

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

8-29-05 AT

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FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

CARLOS GOMEZ,

Petitioner,

v.

VESTCOR COMPANIES, d/b/a
MADALYN LANDING,

Respondent.

EEOC Case No. 15DA400511

FCHR Case No. 2004-2IT08

DOAH Case No. 05-0565

FLB
closed

FCHR Order No. 05-114

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

Preliminary Matters

Petitioner Carlos Gomez filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2003), alleging that Respondent Vestcor Companies, d/b/a Madalyn Landing, committed an unlawful employment practice on the bases of Petitioner's disability and marital status, and on the basis of retaliation, leading to Petitioner's termination.

The allegations set forth in the complaint were investigated, and, on January 7, 2005, 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 8, 2005, in Viera, Florida, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of dismissal, dated August 29, 2005.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact, except as limited by our comments in the "Conclusions of Law" section of this Order, below.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct ultimate disposition of the matter.

We note that the Administrative Law Judge appears to attempt to resolve issues of both housing discrimination and employment discrimination. See, Recommended Order, "Statement of the Issues" section.

We are compelled to point out that the case before the Administrative Law Judge, and currently before the Commission, is an employment discrimination case, not a housing discrimination case.

Consequently, issues of "familial status," a protected category under the Fair Housing Act, (see Section 760.23, Florida Statutes), are not appropriately at issue in this matter, while issues of "marital status," a protected category under the employment discrimination provisions of the Florida Civil Rights Act of 1992, (see Section 760.10, Florida Statutes), but not under the Fair Housing Act, are appropriately at issue in this matter.

Since "familial status" discrimination is a housing discrimination issue not properly before the Commission at this time, we find it unnecessary to adopt the conclusion that because of the nature of Petitioner's marriage he is unable to bring a familial status claim, although were it necessary to consider this conclusion we would find it in error. We note that under the Fair Housing Act, marriage has nothing to do with "familial status," but rather "familial status" typically relates to the presence of children in the family relationship (although "family" also includes a single individual – see Section 760.22(6), Florida Statutes). See Recommended Order, "Preliminary Statement" section in which the Administrative Law Judge concluded Petitioner did not have standing to base a claim on his "familial status," since he was never married, but only claimed to be married under common law; See Section 760.22(5), Florida Statutes, of the Fair Housing Act which states: "'Familial Status' is established when an individual who has not attained the age of 18 years is domiciled with: (a) A parent or other person having legal custody of such individual; or (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person."; and, see, Tabak v. Office Depot, FCHR Order No. 04-159 (December 23, 2004), and cases cited therein, for examples of where Commission panels declined to rule on conclusions of law on which they determined it was unnecessary to rule, given the other conclusions made by the Administrative Law Judge.

With these comments and limitations, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

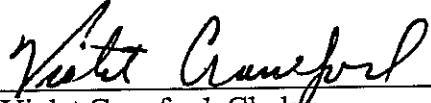
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3rd day of November, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Gilbert M. Singer

Filed this 3rd day of November, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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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:

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Fred L. Buckine, 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 3rd day of November, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations