Circle, Tonya Ames (“Ames”), informed Zamudio that she had forwarded his resume to UMI to see if there was a match. Compl. ¶ 1 (Count I).

On July 22, 2010, Zamudio had a phone interview with UMI’s Vice President of Editorial, Dr. Cheryl Clemetsom (“Clemetsom”). *Id.* at ¶ 2. This interview went well enough that UMI called Zamudio back for a second interview. *Id.* On July 26, 2010, Zamudio had a face-to-face interview with Clemetsom and the then-President of UMI, Terence Chatmon (“Chatmon”). *Id.* at ¶ 3. Once again, UMI called Zamudio back for an additional interview. *Id.* Zamudio told Commission investigators that UMI wanted him to start as soon as possible and that the third interview was really just a formality. Cp Interview (July 31, 2013). The Commission’s

¹ *See* Creative Circle, “About Us,” online at <http://www.creativecircle.com/> (visited June 16, 2014).

investigation, however, found that while Clemetson and Chatmon screened candidates for initial interviews and were enthused about Zamudio's candidacy, the final decision making authority rested with UMI's Chief Executive Officer, Carl Wright ("Wright") alone. Questionnaire Resp. No. 10; Wright Aff. ¶ 8.

This third interview took place on August 26, 2010, when Zamudio had a face-to-face meeting with Wright. Compl. ¶ 4 (Count I). Here the parties' tales diverge.

As Zamudio recalls it, Chatmon met Zamudio warmly and escorted him to the final interview with Wright. Cp Interview (July 31, 2013). Zamudio and Wright primarily discussed Zamudio's professional background, including social media and cultural issues in advertising. *Id.* In recapping the interview to Ames, Zamudio did note that when he mentioned a coffee table book about tequila that he had worked on,² he thought that Wright may have insinuated that Zamudio was a drinker. Ames Interview (Oct. 10, 2013). Nonetheless, Zamudio told Commission investigators that he thought that the interview with Wright had gone quite well. Cp Interview (July 31, 2013). Zamudio's issue arose from Chatmon's purportedly odd line of questioning while escorting Zamudio out of the building after that interview.

After the meeting with Wright, Zamudio had the impression that Chatmon seemed more reserved though still interested in moving forward with the hiring. *Id.* During the walk to the lobby, Chatmon and Zamudio discussed social media and the digital market. *Id.* Chatmon then allegedly asked Zamudio how his kids were doing. *Id.* Zamudio did not respond at first (because Zamudio had no children). *Id.* Chatmon then asked Zamudio something to the effect of, "Is it you who has children or someone else?" *Id.* Zamudio replied that Chatmon must be confusing him with someone else, and the two returned to a conversation about multicultural issues in advertising. *Id.* According to Zamudio, Chatmon shortly thereafter interrupted their conversation yet again to return to the topic of children, asking something to the effect of "You do have children, don't you?" *Id.* Zamudio felt that when he responded in the negative that Chatmon became less talkative. *Id.* As they continued to the lobby, Chatman supposedly asked Zamudio something to the effect of, "You are married, aren't you?" Again, Zamudio said no. *Id.* Chatmon then thanked Zamudio for coming, and Zamudio left the building. *Id.* In recapping the interview to Ames, Zamudio told her that Chatmon's questions were inappropriate. *Id.*

Unfortunately, UMI could neither confirm nor deny that Chatmon had asked Zamudio if he was married or had children. *See* Resp. ¶ 4 (Count I). By the time Zamudio brought his claim to the Commission for investigation, Chatmon had already left UMI. Questionnaire Resp. No. 10. Wright, however, was available to the Commission during its investigation and had a very different impression of how well Zamudio's final interview went. Wright recalled:

I met with Zamudio for approximately 30 minutes. Because I knew his qualifications had already been approved by Chatmon and Clemetson, I was more interested in obtaining a sense of Zamudio's personality. During

² Zamudio's resume indicates that he was the art director, producer, photo editor and co-writer of a book titled *Heaven Earth Tequila: A Journey to the Heart of Mexico*.

the meeting, I asked Zamudio what he does for fun and he responded (in substance) that he liked to spend his off-duty time drinking and partying with friends. I do not recall the exact wording of my question, nor of his response. Although I continued with the interview, I had a negative response to Zamudio's statement. Consistent with UMI's mission and business objectives, the corporate culture of UMI is quite conservative. In addition, as a person with a conservative lifestyle and beliefs, I personally disapproved and was uncomfortable with Zamudio's statement regarding drinking and partying.

Wright Aff. ¶ 10. Aside from the back and forth about the coffee table book, Zamudio, for his part, simply denies that he ever discussed alcohol use, preferences or problems during his interview with Wright.³ Compl. ¶ 6 (Count I); Cp Interview (July 31, 2013).

Where the parties do agree is that after his interview with Wright, UMI was no longer interested in pursuing Zamudio. UMI asserts that Zamudio's alleged interest in alcohol rendered him a bad fit for the company. Questionnaire Resp. No. 11. Zamudio believes that any issues with alcohol are pretextual, and UMI's lack of interest is impermissibly attributable to his status as childless, unmarried and gay. Compl. ¶ 7 (Counts I, II, III). Including Zamudio's, Creative Circle sent UMI the resumes of fourteen candidates. Ames Interview (Oct. 10, 2013). UMI interviewed ten of these candidates, but ultimately did not hire anyone for the position. Questionnaire Resp. Nos. 5, 12.

Discussion

The Human Rights Ordinance prohibits an employer from "directly or indirectly discriminat[ing] against any individual in hiring . . . on the basis of unlawful discrimination." County Code, § 42-35(b)(1). Unlawful discrimination includes discrimination on the basis of an individual's parental status, marital status and sexual orientation. *See id.* at § 42-31. The question of whether an employer's (or potential employer's) proffered reason for an adverse employment action is pretextual does not arise until a complainant has established sufficient evidence to raise an inference of discriminatory intent or animus.

I. Parental Status

The Human Rights Ordinance defines "parental status" as the "status of living with *one or more* dependent minors or disabled children." *Id.* (emphasis supplied). Without regards to the truth or falsity of Zamudio's allegations, the protection against discrimination on the basis of parental status in the Human Rights Ordinance simply does not extend to childless complainants. The Human Rights Ordinance covers allegations of discrimination by a parent because he or she has one child or multiple children, but not allegations of discrimination by a nonparent, such as Zamudio, because he or she has no children at all. *See Wegrzynowska, et al. v. Saleh, et al.*, 2012H004, *3 (CCHRC Jan. 27, 2014) ("Parental status under the Human Rights Ordinance is

³ Zamudio, in fact, asserted to the Commission staff that he has not had an alcoholic drink since August 2005. Cp Interview (July 31, 2013).

defined as a binary condition. A complainant either is or is not a parent.”).

This is not to say that nonparents do not face disadvantages in the workplace. Rather, there are compelling arguments that the opposite may be true. *See, e.g.,* Elinor Burkett, *The Baby Boom: How Family-Friendly America Cheats the Childless* 7-11, 18-22 (2000). The Cook County Board might sensibly amend the Human Rights Ordinance to offer parents and nonparents the same antidiscrimination protections. *Cf. Note, “The Changing Relations of Family and the Workplace: Extending Antidiscrimination Laws to Parents and Nonparents Alike,”* 77 N.Y.U. L. Rev. 833, 863-65 (2002). But until such an amendment occurs, this Commission must enforce the Human Rights Ordinance as enacted, and the current state of the law is that discrimination against nonparents for their childless parental status is without a legal remedy at the Commission.

II. Marital Status

The statutory definition of “marital status” is broad enough to sweep Zamudio into a status protected by the Human Rights Ordinance. County Code, § 42-31 (defining the phrase to include “the status of being single, married, divorced, separated, or widowed”). The Commission’s investigation, however, finds insufficient evidence to support Zamudio’s claim that UMI failed to hire him because he was unmarried.

Wright made the decision not to hire Zamudio, and while the Commission will reserve judgment as to what role Zamudio’s interest in alcohol, professional or otherwise, played in that decision, there is simply no evidence that Wright knew anything about Zamudio’s marital status at the time. Zamudio Interview (July 31, 2013); Wright Aff. ¶ 8. To the extent that Chatmon’s knowledge can be attributed to UMI, his single inquiry as to Zamudio’s marital status is insufficient to raise the inference that UMI intended to discriminate against Zamudio because he was unmarried. Though it is often impolite and unwise for a potential employer to ask such a personal question, it is well established that simply inquiring about an individual’s membership in a protected class is not evidence of animosity towards members of that class. In *Greenberg v. Union Camp Corp.*, for example, the First Circuit observed in dismissing an age discrimination suit that “[a] single inquiry by an employer as to an employee’s plans for retirement . . . does not necessarily show animosity towards age.” 48 F.3d 22, 28-29 (1st Cir. 1995) (noting that such an inquiry may serve some other non-discriminatory purpose); *see also Soules v. U.S. Department of Housing & Urban Development*, 967 F.2d 817 (2d Cir. 1992) (“standing alone, an inquiry into whether a prospective tenant has a child does not constitute an FHA violation.”).

Similarly, here, Chatmon’s single inquiry into Zamudio’s marital status is not sufficient to infer that he bore ill will towards the unmarried. Instead, the most reasonable inference is that Chatmon’s entire line of questioning regarding Zamudio’s marital and parental status on August 26, 2010, was for the purpose of helping Chatmon recall who Zamudio was among all of the other candidates Chatmon had interviewed. Zamudio, himself, told Chatmon when Chatmon inquired about Zamudio’s non-existent children that Chatmon had confused Zamudio with someone else. Zamudio Interview (July 31, 2013). The Commission’s investigation found no other evidence to support Zamudio’s claim of marital status discrimination by UMI, such as more favorable

treatment for similarly situated married applicants for the Creative Manager position.⁴

III. Sexual Orientation

Finally, Zamudio asserts that UMI failed to hire him because of his sexual orientation. Unlike his previous two claims, Zamudio does not contend that anyone at UMI actually inquired as to his sexual orientation. Instead, the basis for Zamudio's claim is his inference that UMI deduced that he is a homosexual from his childless and unmarried status.

The Commission cannot share in that inference. The Commission's investigation found ~~no evidence that anyone at UMI actually knew Zamudio's sexual orientation at the time they declined to hire him.~~ Moreover, Zamudio's presumption about the unmarried and childless is itself outdated. According to 2011 figures, over 30 percent of the adult male population is unmarried in the United States. U.S. Census, "America's Families and Living Arrangements: 2011," Table A1, online at <http://www.census.gov/population/www/socdemo/hh-fam/cps2011.html> (visited June 18, 2014). Meanwhile, the rate of childlessness for Americans has doubled between 1970 and 2010. Pew Research Center, "Childlessness Up Among All Women; Down Among Women with Advanced Degrees," *1, online at <http://www.pewsocialtrends.org/files/2010/11/758-childless.pdf> (visited June 18, 2014). Without any additional evidence that might raise an inference of animus, this claim also can advance no further.

Conclusion

For the foregoing reasons, the Commission orders that complaint 2011E009 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date this order.

June 23, 2014

By delegation:



Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights

⁴ Instead, as noted above, UMI did not hire anyone for the Creative Manager position, married or single.