

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARJORIE R. ROSS,)
)
 Petitioner,)
)
 vs.) Case No. 00-3867
)
 DELAND HOUSING AUTHORITY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this proceeding on August 21, 2003, in Deland, Florida, before Stephen F. Dean, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marjorie R. Ross, pro se
416 West New Hampshire
Deland, Florida 32720

For Respondent: Wayne L. Helsby, Esquire
ALLEN, NORTON & BLUE, P.A.
1477 West Fairbanks Avenue, Suite 100
Winter Park, Florida 32789

STATEMENT OF THE ISSUE

Whether Petitioner was discriminated against based upon race?

PRELIMINARY STATEMENT

Petitioner filed a charge of discrimination because of race with the Florida Commission on Human Relations (FCHR) on February 6, 1997. When the FCHR did not resolve her claim, Petitioner requested a hearing before Division of Administrative Hearings (DOAH), and the FCHR forwarded to the case to DOAH on September 19, 2000. After various requests for extensions of time the case was initially set for hearing on March 28, 2001. On March 26, 2001, Petitioner requested a continuance. After a status report, the case was placed in abeyance on June 1, 2001. Thereafter Respondent moved to dismiss, and the motion was denied. On March 14, 2003, an order was issued to show cause, and a Petition to set the case for hearing was received. The formal hearing was noticed for May 28, 2003. However, a motion to continue was filed on May 22, 2003, which was granted. The matter was reset for August 21, 2003.

At hearing Petitioner testified on her own behalf. Respondent introduced the testimony of Linda McDonnell. Respondent tendered a folder containing 42 pages of documents, which was received. Respondent introduced Exhibits numbered 1, 2, 3, 3A, 4, 5, 6, 6A, 6B, 6C, 6D, 7, 11, and 12. In addition, Respondent received permission to file as a late-filed exhibit, a job description of the position of Public Housing Manager, which was filed on August 27, 2003.

Respondent filed a Proposed Recommended Order which was read and considered. All citations are to Florida Statutes (2002), unless otherwise indicated.

FINDINGS OF FACT

1. Respondent, Deland Housing Authority (the Authority), provides subsidized housing to low-income families in Deland, Florida. Linda McDonnell has been the Executive Director of the Authority since approximately 1990.

2. Petitioner, Marjorie R. Ross, a black female, was employed by the Authority as a Project Management Aide, beginning on or about June 14, 1993.

3. At the time of Petitioner's hire, Greg Norton, the Public Housing Manager, was her immediate supervisor.

4. Petitioner's job duties included, among others, maintaining residents' records and files, computing and inputting utility charges, preparing and issuing monthly rent statements to residents, and preparing 14-day notices (late rent notices).

5. Petitioner's performance evaluation, for the period August 21 to December 21, 1993, rated her overall performance as "needs improvement." In comments attached to the evaluation, it was noted that Petitioner "tried to do too many things at once," causing decreases in her productivity. The comments also stated Petitioner "needs to make an effort to straighten her office

each day" and that her "greatest shortfall as an employee is the manner in which she relates to the other employees."

6. From the date of this evaluation, tension existed between Petitioner and McDonnell. For example, McDonnell cautioned Petitioner about speaking to persons outside the organization without permission.

7. On September 26, 1994, McDonnell approached Petitioner to introduce a visiting HUD representative to Petitioner. Petitioner did not speak with the representative, despite McDonnell's repeated requests, because of McDonnell's previous instructions not to speak without permission. Petitioner received a written reprimand for her conduct.

8. On July 25, 1995, McDonnell gave Petitioner a memo that documented Petitioner's habit of promising to create certain projects and failing to complete them.

9. At the end of July 1995, Norton resigned from the Authority. On July 31, 1995, McDonnell conducted a staff meeting relating to Norton's resignation. During the meeting, McDonnell instructed Petitioner to only write receipts for rent checks, but to refrain from entering the receipts into the computer. Despite this instruction, Petitioner subsequently removed rent receipts from McDonnell's secretary's desk and entered them into the computer. As a result, Petitioner received a reprimand and was given a day off without pay.

10. Petitioner received another written reprimand on September 27, 1995, for failing to follow established Authority policy regarding reporting absences. Authority policy required employees to complete an absentee report upon returning to work from an unscheduled absence. Petitioner failed to complete an absentee report upon returning from an unscheduled absence on September 25, 1995, and was not given pay for the absence.

11. Petitioner applied for the position vacated by Norton as Public Housing Manager. The Authority hired Connie Grobstein, a white female, in September 1995.

12. The stated reason for hiring Grobstein was her experience in grant writing; McDonnell stated that writing grants was an important part of the job. Grobstein had little if any experience with public housing.

13. Grobstein became Petitioner's direct supervisor and Petitioner was asked to teach her the day-to-day operations of the office.

14. During September 1995, Grobstein wrote several memos to McDonnell regarding Petitioner's work performance and attitude.

15. On December 21, 1995, Petitioner received a written reprimand from Grobstein for, among other infractions, failing to timely issue 14-day notices. The reprimand stated, "any

additional violations of Authority procedures will lead to further disciplinary actions up to and including termination."

