

STATE DIVISION OF HUMAN RIGHTS
STATE OF NEW YORK : EXECUTIVE DEPARTMENT

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

WILLIAM C. WISE

Complainant

v.

OVERLAND ENTERTAINMENT CO., LTD.

Respondent

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10106620

Federal Charge No. 16GA504126

On 7/6/2005, William C. Wise filed a verified complaint with the State Division of Human Rights charging the above-named respondent with an unlawful discriminatory practice relating to employment because of race/color in violation of the Human Rights Law of the State of New York.

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division of Human Rights has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

Complainant alleged that Leane Romeo, President, subjected him to disparate treatment by not including him on respondent's payroll until July 2004, although he began working for respondent on January 1, 2003, by singling him out to sign a Terms and Conditions of Employment Agreement and not requiring non-African-American employees to sign such an Agreement, by paying him for seven and a half hour work days while paying non-African-American employees who worked the same schedule eight hours per day or more, by instructing him to itemize his timesheets, and by terminating his employment and failing to provide him with "ten days to cure" after he admitted that he took company funds because of his race/color.

The respondent denied, and the investigation could not substantiate, complainant's allegations of discrimination.

Respondent asserts that it hired complainant through a temporary agency and later paid that agency a finder's fee in

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order to hire complainant directly because it was satisfied with complainant's performance.

Respondent asserts that beginning on or about January 6, 2003, respondent hired complainant as a part-time bookkeeper, for two 7.5 hour days per week and that it would continue to pay complainant per hours worked and complainant would have to continue submitting invoices or timesheets with his total hours worked per week. Respondent asserts that no other employee is paid hourly like complainant. Rather, they are paid a salary and, accordingly, do not submit time sheets.

There is no evidence to support complainant's allegations that respondent treated him any less favorably because he is African-American. In fact, Respondent asserts, and complainant acknowledged, that "it repeatedly extended significant benefits and special favors to complainant and that it granted all of his requests which ranged from benefits not traditionally given, such as pay complainant for holidays if they fell on one of his regularly scheduled work days, paid vacation days, and medical benefits (of which the Company paid 50% of the premium)" and five interest-free personal loans, exceeding \$14,000, as well as numerous advances on his pay.

Respondent asserts it terminated complainant's employment because, as he has admitted, he stole money from respondent by writing checks to himself, forging Ms. Romeo's signature on the fraudulent checks, cashing them, and retaining the money for his own use. The record shows that respondent filed criminal charges against complainant and that he, in a sworn statement to the New York State Supreme Court, admitted that he stole \$4,577.50 by writing four checks to himself, forging Romeo's name on all of them, and cashing them.

In his verified complaint, complainant alleged that respondent offered Ms. Romeo via an Agreement a "ten (10) days to cure" and that he was not afforded the same ten (10) days to cure opportunity. Respondent indicated and the record shows that "Contrary to his allegations, Wise's employment agreement has no "ten day cure" period. In any event, crimes such as fraud, forgery and theft are each incurable, as are his breaches of fiduciary duty and trust reposed in him." It is clear from the record that the ten days to cure part of respondent's Agreement with Ms. Romeo does not refer to the theft of company funds. In fact, the Agreement clearly indicates that the company may terminate the executive's [Ms. Romeo'] employment

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for "Cause" and it goes on to define "Cause" as (a) the intentional theft, unauthorized appropriation or embezzlement of money or property of the company and (b) "intentional and material failure to perform any of her duties under this Agreement after written notice specifically setting forth the failures and providing ten (10) days to cure any such failure." The ten day to cure is specifically referring to the failure to perform any duties as described in (b) and not to intentional theft. Even if this Agreement were giving Ms. Romeo ten days to cure intentional theft, which it is not, complainant is not similarly situated to Ms. Romeo and is therefore not bound by the same Agreement.

The investigation did not reveal sufficient evidence to establish a casual nexus between respondent's decision to terminate complainant and complainant's race/color. Furthermore, respondent's stated non-discriminatory business reason for terminating complainant's employment does not appear to be a pretext for discrimination.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

PLEASE TAKE FURTHER NOTICE that a complainant who seeks state judicial review and who receives an adverse decision therein, may lose his or her right to proceed subsequently in federal court by virtue of Kremer v. Chemical Construction Co., 456 U.S. 461 (1982).

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by

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writing to EEOC, New York District Office, 33 Whitehall Street,
5th Floor, New York, New York 10004-2112. Otherwise, EEOC will
generally adopt our action in your case.

Dated: *March 5, 2006*
New York, New York

STATE DIVISION OF HUMAN RIGHTS

By: *Wilson P. Ortiz*
Wilson Ortiz
Acting Regional Director