

11-10-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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FILED
ADMINISTRATIVE
HEARINGS
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RANDALL CARTER,

EEOC Case No. 15D980315

Petitioner,

FCHR Case No. 98-2288

v.

DOAH Case No. 01-2408

METRO CORRAL PARTNERS, INC.,
d/b/a GOLDEN CORRAL,

AT

FCHR Order No. 05-003

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Randall Carter filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1997), alleging that Respondent Metro Corral Partners, Inc., d/b/a Golden Corral, committed unlawful employment practices on the basis of Petitioner's race (Black) by subjecting Petitioner to offensive racial comments and on the basis of Petitioner's age (39) by denying Petitioner a promotion.

The allegations set forth in the complaint were investigated, and, on April 30, 2001, the Executive Director issued his determination finding that there was no 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 on June 15, 2004, in Orlando, Florida, before Administrative Law Judge Lawrence P. Stevenson.

Judge Stevenson issued a Recommended Order of dismissal, dated November 10, 2004.

The Commission panel designated below considered the record of this matter and 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.

We note that the Administrative Law Judge concluded that it was unnecessary to reach Respondent's legal argument that Petitioner was not within the protected age category because he was under the age of 40. Recommended Order, ¶ 28.

We note that a Commission panel has stated, "While the federal Age Discrimination in Employment Act uses the age of 40 as the age at which the Act's protection begins (see 29 U.S.C. § 631), the age of 40 has no significance in interpreting the Florida Civil Rights Act of 1992, or its predecessor, the Human Rights Act of 1977, as amended. The Commission has consistently held that Florida law prohibits discrimination in employment on the basis of any age, birth to death..." Green v. ATC/Vancom Management, Inc., 20 F.A.L.R. 314, at 315 (FCHR 1997). Accord, Williams v. Sailorman, Inc., d/b/a Popeye's Chicken and Biscuits, FCHR Order No. 04-037 (June 2, 2004).

With this comment, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 31st day of January, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Dominique B. Saliba, M.D.

Filed this 31st day of January, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:

Randall Carter
1102 Alfred Drive
Orlando, FL 32810

Metro Corral Partners, Inc., d/b/a Golden Corral
c/o Lorraine Maass Hultman, Esq.
Kunkel, Miller & Hament, P.A.
Orange Professional Center
235 North Orange Avenue, Suite 200
Sarasota, FL 34236

Lawrence P. Stevenson, 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 31st day of January, 2005.

By: *Vicent Crawford*
Clerk of the Commission
Florida Commission on Human Relations