16. On February 6, 1996, Grobstein and Petitioner had a confrontation in front of a tenant regarding the start date of a lease. Even though her office was several doors away, McDonnell could hear Grobstein and Petitioner arguing about the lease. As a result of the incident, McDonnell terminated Grobstein.^{1/}

17. Petitioner was suspended for one day as a result of the argument with Grobstein. While Petitioner was absent, McDonnell discovered that several resident files, which Petitioner was responsible for maintaining, were missing necessary documentation.

18. McDonnell contacted the Authority's attorney, who advised McDonnell that she had no choice but to terminate Petitioner's employment.

19. On February 12, 1996, Petitioner's employment was terminated. The stated reasons for her termination were: consistent problems with her work performance; the incident with Grobstein on February 6, 1996; refusing to follow instructions; giving out rent credits/reductions without approval; attempting to undermine McDonnell and the Authority; demonstrating a poor attitude and an unwillingness to cooperate with others; and failing to complete her work in a timely manner.

20. Respondent maintains a disciplinary policy for Authority employees. Pursuant to this policy, employees may be discharged for, among other reasons, insolence or insubordination; failure to obey legitimate orders from a supervisor; mistreatment (verbal, psychological or physical) of a client or fellow employee; and neglect or willful disregard of the responsibilities, duties and work rules of a position.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57(1).

22. Under the provisions of Section 760.10, it is an unlawful employment practice to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race.

23. In construing provisions of Section 760.10, legal principles and precedents relating to federal discrimination law under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq., have been incorporated and adopted. See Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); Cooper v. Lakeland Regional Medical Center, 16 FALR 567, 574 (FCHR 1993).

In discrimination cases, Petitioner has the ultimate burden to prove discrimination. Initially a Petitioner must establish a prima facie case of discrimination through one of three generally accepted methods: by direct evidence of discriminatory intent by meeting the four-pronged McDonnell-Douglas test or by statistical proof. Direct evidence is evidence that, if believed, would prove the existence of discrimination without inference or presumption. Carter v. City of Miami, 870 F.2d 578, 581-82 (11th Cir. 1989). In the face of direct evidence, an employer must prove that the same employment decision would have been made absent any discriminatory intent.

24. Absent direct evidence of discrimination, Petitioner must show that she is a member of a protected group, is qualified for the position, and was subject to an adverse employment action; that the position was filled by a person of another race or that she was treated less favorably than similarly-situated persons outside the protected class; and that there is a causal connection between Petitioner's race and the adverse employment action. McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and again in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993). The FCHR has adopted this evidentiary model. Kilpatrick v. Howard Johnson Co., & FALR 5468, 5475 (FCHR 1985).

25. Petitioner showed she was not promoted to Norton's job. Petitioner is the member of a protected group, and the person hired to file Norton's job was white. Petitioner was asked to show the new hire how to handle the daily operations of the office. Petitioner established a prima facie case of discrimination.

26. Respondent must articulate some legitimate, nondiscriminatory reason for the challenged employment decision. Respondent is required only to "produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." Texas Department of Community Affairs v. Burdine, at 257.

27. In this case, Respondent's stated reason for hiring the white female was her skill in writing grant proposals. It was also stated that a college degree was a criterion for the position, and Respondent filed the job description as a late-filed exhibit. This description recites that a bachelor's degree is required or, in lieu thereof, five years of experience. Petitioner did not have the degree or the experience.

28. Once the employer articulates a legitimate reason for the action taken, the burden shifts back to Petitioner to

provide the reason offered by Respondent is not the true reason for the adverse employment action, but is merely a pretext.

29. Respondent showed that Grobstein was hired because of her experience in writing grants, an important part of the job, and that Petitioner did not meet the minimum qualifications. Petitioner did not refute this evidence. Therefore, Petitioner did not establish a prima facie case that she was denied a promotion because of race.

30. Petitioner also showed that she was terminated. Respondent was obligated to articulate a non-discriminatory reason for her termination. Respondent has offered legitimate, nondiscriminatory reasons for Petitioner's termination. The burden to articulate a legitimate nondiscriminatory reason for the action is one of production, not of persuasion. Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2105 (2000); St Mary's Honor Center v. Hicks, at 509.

31. Respondent showed that Petitioner was disruptive and uncooperative after Grobstein was hired. This resulted in Grobstein's firing, and shortly thereafter Petitioner's firing. Petitioner failed to come forward with credible evidence that there was a causal connection between her race and her termination. Petitioner has failed to identify any non-minority employees who were treated differently than she was treated under similar circumstances. To the contrary, the facts show

that the authority terminated Grobstein after the February 6, 1996, incident.

32. In summary, Respondent offered admissible evidence that it terminated Petitioner's employment because she repeatedly ignored the instructions of her supervisors, failed to perform the duties of her job, was insubordinate to supervisors and violated the Authority's policies.

33. Petitioner failed to introduce any evidence that remotely suggests Respondent's legitimate, nondiscriminatory basis for her termination was a pretext for discrimination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 17th day of October, 2003, in Tallahassee, Leon County, Florida.

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STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2003.

ENDNOTE

^{1/} There had been a previous incident involving a dispute between Petitioner and Grobstein after which McDonnell advised Grobstein that a reoccurrence would result in Petitioner's termination.

COPIES FURNISHED:

Marjorie R. Ross
416 West New Hampshire
Deland, Florida 32720

Wayne L. Helsby, Esquire
ALLEN, NORTON & BLUE, P.A.
1477 West Fairbanks Avenue, Suite 100
Winter Park, Florida 32789

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.