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How A Criminal Background Check Can Cost You The Job

Kevin Jones thought he had landed a good job with the big property manager Halstead Management, as a doorman at a Manhattan building. But like 69% of American employers, Halstead ran a criminal background check on Jones before making its final offer. It relied on Sterling Infosystems, one of the nation's largest background check firms. Sterling turned up evidence that Jones had been convicted of drunk driving, driving without a license, petty larceny, and criminal possession of stolen property. But there was a problem. The Kevin Jones with the criminal past was a white man with the middle initial "M." The would-be doorman, an African-American, was named Kevin A. Jones.

Halstead didn't give Jones a chance to clear his name before telling him he didn't have the job, according to a class action lawsuit filed against Sterling, Halstead and its sister company, Brown-Harris-Stevens. Jones is being represented by a New York public interest firm, Legal Action Center, and by Philadelphia's Francis & Mailman. Says Legal Action Center legal director Sally Friedman, "It's the Wild West out there among these criminal background screeners. They get away with sloppy practices that wreak havoc on people's lives." (Halstead denies it had revoked Jones' offer when it told him about the background check. Sterling denies the allegations in the class action.)

According to Friedman, federal law requires that job applicants have the opportunity to set the record straight if they are being denied a job based on false information. The Fair Credit Reporting Act gives you the right to get a copy of background check information that has been turned over to employers. But in reality, it's tough for people like Jones to get companies like Sterling to respond in a timely manner. According to the complaint, when Jones alerted Sterling to the mistakes in its report, Sterling responded that it was up to Jones to correct the information he believed was false. With Legal Action Center's help, Jones finally got a copy of his clean record of arrests and prosecutions, or RAP sheet, from New York state, but it took weeks to track down that document and by then the job was gone.

Jones is not alone. No one has counted the number of mistakes made by background screeners but The National Consumer Law Center put together a [report](#) which says that "tens of millions" of workers have their job offers put in jeopardy because of faulty criminal background checks. Another problem: You could have had an arrest that didn't result in a conviction, or a wrongful

conviction that then was wiped from your record, but background checkers like Sterling don't go the extra mile to document how charges were resolved, instead reporting half-truths to potential employers that foil job offers.

What can you do if you fall victim to a faulty criminal background check? Friedman has several suggestions, most of which amount to you doing the work that the screener should be doing:

1. You can demand that the background screener do their job. Get the name of the person you speak to, keep notes of your conversation and/or preserve emails if that's how you communicate.
2. Contact the court that adjudicated the alleged criminal activity and ask for detailed information about the conviction. Jones only learned of the conflicting middle initial after his lawyers got the court records. The report from Infosystems simply said, "Kevin Jones."
3. If you can muster proof that you could not have committed the alleged crime, do so. For example, if the background check says you were in prison in from May 2007 to April 2009, but at the time you were weren't incarcerated, show your pay stubs or income tax returns to prove you were at large.
4. Get in touch with your potential employer, alert them to the problem, and confirm that they are holding the job open for you until you can resolve the issue with the background check. Federal law says an employer is supposed to give you a "reasonable" amount of time before denying the job, though it's not clear how long that is, so act fast.
5. Submit a complaint to the Consumer Financial Protection Bureau, which oversees the background screening industry.

If you are an employer reading this piece, I recommend you look at the [best practices manual](#) put together by the Legal Action Center together with the Lawyers' Committee for Civil Rights and the National Workrights Institute, who collaborated with two background screening companies, Employment Screening Resources and [CARCO Group](#). Among the recommendations to background screeners: "report convictions only when full name and all other available identifiers match." If Infosystems had done that, arguably Jones would not have lost his job offer. Employers should inform themselves about their own legal obligations and hire background screeners with good practices. Fortunately Jones did land another job some months later, as a personal driver. But, he told the [Daily News](#), the experience with Halstead "was humiliating and embarrassing."

The incident with Halstead happened in 2012 and the class action suit was filed in the spring of this year. The class action has yet to be certified. If Jones and his class prevail, it could send a message to background checkers and employers that they had better clean up their act and abide by the law.