

3.16.05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2005 JUN -2 A 10:42

D'ANGELO A. SULLIVAN,

EEOC Case No. 15DA400140

Petitioner,

FCHR Case No. 2004-20247
ADMINISTRATIVE HEARINGS

v.

DOAH Case No. 04-2609 HLH

AUSSIE RESTAURANT
MANAGEMENT / OUTBACK STEAKHOUSE,

FCHR Order No. 05-055
CIOSec

Respondent.

AT

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

Preliminary Matters

Petitioner D'Angelo A. Sullivan filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Aussie Restaurant Management / Outback Steakhouse committed an unlawful employment practice by refusing to allow Petitioner to return to work following a medical leave of absence, on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on July 1, 2004, 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 in Pensacola, Florida, on February 8, 2005, before Administrative Law Judge Harry L. Hooper.

Judge Hooper issued a Recommended Order of dismissal, dated March 16, 2005.

Pursuant to notice, public deliberations were held on May 24, 2005, 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 Petition for Relief.

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Recommended Order in a document received by the Commission on March 22, 2005.

In the exceptions document the Petitioner appears to take issue with facts found by the Administrative Law Judge (See, e.g., Filing, ¶ 2, ¶ 4, and ¶ 8), inferences drawn from the evidence presented (See, e.g., Filing, ¶ 10), and credibility assigned to witness statements (See, e.g., Filing, ¶ 5, ¶ 6, and ¶ 7). (Exceptions document ¶ 1, ¶ 3, and ¶ 9, do not appear to except to portions of the Recommended Order.)

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).

Further, there is no indication on Petitioner's exception document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.110.

We reject Petitioner's exceptions.

Dismissal

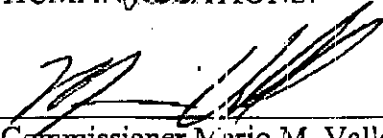
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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.

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



Commissioner Mario M. Valle,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Billy Whitefox Stall

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



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:

D'Angelo A. Sullivan
1006 West Hayes Street
Pensacola, FL 32501

Aussie Restaurant Management / Outback Steakhouse
c/o Maria A. Santoro, Esq.
George, Hartz, Lundeen, Fulmer, Johnstone,
King & Stevens
863 East Park Avenue
Tallahassee, FL 32301

Harry L. Hooper, 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 May, 2005.

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