

No. 18 - 7601

Supreme Court of the United States

JOSEPH CHHIM,
Petitioner,

v.

GOLDEN NUGGET LAKE CHARLES., improperly referred
to as Golden Nugget Casino Lake Charles,

Respondent.

FILED
APR 10 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

**SUPPLEMENTAL BRIEF AND APPENDIX
PETITION FOR REHEARING**

Joseph Chhim
5634 Windsor Forest Dr.
Houston, Texas 77088
832-855-6743
Email: chhimjoseph100@gmail.com

Pro Se

RECEIVED
APR 19 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

APPENDIX

The Human Resources Team of Golden Nugget Casino (GNC) has stated deciding to pursue other candidates that more closely match our criteria and would not considered Chhim for other position, but this managers' team did not state facilities supervisor was not filled...App. 1

Laura Jasso , Director of Human Resources Laundry's Inc. recommended did not discriminate in employment in employment opportunity, and it is based from the qualifications of the candidates , but Laura on July 7, 2014 did not state the facilities supervisor was not filled.....App. 2

The Human Resources Teams also stated Chhim may applied facilities lead. The result Assessments indicates that you would not be other considered manager or non manager at this time and no further assessment are required but these teams never stated the facilities supervisors was not filled.....App. 3

Sandy Cowart, Assistant Human Resources Director Golden Nugget Casino (GNC) wrote the letter to Uma Candan, Enforcement Manager New Orleans EEOC, 1555 Poydras Street, New Orleans, Louisiana 70112 on October 14, 2014 but Sandy Cowart failed to report to EEOC Uma Candan that the facilities supervisor was not filled.....App. 4

Elizabeth Guest, Human Resources Manager on page No. 4. Paragraph No. 1 declared Golden Nugget never hired anyone to fill the facilities supervisor Position for which Chhim applied that it is conflicted with all the above four high level management that they never stated the facilities supervisor was never filled, so that on July 24, 2017 Declaration of Elizabeth Guest for which the district court, and Court of Appeals overlooked without controlling effect or to other substancial grounds not previously presented or without deposition. Defendant just raised one level management Elizabeth Guest's Declaration no hired anyone for Chhim to prove employment discrimination without comparing the four level management who did not state facilities supervisor was never filled.....App. 5

ARGUMENT

BY Supreme Court Rule 44.2, the ground of a petition for rehearing "shall be limited to intervening circumstances of a substantial or controlling effect." BY Supreme Court Rule 15.8, a supplemental petition "may be filed at any time, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing." The last filing in this case was made on April 10, 2019.

Finally, Petitioner submitted a related "differing opinion via relevant documents without stating any opposition to its arguments and requests.

CONCLUSION

If the Supreme Court requests a response to the Mr. Chhim's petition for rehearing, it is possible, perhaps likely, that the Team of management will inform the Court of its support and that it will file a response in acquiescence, if given the opportunity to do so. This would be a change in circumstances "of a substantial or controlling effect" to the Court's Order of March 18, 2019.

Mr. Chhim prays the Court will decide to request a response, he has acted in good faith, the Court may ask (GNC) why all four high level management did not inform Chhim and the EEOC who should receive a fair investigation after the EEOC's charge was filed.

Respectfully submitted,



Joseph Chhim
5634 Windsor Forest Dr.
Houston Texas 77088
832-855-6743
Email: chhimjoseph100@gmail.com

Pro Se

CERTIFICATE OF SERVICE

I hereby certify on the 16th day of April, 2019, a true and correct copy of the foregoing Appellant Brief and Appendix Petition for Rehearing has been sent to the following list of attorney representing Defendant-Appellee, Golden Nugget Casino Lake Charles L.L.C. :

Steven F. Griffith and
Kathlyn G. Perez
201 St Charles Ave. Suite 3600
New Orleans, Louisiana 70170



Joseph Chhim

Joseph Chhim <chhimjoseph100@gmail.com>

Golden Nugget Application Information

1 message

AutomationManager@brassring.com <Enterprise@irm.brassring.com>

Mon, Jun 16, 2014 at 3:06
PM

Reply-to: AutomationManager@brassring.com

To: chhimjoseph100@gmail.com



Dear Joseph Chhim,

Thank you for your interest, however after the review of your assessment, we have decided to pursue other candidates that more closely match our position criteria. The results of the Assessments indicate that you would not be considered for other positions, so no further Assessments are required.

Thank you again for your time and interest.

Sincerely,

The Human Resources Team
Golden Nugget Lake Charles

App. 1

6/17/2014 8:05 A



July 7, 2014

Joseph Chhim
5634 Windsor Forest Dr.
Houston, TX 77088

(via email chhimjoseph100@gmail.com)

Dear Mr. Chhim,

I am in receipt of your email dated June 17, 2014 regarding the employment application process at the Golden Nugget Lake Charles, and want to thank you for taking the time to voice your concerns.

I can assure you that it is the Company's goal is to hire the most qualified person, recognizing the value of all individuals, regardless of age, race or national origin. In furtherance of this objective, Golden Nugget has a policy of non-discrimination that all employees are required to follow. Golden Nugget does not discriminate in employment opportunities or practices on the basis of race, color, religion, gender, sexual orientation, national origin, age, disability, or any other characteristic protected by law. Employment decisions are based on merit, qualifications, and abilities.

After reviewing your application, I am confident that your age, race and national origin were not factors in the decision to not move forward with your application. Rather, the decision was based solely on the fact that you did not complete the behavioral assessment. The behavioral assessment is given to all candidates regardless of age, race, national origin, or any other protected characteristic, and is found to be predictive of the attitudes and behaviors that employees may exhibit in the workplace. The assessment has been evaluated and found to be scientifically valid and non-discriminatory in its use. Should you wish to be considered for any future employment opportunities, you will need to log in to your online profile and complete the assessment.

Should you have any additional questions or concerns, please feel free to contact me at 713-386-7187. Thank you once again for sharing your concerns. We wish you good fortune in your future endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Jasso".

Laura Jasso
Director of Human Resources
Landry's, Inc.

App. 2

Joseph Chhian <chhianjoseph100@gmail.com>

Golden Nugget Application Information

1 message

AutomationManager@brassring.com <Enterprise@trm.brassring.com>
Reply-To: AutomationManager@brassring.com
To: chhianjoseph100@gmail.com

Thu, Aug 14, 2014 at 8:19
AM



Dear Joseph,

Thank you for your interest in the position of FACILITIES LEAD. After the review of your assessment, we have decided to pursue other candidates that more closely match our position criteria. The results of the Assessment indicates that you would not be considered for other positions in that job category (either manager or non-manager) at this time and no further assessments are required.

If the position listed above for which you applied is a manager position, you may apply for non-manager positions and take the assessment associated with those positions.

We wish you the best of success in your career search endeavors, and thank you again for your interest in Golden Nugget Lake Charles.

Sincerely,

The Human Resources Team
Golden Nugget Lake Charles

App. 3



October 13, 2014

OCT 16 2014

Uma Kandan, Enforcement Manager
New Orleans Field Office
1555 Poydras Street
Suite 1900
New Orleans, La 70112

Re: Joseph Chhim
EOC Charge No. 461-2014-02003

Dear Ms. Kandan,

The Golden Nugget Casino , Lake Charles, LA denies any and all charges of discrimination by the claimant based on National Origin, Race and Age.

The following is our response to these allocations:

1. "In June 2014 I applied online with Golden Nugget Casino Lake Charles for a position as a Facilities Supervisor and on June 17, 2014 I received an email back from the Human Resources Team denying me employment with the company. The company employs over 200 employees."

Joseph Chhim did indeed apply for the position of Facilities Supervisor on June 14, 2014. (See Exhibit A)

On July 10, 2014, Joseph Chhim took a customer service based assessment online for the Facilities Lead. A minimum score of 30% was acceptable and his results yielded a score of 12%. This prevented Mr. Chhim from applying for any positions going forward. (See Exhibit B)

As of the date of the application the Golden Nugget employed 108 people.

2. "Golden Nugget Casino Lake Charles reason for not hiring after review of my assessment: we have decided to pursue other candidates that more closely match our position criteria. The results of the Assessments indicate that you would not be considered for other positions, so no further Assessments is required."

This is a true statement. (See Exhibit B)

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3. "I believe I have been discriminated against because of my Nations Origin, Race, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe I have been discriminated against because of my Age, in violation of The Age Discrimination in Employment Act of 1967, as amended because I was not afford the opportunity to apply for any other position within the company. Further, other applicants who are not protected class (Under Title VII) were treated better."

The application process stopped when he did not obtain the required minimum score of 30 %. We maintain that he was not discriminated against based on his accusations of national origin, race or age. As indicated by the attached exhibits there is nothing that would ask for the information that Mr. Chhim alleges.

All applicants regardless of National Origin, Race and Age that scored below the minimum of 30% were sent the same automatic response from customer service assessment.

If you need any other information regarding this charge, please do not hesitate to contact me.

Sincerely,



Sandy Cowart
Assistant Human Resources Director
Golden Nugget Casino Lake Charles
123 College Street
Lake Charles, LA 70605
scowart@gnlcn.com
337-419-3188 Ext. 108

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JOSEPH CHHIM,

* CIVIL ACTION

Plaintiff,

* NO. 16-cv-1094-PM-KK

VERSUS

* JUDGE PATRICIA MINALDI

GOLDEN NUGGET CASINO LAKE CHARLES

* JURY TRIAL REQUESTED

Defendant.

