

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
01 JUN -3 PM 1:10  
TALLAHASSEE, FLORIDA

TIMOTHY L. CAHILL,

EEOC Case No. 15D970298

Petitioner,

FCHR Case No. 96-2006

v.

DOAH Case No. 01-1689

SFD-CWS

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

FCHR Order No. 03-015

Respondent.

**TRANSMITTAL TO DIVISION OF ADMINISTRATIVE HEARINGS**

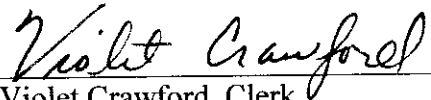
TO: Robert S. Cohen, Chief Administrative Law Judge  
Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550  
(850) 488-9675

On April 30, 2002, Administrative Law Judge Stephen F. Dean issued a Recommended Order in the above-styled matter, recommending that the Commission issue a final order finding that unlawful discrimination occurred and recommending affirmative relief. In an order filed February 20, 2003, the Commission adopted Judge Dean's recommended order with some modifications, and indicated that, if within 30 days of the filing of the Commission's order (03-015) the parties were unable to reach agreement on the remedy amounts, *"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 appropriate remedy amounts in this matter, in addition to those already determined by the Administrative Law Judge, as ordered above."* The Commission's Order was appealed to the First District Court of Appeal who determined that the order on appeal was not final and, accordingly, the appeal was dismissed for lack of jurisdiction.

Petitioner filed, on May 28, 2004, a Motion for Entry of Final Order which the Commission has determined is more properly titled, "Notice of Failure of Settlement." Consequently, through the operation of the above-indicated order, the Commission requests the matter be returned to the Administrative Law Judge for determination of the appropriate remedy amounts in accordance with the above-indicated order (number 03-015).

CERTIFICATE OF TRANSMITTAL

Transmitted this 2<sup>nd</sup> day of JUNE, 2004, at Tallahassee, Florida.

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

Attachments: Commission Order 03-015, filed February 20, 2003  
Petitioner's Motion for Entry of Final Order  
Petitioner's Attachment A to the Motion

Copies of Transmittal and Attachments furnished to:

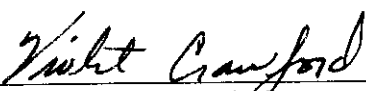
Timothy L. Cahill  
c/o John C. Barrett, Esquire  
5 Calle Traviesa  
Pensacola Beach, FL 32561

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

Honorable Stephen F. Dean, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 2<sup>nd</sup> day of JUNE, 2004.

BY:   
Clerk of the Commission  
Florida Commission on Human Relations

**STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS**

FILED  
04 JUN -3 PM 1:10  
TALLAHASSEE  
FLORIDA

Timothy L. Cahill, Petitioner  
V.  
K.S.L. Fairways Group, L.P., Respondent

EEOC Case No.  
15D970298  
DOAH Case No. 01-1689  
FCHR Case No. 96-2006  
FCHR Order No. 03-015

**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)(l), **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<sup>th</sup> day of February, 2003.  
For The Florida 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.

Violet Crawford, Clerk of the  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082, Ext. 1032

## **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 the 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:

Timothy L. Cahill  
c/o John C. Barrett, Esq.  
5 Calle Traviesa  
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.

Violet Crawford, Clerk of the  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082, Ext. 1032



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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
TALLAHASSEE, FLORIDA

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ALLEGATION FILED  
TALLAHASSEE, FLORIDA

TIMOTHY L. CAHILL,

Petitioner,

CASE NO. 01-1689  
96-2006

vs.

K.S.L. FAIRWAYS, et al.

Respondent.

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HUMAN RELATIONS  
2004 MAY 28 PM 3:08

**MOTION FOR ENTRY OF FINAL ORDER**

WHEREAS, the Commission on Human Relations of the State of Florida ["Commission"] after a full and fair administrative hearing and an administrative appeal by Respondent, has made and entered a Final Order in the above-referenced contested case proceeding; and

WHEREAS, pursuant to that Final Order respondent K.S.L. Fairways doing business as Tiger Point Golf and Country Club was found to have engaged in age discrimination in employment contrary to the Florida Civil Rights Act of 1992, Section 760.1-11, Florida States; and

WHEREAS, upon the evidence adduced at hearing, and the findings of fact entered by Administrative Law Judge, and the "Final Order Awarding Affirmative Relief From An Unlawful Employment Practice" entered on February 20, 2003 and served by mail on March 7, 2003, the petitioner has been found entitled to received from respondent certain compensatory damages and an award of fees and costs; and

WIHEREAS, in addition the "Final Order Awarding Affirmative Relief From An Unlawful

Employment Practice” further ordered that Respondent K.S.L. Fairways cease and desist from discriminating on the basis of age in employment “in the manner it has been found to have unlawfully discriminated against petitioner;” and

WHEREAS, the Commission and the Administrative Law Judge in this matter duly received from petitioner appropriate applications for the final award of damages, fees, and costs to be awarded to petitioner; and

WHEREAS, the respondent KSL Fairways et al. erroneously filed an appeal to the First District Court of Appeals before the Commission could act with finality on the application for damages, fees, costs, thus depriving the Commission of jurisdiction while the appeal was pending; and

WHEREAS, the First District Court of Appeals dismissed respondent KSL’s appeal as being premature and untimely;

NOW, THEREFORE, THE PETITIONER MOVES for entry of a final and appealable Administrative Order from the Commission commanding that:

1. Respondent shall pay to petitioner through his attorney of record the total sum of \$109,269.33 as and for lost back wages and benefits, attorney’s fees, and costs; and

2. Respondent acknowledges that the Florida Commission on Human Relations has determined by Final Order that respondent engaged in prohibited age discrimination in the employment of a golf club professional by discharging him for the pretextual reason of eliminating his job while in fact it replaced him with a younger worker to whom substantially the same duties were assigned although it changed the formal title of the job. Respondent further agrees, covenants, and promises that it will cease and desist engaging in such prohibited age

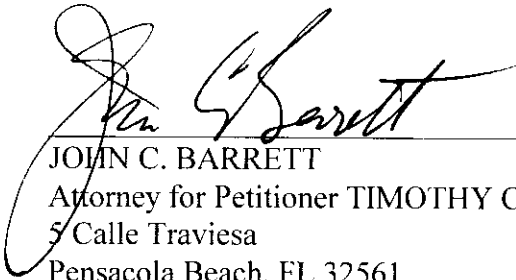


discrimination in the future.

3. The Administrative Order include statutory interest to the date of entry and be entered in the public records of the Florida Commission on Human Relations and Notice of Entry of that order be served on all parties.

In further support of this motion, petitioner had appended Attachment "A," being the April 3, 2003, notice provided to respondent KSL April, 2003, as directed by the administrative law judge.

DATED: May 20, 2004



---

JOHN C. BARRETT  
Attorney for Petitioner TIMOTHY CAHILL  
5 Calle Traviesa  
Pensacola Beach, FL 32561  
Te: (850) 934-8953/Fax: (850) 934-8954

ATTACHMENT A

04 JUN -3 PM 1:11  
RECEIVED  
STATE OF FLORIDA  
DEPARTMENT OF  
TRANSPORTATION

April 3, 2003

David Shankman  
Attorney at Law  
PO Box 172907  
Tampa, FL 32762-0907

RE: Timothy L. Cahill v. KSL Fairways Group, L.P. et al. - DOAH Case No. 01-1689

Dear David,

Once again, I have had some difficulty locating your current fax and telephone number or office address. Accordingly, I am using the post office box indicated in the service copy of the last entered order in the above-entitled case.

As you know, the Commission rejected your client's administrative appeal in the above-referenced matter and gave us the opportunity to agree on a final order.

