

Court of Appeals Dismisses EEOC Appeal of Background Check Suit, Faulting Agency Process

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March 6, 2015

In the appeal of a lawsuit brought by the EEOC over a Texas employer's use of background checks in the hiring process, *Equal Employment Opportunity Commission v. Freeman*, the Fourth Circuit Court of Appeals slammed the EEOC's sloppy investigative work and dismissed the suit.

The underlying case arose from a racial discrimination charge brought by a black applicant to the Dallas-based convention management company, whose application was denied after a background check into her credit history. She alleged that the company's background check process disproportionately affected minority applicants. The EEOC brought suit on behalf of a "credit class" and a "criminal class" of unsuccessful applicants.

The closely watched case was dismissed by the lower court after it discovered that the EEOC's purported expert analysis to support the claims was littered with a "mind-boggling number of errors" that rendered it "utterly unreliable."

On appeal, the Fourth Circuit rejected the EEOC's attempt to correct these errors, finding that the expert only introduced new, unexplainable mistakes. It authored a scathing opinion (with equally harsh opinions in concurrence) lambasting the EEOC's continued use of an expert whose work has been questioned in no less than five prior cases. Employers should be vigilant and scrutinize all expert reports or analysis with the EEOC, as this presents a strong defense against pattern or practice cases brought by the agency.