

9-19-03

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

2004 JUN 30 P 2:37  
FILED  
ADMINISTRATIVE  
DIVISION

LINCOLN E. NICHOLSON,

EEOC Case No. 150A13228

Petitioner,

FCHR Case No. 23-01875

v.

AT

DOAH Case No. 03-1788

JVL-CWS

CITY OF SUNRISE

FCHR Order No. 04-016

Respondent.

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

Petitioner, LINCOLN E. NICHOLSON, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, CITY OF SUNRISE, committed an unlawful employment practice by failing to promote him due to his race and national origin. The allegations set forth in the complaint were investigated by the EEOC and on May 31, 2002, it issued a notice stating that it was unable to conclude whether an unlawful employment practice had occurred. The FCHR subsequently issued a Notice of Dismissal and Right to Sue on April 16, 2003. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held by video teleconference at sites in Tallahassee and Fort Lauderdale, Florida, on July 18, 2003, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of Dismissal dated September 19, 2003.

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 and Conclusions of Law

The Commission's file contains a transcript of the proceeding before the Administrative Law Judge.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spradlin vs. Washington Mutual Bank, d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

The Administrative Law Judge found that the Petitioner presented no direct evidence of sex or race bias on the part of the Respondent or its employees. The Petitioner further failed to establish that he was better qualified for the job than the person hired. In addition, the Respondent further demonstrated a legitimate, non-discriminatory reason for the termination. The ALJ was not persuaded by the greater weight of the evidence that the City intentionally discriminated against the Petitioner either when it hired him as a GSP-I or when it selected someone else for the GSP-III position.

Since an Administrative Law Judge's finding of whether discrimination occurred is a finding of fact, the Commission may overturn such a finding **only if, after reviewing the complete record of the case, the Commission determines that the finding is not supported by competent substantial evidence in the record** or that the proceeding leading to the determination did not comply with the essential requirements of law. See Florida Department of Community Affairs v. Bryant, 586 So2d 1205, at 1210 (Fla. 1<sup>st</sup> DCA 1991). See also, Department of Health and Rehabilitative Services v. Yhap, 680 So2d 559 (Fla. 1<sup>st</sup> DCA 1996); Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So2d 106 (Fla. 1<sup>st</sup> DCA 1992); Clay County Sheriff's Office v. Loos, 570 So2d 394 (Fla. 1<sup>st</sup> DCA 1990); National Industries, Inc. v. Commission on Human Relations, 527 So2d 894 (Fla. 5<sup>th</sup> DCA 1988); Howard Johnson Co. v. Kilpatrick, 501 So2d 59 (Fla. 1<sup>st</sup> DCA 1987); Holmes v. Turlington, 480 So2d 150 (Fla. 1<sup>st</sup> DCA 1985); Brevard County Sheriff's Department v. Florida Commission on Human Relations, 429 So2d 1235 (Fla. 5<sup>th</sup> DCA 1983); and School Board of Leon County v. Hargis, 400 So2d 103 (Fla. 1<sup>st</sup> DCA 1981).

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

#### Exceptions

Neither party filed any exceptions to the Recommended Order.

#### Dismissal

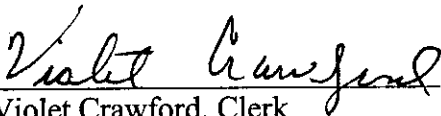
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 10th day of March, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Donna Elam, Chairperson  
Commissioner John Corbett  
Commissioner Roosevelt Paige

Filed this 10th day of March, 2004,  
in Tallahassee, Florida.

  
Violet Crawford, Clerk  
Commission on Human Relations  
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Honorable John G. Van Laningham, 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 10th day of March, 2004.

BY:   
Clerk of the Commission