DECLARATION OF ELIZABETH GUEST

Pursuant to 28 U.S.C. § 1746

STATE OF TEXAS

HARRIS COUNTY

NOW COMES, Elizabeth Guest, who under penalty of perjury and from her own personal knowledge, states:

1. I am over 18 years of age and competent to give testimony in this matter. I have personal knowledge of all facts and circumstances in this Declaration.
2. I am employed by Landry's Management, LP in the Human Resources Department as the Manager of Corporate Recruiting. Landry's Management, LP provides various management and administrative support roles to Golden Nugget Lake Charles, LLC ("Golden Nugget"), including human resources support.
3. I am familiar with the allegations made by Mr. Joseph Chhim in this matter.

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4. In my role as the Manager of Corporate Recruiting, I am familiar with the online application process that Golden Nugget used during the months surrounding Mr. Chhim's applications in June and July 2014.

5. Mr. Chhim has never been employed by Golden Nugget and was never interviewed for a position at Golden Nugget. Golden Nugget's only interaction with Mr. Chhim was related to the online employment applications he submitted through Golden Nugget's portal in 2014.

6. Kenexa was the online application system used by Golden Nugget to filter and process job applications for the casino before it opened in December 2014.

7. To complete an application, the Kenexa system required all applicants to timely complete a behavioral assessment, which predicted attitudes and behaviors employees may exhibit in the workplace. This test asked questions related to customer service, engagement, and retention.

8. The Kenexa assessment did not ask any questions concerning any applicant's age, national origin, race, or any other protected characteristic.

9. Mr. Chhim initially input his information into the Kenexa system for the Golden Nugget Facilities Supervisor position (referenced as "48BR" in the Golden Nugget system), but he did not complete the assessment within the time allowed. Therefore, Mr. Chhim's first application was not considered complete and was automatically rejected.

10. A true and correct copy of the job description for the Facilities Supervisor position is attached as Exhibit "A" to this Declaration.

11. On June 17, 2014, Mr. Chhim sent Golden Nugget an email regarding the employment application process.

12. On July 7, 2014, Ms. Laura Jasso, Director of Human Resources, sent an email to Mr. Chhim, pointing out his failure to complete the behavioral assessment. A true and correct copy of that email is attached as Exhibit "B" to this Declaration.

13. On July 10, 2014, Ms. Sherry Grodner, Golden Nugget's Vice President of Human Resources, offered Mr. Chhim another chance to complete the assessment and finalize his application apply for the position.

14. Mr. Chhim completed the assessment on July 10, 2014, scoring only a 12 percent. A true and correct copy of Mr. Chhim's Behavioral Assessment Results is attached as Exhibit "C" to this Declaration.

15. IBM, the company that designed the assessment on behalf of Golden Nugget, recommended that 30% be the minimum score for an applicant to advance past the initial online application stage. Any applicant that scored below that threshold would automatically receive the same rejection letter from the system for failure to meet the minimum score.

16. Because Mr. Chhim's score fell below 30%, his application was automatically rejected on July 12, 2014. A true and correct copy of the Golden Nugget System Recommendation based on Mr. Chhim's assessment results is attached as Exhibit "D" to this Declaration.

17. Of the 63 individuals that completed the application for Facilities Supervisor Position, only 8 did not pass the assessment with a minimum al score of 30%.

18. A true and correct copy of Golden Nugget's "Action Log," which tracks all of the casino's interactions with Mr. Chhim as a job applicant is attached as Exhibit "E" to this Declaration.

19. Golden Nugget never hired anyone to fill the Facilities Supervisor Position for which Mr. Chhim applied.

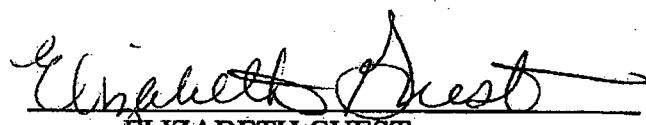
20. Mr. Chhim filed a Charge of Discrimination on September 15, 2014. Golden Nugget investigated the Charge and submitted a written response to the EEOC on October 13, 2014. A true and correct copy of Golden Nugget's Response to the EEOC is attached as Exhibit "F" to this Declaration.

21. Mr. Chhim is free to submit another application for employment with Golden Nugget at any time. Golden Nugget will consider Mr. Chhim's credentials and qualifications for any employment position for which the casino is currently seeking applicants.

22. Golden Nugget is committed to providing a workplace free of discrimination and harassment, which is set forth in the relevant policies in Golden Nugget's Employee Handbook, attached as Exhibit "G" to this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 24th day of July, 2017.


ELIZABETH GUEST