

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TIMOTHY L. CAHILL,)
)
 Petitioner,)
)
 vs.) Case No. 01-1689
)
 K. S. L. FAIRWAYS GROUP, L.P.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case was remanded to the Division of Administrative Hearings by the Florida Commission on Human Relations to conduct further evidentiary hearings to determine the amounts of economic damages suffered by the Petitioner. The matter was duly set for hearing; however, before the hearing, the parties entered into a stipulation regarding the facts.

APPEARANCES

For the Petitioner: John C. Barrett, Esquire
5 Calle Traviesa
Pensacola Beach, Florida 32561

For the Respondent: David S. Shankman, Esquire
215 W. Verne Street, Suite A
Tampa, Florida 33606-2320

STATEMENT OF THE ISSUE

What are the amounts of economic damages suffered by the Petitioner, to include attorney's fees?

PRELIMINARY STATEMENT

This case was originally heard on February 5, 6, and 7, 2002, and the Recommended Order was forwarded to the Florida Commission on Human Relations (FCHR or Commission) on April 30, 2002. The Commission entered its Final Order on March 20, 2003, which remanded the matter to the Division of Administrative Hearings if the parties were unable to mediate an agreement regarding the damages. On June 3, 2004, the FCHR remanded the case to the Division of Administrative Hearings.

On July 14, 2004, the case was set for hearing on August 3, 2004; however, before the hearing, the parties entered into a stipulation regarding the factual matters which the hearing was to consider. The parties stipulated that the Division of Administrative Hearings may propose and recommend, and the Commission may determine and enter, an "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice" to include the precise remedy amounts, damages, attorney's fees, and costs to date in the amounts to which the parties stipulated.

The parties agreed that by entering into their stipulation, neither party is prejudiced in its right to file a notice of appeal of any "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice" which the FCHR might approve and enter of record. The following Findings of Fact is a recitation of the stipulation of the parties.

FINDINGS OF FACT

1. The Division of Administrative Hearings may propose and recommend, and the Florida Commission on Human Relations may

determine and enter, an "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice" to include the precise remedy amounts, damages, attorney's fees, and costs to date in the sums described below.

2. The parties agree that by entering into their Stipulation, neither party is prejudiced in its right to file a notice of appeal of any "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice" which the Commission may approve and enter of record.

3. Solely for the purpose of determining the precise remedy amounts in this matter so that they may be incorporated in the "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice," the parties agree as follow:

a. Back pay, benefits, and interest at the statutory rate awardable in behalf of Petitioner pursuant to the Findings of Fact and Recommendations of the Hearing Officer and the February 20, 2003, "Final Order Awarding Affirmative Relief," total \$77,118.47 from April 1996 through July 31, 2004.

b. Attorney's fees and out of pocket costs reasonably incurred by Petitioner total \$38,000 through July 31, 2004.

4. In consideration of entering into the Stipulation, the parties further agree:

a. Petitioner waives any claim to enhancement of prevailing party's attorney's fees for work performed through July 31, 2004, but it is acknowledged by the parties that Petitioner may and does reserve the right to seek

enhanced prevailing party's attorney's fees for any additional work performed after July 31, 2004, should there be subsequent agency or judicial review appeal proceedings.

b. The Stipulation is solely intended to reflect the parties' agreement on the back pay, attorney's fees, and costs incurred by Petitioner to date and is not in prejudice of any legal ground or claim Respondent may seek to raise or argue in any subsequent judicial appeal proceedings challenging the findings of fact or conclusions of law of the Florida Commission on Human Relations.

5. The Stipulation shall be promptly submitted by the parties to the Florida Division of Administrative Hearings and the Florida Commission on Human Relations.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction to enter this Order pursuant to the remand of FCHR and the stipulation of the parties.

RECOMMENDATION

That the FCHR enter its "Amended Final Order Awarding Affirmative Relief from an Unlawful Employment Practice" awarding the Petitioner the amounts stipulated to by the parties.

DONE AND ENTERED this 9th day of August, 2004, in Tallahassee, Leon County, Florida.



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 9th day of August, 2004.

COPIES FURNISHED:

John C. Barrett, Esquire
Five Calle Traviesa
Pensacola Beach, Florida 32561

David S. Shankman, Esquire
215 W. Verne Street, Suite A
Tampa, Florida 33606-2320

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

Cecil Howard, General Counsel
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.