

4-30-02

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

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FLORIDA COMMISSION ON  
HUMAN RELATIONS

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AT

TIMOTHY L. CAHILL,

EEOC Case No. 15D970298

Petitioner,

DOAH Case No. 01-16889

v.

FCHR Case No. 96-2006

K.S.L. FAIRWAYS GROUP, L.P.,

FCHR Order No. 03-015

Respondent.

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FILED

DIVISION OF ADMINISTRATIVE HEARINGS

SFD-CWS

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF  
FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Timothy L. Cahill filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1995), alleging that Respondent K.S.L. Fairways Group, L.P., committed an unlawful employment practice on the basis of Petitioner's age (41) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on January 16, 2001, the Executive Director issued his determination finding that there was reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Pensacola, Florida, on February 5-6, 2002, before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order on April 30, 2002, recommending that the Commission enter a final order finding that Respondent committed an unlawful employment practice, and recommending affirmative relief.

Pursuant to notice, public deliberations were held on February 20, 2003, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order.

### Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

### Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter, with the exception of the Administrative Law Judge's conclusions relating to the impact of unemployment compensation received on the recommended back pay award, and the omission of awarding costs reasonably incurred by Petitioner in this matter.

The Administrative Law Judge found Petitioner entitled to back pay, less unemployment compensation received. Recommended Order, ¶ 35 and ¶ 52.

In our view, the Administrative Law Judge committed an error of law in concluding that unemployment compensation benefits received should be deducted from the back pay to which Petitioner is entitled.

Commission panels have held that unemployment compensation benefits are not to be offset from back pay awards owed Petitioner. See, McCoy v. Florida Rock & Tank Lines, Inc., 23 F.A.L.R. 4373, at 4374 (FCHR 2001), citing Swenson-Davis v. Orlando Partners, Inc., d/b/a Quality Hotel Orlando Airport, et al., 16 F.A.L.R. 792, at 793 (FCHR 1993), and Larson v. Dracut Corporation, Kings Inn Restaurant, et al., 13 F.A.L.R. 1988, at 1989 and 1991 (FCHR 1990). See, also, McGill v. The Moorings Restaurant, FCHR Order No. 01-044 (FCHR 2001) and Garcia v. Department of Health and Rehabilitative Services, n/k/a Department of Children and Family Services, FCHR Order No. 02-104 (FCHR 2002).

In addition, Petitioner is entitled to costs reasonably incurred in the conduct of this litigation. See, e.g. Bert v. Department of Education, 21 F.A.L.R. 1781, at 1784 (FCHR 1998).

In making these corrections to the Administrative Law Judge's conclusions of law, we find: (1) that the Administrative Law Judge's conclusions of law that are being corrected are within the substantive jurisdiction of the Florida Commission on Human Relations, namely the determination of entitlement to relief under the Florida Civil Rights Act of 1992; (2) the reason the corrections are being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission action on the issue; and (3) that in making these corrections the conclusions of law being substituted are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(1), Florida Statutes (2001).

With these corrections, we adopt the Administrative Law Judge's conclusions of law.

### Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent KSL Fairways's [sp] Exceptions to Findings of Fact and Conclusions of Law."

The 20-page document contains three sections: A. Statement of the Case; B. Findings of Fact; and C. Exceptions to the Hearing Officer's Report. See Filing.

With regard to the "Exceptions to Hearing Officer's Report" section, Respondent argues that the Administrative Law Judge made two fundamental errors. First, Respondent argues that the Administrative Law Judge inaccurately describes the evidence. Second, Respondent essentially takes issue with the inference drawn by the Administrative Law Judge that the "legitimate, nondiscriminatory reason" put forth by Respondent for terminating Petitioner was a pretext for discrimination, arguing that Respondent was erroneously required to "prove" rather than "articulate" its legitimate, nondiscriminatory reason for not selecting Petitioner for the position of Club Manager. See Filing, page 8.

In short, the exceptions appear to except to inferences drawn from the facts found and/or the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

Respondent's exceptions are rejected.

### Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that an unlawful employment practice has occurred in this matter and have adopted the Administrative Law Judge's recommendations for the remedy of that unlawful employment practice, with the indicated modification regarding offset for unemployment compensation received, and an award of costs.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;

(2) to remit back pay and other economic loss amounts to Petitioner in the manner recommended by the Administrative Law Judge in the Recommended Order, with the exception that no off-set is to be made for amounts of unemployment compensation received by Petitioner;

(3) to pay Petitioner the statutorily established interest on the amounts awarded Petitioner in (2), above;

(4) to pay Petitioner attorney's fees that have been reasonably incurred in this matter by Petitioner; and

(5) to pay Petitioner the amount of costs that has been reasonably incurred in this matter by Petitioner.


The Commission reserves jurisdiction over the determination of precise remedy amounts in this matter, including, but not limited to, amounts of back pay and other economic loss, interest, attorney's fees, and costs awarded Petitioner.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties have agreed to the appropriate remedy amounts for the unlawful employment practice found to have occurred, the parties shall prepare and submit to the Commission a Joint Stipulation of Settlement.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties are unable to reach agreement as to the remedy amounts for the unlawful employment practice found to have occurred, the Petitioner is directed to file with the Commission a Notice of Failure of Settlement, and the case will be remanded to the Administrative Law Judge for determination of the appropriate remedy amounts in this matter, in addition to those already determined by the Administrative Law Judge, as ordered above.


The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 20 day of February, 2003.  
FOR THE COMMISSION ON HUMAN RELATIONS:

  
\_\_\_\_\_  
Commissioner Rita Craig,  
Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner P.C. Wu

FILED this 7<sup>th</sup> day of March, 2003,  
in Tallahassee, Florida.

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Violet Crawford  
Clerk, Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

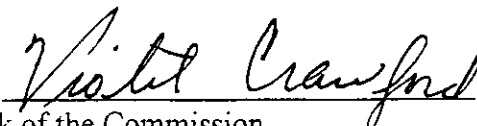
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Pensacola Beach, FL 32561

K.S.L. Fairways Group, L.P.  
c/o David S. Shankman, Esq.  
Post Office Box 172907  
Tampa, FL 33672-0907

Stephen F. Dean, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 7<sup>th</sup> day of March, 2003.

By:   
Clerk of the Commission  
Florida Commission on Human Relations