Base Compenatory Damages

Taking into account Judge Dean's proposed order at paragraphs 35-49, and the Commission's Final Order, which in effect increased the award by declining to offset the unemployment compensation payments, I calculate the total base compensatory damages owing to my client as follows:

David Shankmnan

April 3, 2003

Page 2

|    |                             |             |                                |
|----|-----------------------------|-------------|--------------------------------|
| 1. | April - October 13, 1996:   | \$19,994    | (disallowing the unemployment) |
| 2. | October 14 - December 1996: | \$ 3,685    |                                |
| 3. | 1997:                       | \$15,962    |                                |
| 4. | January - April 1998:       | \$ 5,149.61 |                                |
| 5. | May - December 1998:        | \$ 190.72   |                                |

SUBTOTAL: \$ 44,981.33

Statutory Interest

As you know, the Commission also directed statutory interest charges in favor of petitioner. The Comptroller's statutory interest for each of the years at issue pursuant to Fla. Stat. section 55.03 has been established thus:

|           |   |                              |
|-----------|---|------------------------------|
| 1996-2000 | = | 10% (daily rate of .0002740) |
| 2001      | = | 11% (daily rate of .0003014) |
| 2002      | = | 9% (daily rate of .0002466)  |
| 2003      | = | 6% (daily rate of .0001644)  |

For convenience I calculated the relevant interest on each of the compensatory years due and owing on the basis of ten percent per annum from the *end* of each period and then rounded down thus giving your client a slight benefit. The subtotals are as follows:

|    |  |                  |
|----|--|------------------|
| 1. | April - October 13, 1996 interest accrued on award of \$19,994 Oct1996-April 30, 2003) | - \$13,124       |
| 2. | October 14, 1996 interest accrued on award of \$ 3,685 through April 30, 2003          | - 2,357          |
| 3. | 1997 accrued interest on award of \$15,962   | - 8,540          |
| 4. | Jan-April 1998 accrued interest on award of \$5,149.61through April 30, 2003           | - 2,584          |
| 5. | May-Dec, 1998 accrued interest on award of \$192.72 through April 30, 2003             | - 83             |
|    | SUBTOTAL   | <u>\$ 26,688</u> |

David Shakman  
April 3, 2003  
Page 3

#### Attorney's Fees and Costs

In addition, the Commission has affirmed that it will award attorney's fees and costs unless we can reach a stipulation.

Using the lodestar amount, I have incurred slightly more than \$33,500 in attorney's fees at my customary and reasonable hourly rate of \$200 per hour and another \$ 4,114 in costs, chiefly for the joint telephone conferences, deposition copies, witness travel expenses (you will recall almost every witness except the petitioner lives out of state), and my extended travel and related expenses at the deposition you requested in Jackson, Mississippi, including several very lengthy long distance calls (30-45 minutes apiece) which I had to make to assist your office after it was discovered your own arrangements had fallen through and because I was on the scene I had to make new arrangements for you

If you consult your own records, I'm sure you will see that these fees and expenses are more than reasonable and probably far less than your own. I can give you an itemized statement, if you insist, and we can litigate this new issue – or you can accept the enclosed Proposed Final Order which rounds down my fees and costs to an even \$37,600.

Thus, the total I have included in the proposed stipulation comes to \$109,269.33.

If your client does not agree to that amount, I should alert you that under the Johnson doctrine in addition to compensation for the additional time and expense in litigating a fee award, I will be applying for an enhancement of fees above the lodestar amount, proposing a multiplier of 2.5 and therefore requesting fees totaling \$94,000. While there is no assurance I would receive that specific multiplier, I have been awarded multipliers in similar discrimination cases in other federal and state jurisdictions as high as 5 times the lodestar amount.

In light of the foregoing, I have drafted the enclosed proposed Stipulation and Agreement. Kindly let me know if this is acceptable to your client.

I have to be out of state on another case next week, but I expect to return by the end of the week. Kindly write, fax, or call by Friday, April 11 if you can agree to the proposed stipulation or have any questions. Otherwise, I plan to file the appropriate application with Judge Dean the first of the following week.

David Shakman  
April 3, 2003  
Page 4

Thank you.

Sincerely yours,

JOHN C. BARRETT  
Attorney at Law

cc: Hon. Stephen F. Dean

/cb