

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4871-10T2

FRANCIS CORNACCHIULO,

Appellant,

v.

ALTERNATIVE INVESTMENT  
SOLUTIONS, INC., and NEW  
JERSEY DIVISION ON CIVIL  
RIGHTS,

Respondents.

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Argued November 8, 2012 - Decided January 23, 2013

Before Judges Fuentes and Ashrafi.

On appeal from the Department of Law and  
Public Safety, Division on Civil Rights,  
EEOC Charge No.: 524-2009-01014.

James E. Burden argued the cause for  
appellant (Smith Mullin, P.C., attorneys;  
Neil Mullin, of counsel and on the brief;  
Mr. Burden, on the brief).

Charles S. Cohen, Deputy Attorney General,  
argued the cause for respondent New Jersey  
Division on Civil Rights (Jeffrey S. Chiesa,  
Attorney General, attorney; Mr. Cohen, on  
the brief).

Sean R. Kelly argued the cause for respondent Alternative Investment Solutions, Inc. (Saiber L.L.C., attorneys; Mr. Kelly, on the brief).

PER CURIAM

Plaintiff Francis Cornacchiulo brings this second appeal before us in an effort to revive his discrimination claim against his former employer, Alternative Investment Solutions, L.L.C. Pursuant to N.J.S.A. 10:5-21, he appeals from an April 29, 2011 letter of the New Jersey Division on Civil Rights (the NJDCR or the Division) stating that it was closing its file on plaintiff's administrative complaint of discrimination because the federal Equal Employment Opportunity Commission (the EEOC) had investigated the matter and already decided it unfavorably to plaintiff. We affirm.

We incorporate here the statement of facts and procedural history set forth in our prior unpublished decision.

Cornacchiulo v. Alternative Investment Solutions, Inc., Docket No. A-5697-10 (App. Div. June 19, 2012). We recited there the factual circumstances that prompted plaintiff's dual-filing of an administrative complaint before both the EEOC and the NJDCR against his former employer. Id. at 2-5. We rejected plaintiff's appeal of an order of the Law Division dismissing his discrimination lawsuit in accordance with N.J.S.A. 10:5-27,

the election of remedies and exclusivity provision of New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. Cornacchiulo, supra, slip op. at 6-9.

Plaintiff asserted he was confused by the documents he was asked to sign when he filed an administrative complaint before the EEOC, and that he should be permitted to pursue a discrimination lawsuit in State court. We explained that the worksharing agreement between the EEOC and the NJDCR provides that only one of the agencies will actually conduct an investigation of a dual-filed complaint and that the NJDCR will usually abide by the results of an investigation conducted by the EEOC. Id. at 8-9. Furthermore, the NJDCR had notified plaintiff that he could seek an independent investigation by the State agency if he could show good cause for such a second investigation, but he never made such a request. Id. at 3-4, 8-9. Instead, he filed a lawsuit in State court and belatedly tried to withdraw his State administrative complaint. Plaintiff's failure to follow the permitted procedures and to act in timely fashion with respect to his NJDCR complaint precluded his State lawsuit. Id. at 11-12.

In the current appeal, plaintiff argues that the NJDCR did not conduct any investigation of his claim of discrimination, and it should be compelled to do so. He argues that the

pertinent State regulations, N.J.A.C. 13:4-1.1 to -13.4, require that the NJDCR conduct an investigation when a complainant files a verified complaint alleging a violation of the LAD. In particular, N.J.A.C. 13:4-4.1(b) states: "Upon receipt of a verified complaint and answer, the Division shall promptly initiate an investigation into the allegations of discrimination." Additional regulations, N.J.A.C. 13:4-4.2 to -4.8, describe the investigatory procedures and the authorized forms of evidence-gathering that the Division must employ. Upon completion of the Division's investigation, yet another regulation, N.J.A.C. 13:4-10.2, requires that the Director of the Division "determine whether or not probable cause exists to credit the allegations of the verified complaint." These steps were not undertaken by the NJDCR before it closed its file on plaintiff's administrative complaint.

We reject plaintiff's argument, however, that the regulatory provisions mandate an independent investigation by the NJDCR in every case, including in a case where the EEOC has conducted an investigation pursuant to the worksharing agreement between the federal and State agencies. Plaintiff's challenge on this appeal amounts to an attack on the entire worksharing agreement. Without an adequate record or briefing directed to that specific issue, we will not address whether there is some

violation of law or other impropriety in the worksharing agreement itself.

Here, we see no violation of the intent and purpose of the regulatory provisions we have quoted for the NJDCR to rely on comparable investigatory procedures used by the federal agency. The dual-filing complainant has a mechanism to pursue remedies before the NJDCR if dissatisfied with the EEOC's final determination. Plaintiff was notified by the NJDCR's initial communication to him dated January 12, 2010, that his claims would be processed under a "Worksharing Agreement" by the EEOC, not by the NJDCR. The letter also stated:

Once the Equal Employment Opportunity Commission has made a determination concerning that charge and closes its file, the Division on Civil Rights ordinarily adopts the EEOC's determination. However, upon application, and for good cause shown, the Division on Civil Rights will review a no reasonable cause determination by the EEOC to ensure that it comports with standards under the Law Against Discrimination.

Although plaintiff already had received notice by the date of this letter that the EEOC had not substantiated his claims of disability discrimination, he made no request for an independent NJDCR review. As a result, the NJDCR accepted the EEOC's disposition of plaintiff's complaint, adopted that disposition as its own, and closed its file. The NJDCR created no

independent factual record of an investigation that we can review. Nor has plaintiff provided to us a record of the EEOC investigation by which he might argue and we might evaluate whether there was good cause for an independent investigation by the NJDCR.

Because plaintiff has not presented any facts or law from which we might conclude that the worksharing agreement and the decision of the EEOC do not comply with our State law, we find no merit in his appeal. We conclude that the NJDCR was not required to conduct an independent investigation before closing its file on plaintiff's complaint.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION