STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JASEN BAKER,

Petitioner,

vs. — Case No. 05-0623

CARRABBA'S ITALIAN GRILL,

Respondent.

BERNARD SOUTHWELL,

Petitioner,

vs. — Case No. 05-0632

CARRABBA'S ITALIAN GRILL,

Respondent.

RECOMMENDED ORDER

A formal hearing was conducted in these cases before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings, on July 27, 2005, in Orlando, Florida.

APPEARANCES

For Petitioners: Jason M. Gordon, Esquire
Gordon & Cornell
103 North Atlantic Avenue
Cocoa Beach, Florida 32931

For Respondent: Kevin D. Johnson, Esquire
Thompson, Sizemore & Gonzalez, P.A.
501 East Kennedy Boulevard, Suite 1400
Tampa, Florida 33602

STATEMENT OF THE ISSUES

Whether Respondent, Carrabba's Italian Grill, Inc., subjected Petitioners, Jasen Baker and Bernard Southwell, to a hostile work environment and retaliation in violation of Subsection 760.10(1)(a), Florida Statutes (2004).

PRELIMINARY STATEMENT

Petitioners, Jasen Baker and Bernard Southwell (referred to individually as "Baker" and "Southwell," and collectively as "Petitioners"), filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) charging Respondent, Carrabba's Italian Grill, Inc. ("Respondent"), with employment discrimination on or about August 29, 2003, alleging sex discrimination and retaliation. On or about January 26, 2005, an amended "No Cause" determination was issued by FCHR as to Baker. On January 19, 2005, a "Cause" determination was issued by FCHR, as to Southwell. Petitioners each timely filed a Petition for Relief with FCHR, alleging that they had been subjected to a hostile work environment and retaliation and requested a formal hearing. These matters were, subsequently, referred by FCHR to the Division of Administrative Hearings for a final hearing de novo on February 22 and 23, 2005, respectively, consolidated for hearing, and these matters were set for hearing. Following discovery and the granting of the

parties' Motion for Continuance, a final hearing commenced on July 27, 2005.

At the hearing, Petitioners testified in their own behalf and presented the testimony of one witness, Ben See. Five exhibits were admitted into evidence. Respondent presented the testimony of eight witnesses, and seven exhibits were admitted into evidence.

A four-volume Transcript was filed on September 14, 2005. The parties were allowed 15 days from the date of the Transcript in which to file proposed findings of fact and conclusions of law. On October 3, 2005, Petitioners filed a joint Motion for Extension of Time to file their proposals. Respondent did not object, and the motion was granted. The parties filed their proposed Findings of Fact, Conclusions of Law and Closing Arguments on October 31, 2005. Respondent filed a notice of supplemental filing on November 1, 2005. Both parties' proposals have been given careful consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent operates a chain of casual Italian restaurants.

2. Respondent has adopted a policy against discrimination and harassment. In addition to prohibiting harassment, the policy instructs employees whom to contact if they experience

harassment. The policy is contained in an employee handbook that is distributed to all employees during the initial orientation process. During orientation, Respondent's manager reviews the employee handbook with the new employee, including the policy on sexual harassment. During the orientation process, Respondent also requires employees to view a video that explains that Respondent will not tolerate harassment. The video familiarizes the employees with the company's expectations regarding the reporting of harassment in the workplace.

3. During the orientation process, the employees are required to sign an acknowledgment on the exterior of their employee folders indicating that they have received and read the policy against harassment. The critical sections of the policy are reprinted on the folders immediately above the signature lines.

4. All of Respondent's restaurants are required to display a poster known as the "Carrabbamico Info" poster in the kitchen area. This poster reprints the harassment policy and provides employees with a list of names to call if they feel that they have been harassed.

5. Respondent has implemented reasonable precautions to prevent harassment from occurring in its restaurants.

6. In the Central Florida market, Respondent's restaurants are overseen by a joint venture partner named Dick Meyer. Meyer

is responsible for hiring and firing the managers of the restaurants that he oversees.

7. In March 2000, Lawton DePriest became the managing partner at Respondent's Palm Bay location. DePriest reported to Meyer. DePriest remained in that capacity until September 2003, when he became the managing partner of Respondent's restaurant located in Formosa Gardens. It was DePriest's management style to frequently yell at employees in order to motivate them. It is also possible that he had favorites on the staff of the Palm Bay restaurant.

8. Baker was hired by Respondent's Palm Bay restaurant in January 2002. At the time that Baker began working for Respondent, he attended an orientation session conducted by DePriest. It was DePriest's practice during orientation to discuss harassment issues and instruct employees to come to him directly if they experience any problems with sexual harassment. If for some reason an employee is not comfortable with him, DePriest would encourage the employee to contact any other person listed on the poster.

9. Baker was given a copy of Respondent's handbook, which contains the company's policy against harassment. On that same date, January 19, 2002, Baker signed his employee folder on the blank line under the harassment policy indicating that he had

read and received the policy. Whether he reviewed the employee handbook further after that date is irrelevant.

10. Baker "vividly remembers" that during his orientation, he watched the videotape that included instructions on what he should do if he felt harassed. However, during the hearing, Baker denied ever seeing the Carrabbamico Info poster. However, Baker admitted on cross-examination that during his deposition, he had acknowledged seeing the Carrabbamico Info poster posted in the store. During the deposition, Baker specifically remembered that there were business cards with contact information for Meyer and Cheri Ashe attached to the bottom of the poster. Despite Baker's attempt to deny seeing the poster, his earlier answers in deposition were more credible in view of his specific recollection of the attached business cards and the lack of any persuasive explanation for the discrepancy.

11. After completing his orientation, Baker initially worked as a dishwasher. Later, he was shown how to do food preparation work.

12. Before coming to work for Respondent, Baker had previously worked for a restaurant by the name of Golden Corral. During the time that he worked with Golden Corral, he became acquainted with a co-worker named Bernard Southwell.

13. In the summer of 2002, Petitioners discussed the possibility of Southwell coming to work for Respondent. Baker

spoke favorably of the restaurant and recommended that Southwell submit an application. At the time, Baker had worked for Respondent for six or seven months.

14. Baker did not express to Southwell that he had observed or experienced any problems with unwelcome harassment.

15. Southwell submitted an application and was hired by Respondent's Palm Bay restaurant in August 2002 as a dishwasher.

16. At the time he began employment with Respondent, Southwell was living with a friend of his named Joe Corbett.

17. At the time, Baker was living in a one-bedroom apartment with his girlfriend. Several weeks later, Baker's girlfriend decided to move out. According to Petitioners, she suggested to Southwell that he move into Baker's apartment to replace her.

18. Around October 2002, Southwell moved out of the Corbett residence and moved in with Baker. A third employee named Chris Germana also moved into the residence around the same time.

19. Because the apartment only had one bedroom, Germana slept on the couch. Petitioners slept in the bedroom.

20. When employees at the restaurant learned of these arrangements, speculation began about whether the two men were homosexual.

21. According to Petitioners, sometime after Southwell started to room with Baker, co-workers at the restaurant started referring to Petitioners by nicknames. The co-workers referred to Baker as "powder," "crack pipe," and "crack head." Baker knew that "powder" was a reference to a character from the movie "Powder" and that the name had nothing to do with his sexuality.

22. The co-workers also referred to Petitioners as "butt buddies." Southwell testified that a male co-worker, Christopher Bouley, told him, "I know you guys are lovers."

23. Bouley, Arnold Samuel and DePriest all used these nicknames on occasion to refer to both Petitioners, according to Baker.

24. After several months, Southwell eventually went to DePriest and complained about the "powder," "crack pipe," and "butt buddies" nicknames. Southwell told DePriest that the nicknames were funny at first, but that they started getting old. DePriest then told Samuel and Bouley to stop using the nicknames. Thereafter, the use of the nicknames stopped.

25. Southwell claimed that Bouley would gyrate his hips behind other employees as they were bending down. However, Petitioners both admitted that Bouley would do these hip motions to both male and female employees.

26. During the hearing, Petitioners claimed that Bouley subjected them to unwelcome touching.

27. Baker claimed that Bouley had touched his buttocks once. However, Baker acknowledged that when his deposition was taken prior to the final hearing, he did not mention that Bouley touched his buttocks. In fact, when asked during his deposition whether he had been sexually harassed, Baker testified that he had not and that he had only been verbally harassed. Furthermore, Baker made no mention of any physical touching in the Affidavit that he submitted to FCHR at the time he filed his charge of discrimination.

28. Southwell never saw Bouley touch or grab Baker's buttocks. And despite their close relationship, Baker never told Southwell that Bouley had grabbed his buttocks.

29. Accordingly, Baker's allegation that he was touched inappropriately by Bouley or any other of Respondent's employees is not credible.

30. Southwell claimed that Bouley had touched his buttocks on two or three occasions and touched his nipples twice.

31. Southwell also claimed that Bouley had touched his penis on one occasion. According to Southwell, he was bending down to pick up sauté pans when Bouley, who was supposedly standing behind him, reached between Southwell's legs from behind and clutched Southwell's genital area through his trousers. This incident supposedly occurred during the restaurant's hours of operation while customers were in the

restaurant. The alleged grabbing supposedly took place in front of a stove that sat in full view of customers seated at the restaurant's bar. Bouley flatly denied ever touching Southwell's genitals or private area.

32. In the Affidavit that Southwell submitted to FCHR at the time he filed his charge of discrimination, Southwell made no mention of Bouley touching Southwell's penis. At the time that he submitted this Affidavit, Southwell was represented by counsel. Southwell did not offer any convincing reason for the omission of any description of his genitals being grabbed.

33. Accordingly, Southwell's allegation that Bouley touched Southwell's genitals is not credible.

34. Although Petitioners testified that they spoke to DePriest on several occasions, they admit that they never spoke to any of the other individuals listed on the harassment poster to complain about sexual harassment.

35. DePriest testified that the only complaint he ever received had to do with the nicknames and that he took prompt action to resolve this problem.

36. Annually, Respondent submits an employee experience survey to its employees that is completed anonymously and forwarded to an outside company for analysis. After the survey is completed, employees participate in a small group feedback session to discuss the results of the survey. On March 11,

2003, DePriest held the feedback session for his store, which was attended by Petitioners. During the session, Southwell commented about the situation with the nicknames. He indicated that the situation was resolved when it was brought to DePriest's attention.

37. This was the sole extent to which either employee complained of unwelcome behavior. Respondent was not on notice of any problems with regard to touching or more serious inappropriate behavior.

38. On March 12, 2003, Petitioners' last day of work, Southwell approached DePriest to complain about scheduling for a special event at the convention center. Southwell stated that he and Baker had signed up to participate in this event. Southwell was scheduled for the event, but Baker was not. DePriest explained that he needed Baker to float, because there were not enough people scheduled to work at the restaurant that night. DePriest later talked to Baker, who indicated that he was not disappointed that he was not participating in the event. That conversation, however, was the last time that DePriest saw Baker. DePriest learned that Petitioners had left before the end of their shift, when the plates in the restaurant were getting low and the sauté pans were getting stacked up. DePriest asked about the whereabouts of Petitioners and learned that they were seen riding their bicycles away from the

restaurant. DePriest could not contact them because they did not have a telephone. DePriest eventually terminated their employment for voluntarily walking off the job.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2005), and Florida Administrative Code Rule 60Y-4.016(1).

40. The State of Florida, under the legislative scheme contained in Chapter 760, Florida Statutes (2003), incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e, et seq. The Florida law prohibiting unlawful employment practices is found in Section 760.10, Florida Statutes (2004). This section prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's sex. § 760.10(1)(a), Fla. Stat. (2004). FCHR and the Florida courts interpreting the provisions of the Florida Civil Rights Act of 1964 have determined that federal discrimination laws should be used as guidance when construing provisions of the Act. See Brand v. Florida Power Corp., 633 So. 2d 504, 506 (Fla. 1st DCA

1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); Cooper v. Lakeland Regional Medical Center, 16 F.A.L.R. 567, 574 (FCHR 1993). The United States Supreme Court has held that sexual harassment is a form of sex discrimination. See Meritor Savings Bank v. Vinson, 477 U.S. 57, 64 (1986).

41. Petitioners have the ultimate burden to prove discrimination either by direct or indirect evidence. Direct evidence is evidence which, if believed, would prove the existence of discrimination without inference or presumption. Carter v. City of Miami, 870 F.2d 578, 581-82 (11th Cir. 1989). Blatant remarks, whose intent could be nothing other than to discriminate, constitute direct evidence of discrimination. See Earley v. Champion International Corporation, 907 F.2d 1077, 1081 (11th Cir. 1990). Petitioners have not presented any evidence which would constitute direct evidence of discrimination.

42. Absent any direct evidence of discrimination, the Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and again, in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993).

43. To support a claim of hostile environment sexual harassment, a petitioner must establish:

> (1) that he or she belongs to a protected group; (2) that the employee has been subject to unwelcome sexual harassment, such as sexual advances, requests for sexual favors, and other conduct of a sexual nature; (3) that the harassment must have been based on the sex of the employee; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) a basis for holding the employer liable.

Gupta v. Florida Board of Regents, 212 F.3d 571, 582 (11th Cir. 2000).

44. Petitioners have failed to establish that they were subjected to harassment that was sufficiently severe or pervasive to support their claim of hostile environment sexual harassment. The severe or pervasive element tests the mettle of most sexual harassment claims. Gupta, 212 F.3d at 583. By requiring the petitioner to prove that the harassment is severe or pervasive, ensures that Title VII does not become a mere "general civility code." Id. (citing Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998). This requirement is regarded "as crucial, and as sufficient to ensure that courts and juries do not mistake ordinary socializing in the workplace -- such as male-on-male horseplay or intersexual flirtation -- for discriminatory 'conditions of employment.'" Id. (quoting Oncale

v. Sundowner Offshore Services, Inc., 523 U.S. 75, 81 (1998). Thus, a petitioner must establish not only that they subjectively perceived the environment as hostile and abusive, but also that any reasonable person would perceive the environment to be hostile and abusive. Id. (citing Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999). The Supreme Court has recognized that under the severe and pervasive requirement, ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes and occasional teasing, fall outside the broad protections of Title VII. Faragher, 524 U.S. at 788.

45. In Gupta, the petitioner claimed that the harasser had touched her knee and raised the hem of her dress, touched her jewelry, commented that she looked very beautiful, and called her at home two to three times per week, often suggesting that he would like to come over and spend the night. Gupta, 212 F.3d at 584-585. The Eleventh Circuit found that this conduct was not sufficiently severe and pervasive to qualify as harassment.

46. In Speedway Super America, LLC v. Dupont, 2005 WL 1537247 (Fla. 5th DCA 2005), the Fifth District Court of Appeal reversed a jury verdict in favor of a sexual harassment plaintiff, because the plaintiff failed to show that the conduct she experienced was sufficiently severe and pervasive. Although the plaintiff claimed that the harasser had touched her buttocks

and rubbed her shoulders in a sexual manner, the court found that this conduct was not so severe and pervasive as to qualify as a hostile environment under the Florida Civil Rights Act.

47. The evidence is not persuasive that the touching incidents described by Petitioners even occurred. Southwell claimed that Bouley grabbed his nipples on two occasions, grabbed his buttocks on two or three occasions, and grabbed his penis once. With the exception of Baker, Southwell did not identify any witnesses who could verify his story with respect to the alleged touching incidents. Furthermore, because Southwell's story was improbable and inconsistent with respect to the allegation that his penis was touched by Bouley, it is found, as a matter of fact, that Bouley did not grab Southwell's penis.

48. Assuming that Bouley may have slapped Southwell's backside two or three times and twisted his nipples on two occasions, this amount of touching is not so severe or pervasive as to alter the conditions of work and create a hostile and abusive environment.

49. Even assuming Southwell's account of his genitals being grabbed did occur, the sum total of the behavior that Southwell claims to have experienced does not exceed that which the Eleventh Circuit rejected as insufficient in Gupta or that

which the Fifth District Court of Appeal found to be insufficient in Speedway Super America.

50. Similarly, Baker claimed during the hearing that Bouley had grabbed his buttocks on one occasion, but Baker did not mention this alleged touching at any point during his deposition, nor did Baker tell his close friend Southwell anything about this alleged touching. Furthermore, Petitioners attended a feedback session in which the subject of workplace harassment was discussed. While the subject of nicknames was raised by Southwell, neither Petitioners mentioned any touching incidents. During this session, Southwell indicated that the situation with the nicknames had been resolved.

51. Because the alleged touching incidents were few in number and not sufficiently serious, Petitioners have failed to establish that they were subjected to severe or pervasive sexual harassment.

52. Petitioners also cannot establish claims for hostile work environment sexual harassment because they cannot show that any of the alleged harassment occurred because of their sex. See Oncale v. Sundower Offshore Services, Inc., 523 U.S. 75 (1998). The Supreme Court has noted that a same-sex harassment plaintiff may attempt to establish that the conduct was "because of . . . sex" by evidence that the harasser was a homosexual, was hostile towards members of one sex, or treated members of

one sex less favorably than members of the other sex. Id. at 80-81. The Supreme Court has stated that "whatever evidentiary route the plaintiff chooses to follow, he or she must always prove that the conduct at issue was not merely tinged with offensive connotations, but actually constituted "discrimination because of . . . sex." Id.

53. Petitioners failed to present any evidence that Bouley, the alleged harasser, was himself a homosexual, or held animus toward others who might be homosexual. Southwell testified that Bouley would gyrate his hips whenever an employee would bend over. Southwell further admitted that Bouley could conduct these hip motions with both male and female employees. This information reveals that Bouley did not act in a manner motivated by sexual desire for male employees or hostility toward males in the workplace. See E.E.O.C. v. Harbert-Yeargin, Inc., 266 F.3d 498 (6th Cir. 2001).

54. The alleged touching that was raised by Petitioners falls in the category of male horseplay. This conduct falls outside of the protection of Title VII. See Oncale, 523 U.S. at 81. In Oncale, the Supreme Court noted that Title VII does not reach genuine, but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex. Id. The Court added that the prohibition of harassment on the basis of sex requires neither asexuality nor

androgyny in the workplace; "it forbids only behavior so objectively offensive as to alter the 'conditions' of the victim's employment." Id.; see also E.E.O.C. v. Harbert-Yeargin, 266 F.3d at 522 (noting that gross and vulgar male horseplay (i.e., goosing) did not constitute discrimination based on sex); McCown v. St. John's Health System, Inc., 349 F.3d 540, 544 (8th Cir. 2003) (ruling that male employee grabbing another male by the waist, chest, and buttocks and making lewd comments did not constitute discrimination based on sex).

55. To the extent that Petitioners claim that they were discriminated against because they were perceived to be homosexual, their allegations are insufficient to establish that they faced discrimination based on sex. Title VII does not proscribe discrimination based on sexual orientation. Thus, where a harassment plaintiff faces unwelcome conduct because he or she is perceived to be gay, this unwelcome conduct will not suffice to show that the plaintiff was discriminated against "based on sex." Kay v. Independence Blue Cross, 2005 WL 1678816 (3rd Cir. July 19, 2005).

56. Petitioners further cannot support their claims for sexual harassment based on the alleged nicknames. Some of the nicknames that they complained about, that is, "powder," "crack pipe," and "crack head," were not sexual in nature. Therefore,

the use of these names cannot be considered with respect to their claims for harassment. The other nickname, "butt buddies," while offensive, falls in the category of male horseplay. When Baker complained to DePriest about the nicknames, he stated that they were funny at first, but started getting old. After Baker's complaint, DePriest made everyone stop using the nicknames. Later, at the employee feedback session, Southwell brought up the subject of the nicknames, indicating that he was satisfied with the resolution.

57. Petitioners' sexual harassment claims also fail because Respondent exercised reasonable care to prevent harassment in the workplace and to correct harassing behavior that Petitioners could have encountered in the workplace. Petitioners cannot recover on their claims because they failed to take advantage of Respondent's preventive and corrective opportunities. Respondent has a policy against sexual harassment that is stated in its employee manual. Respondent reviews this policy with all new employees during their orientation. New employees also watch a video about sexual harassment during their orientation. After the video, a manager will address the new employees' questions regarding sexual harassment. Respondent also has a poster hanging in the restaurant defining its policy against sexual harassment. The poster provided information to employees to contact the joint

venture partner, Dick Meyer, or the service technician assistant, Cherie Ash, if they were subjected to sexual harassment.

58. Petitioners never contacted Meyer or Ash. Therefore, they cannot overcome the defense that Respondent exercised reasonable care to prevent harassment in the workplace. See Walton v. Johnson & Johnson Services, Inc., 347 F.3d 1272 (11th Cir. 2003). Moreover, their subjective fears of reprisal do not justify their failure to complain in accordance with the policy. Id.

59. To the extent that Petitioners attempted to complain to lower-level managers not named in the policy or to DePriest himself, whom they alleged to be involved in the harassment, their complaints are not sufficient to put Respondent on notice of the supposed problems. See Madray v. Publix Supermarkets, 208 F.3d 1290 (11th Cir. 2000).

60. Petitioners also attempt to pursue retaliation claims against Respondent. To establish a prima facie case of retaliation under Title VII, a petitioner must prove that: (1) he participated in an activity protected by Title VII; (2) he suffered an adverse employment action; and (3) there is a causal connection between the participation in the protected activity and the adverse employment action. Gupta, 212 F.3d at 587.

61. Petitioners cannot satisfy the second and third prongs of their retaliation claims because they cannot show that they suffered an adverse employment action. See Gupta, 212 F.3d at 587 (noting that adverse employment action includes an ultimate employment decision, such as discharge or failure to hire, or other conduct that "alters the employee's compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee"). Specifically, they walked off their jobs in the middle of their shift. Neither man was ever disciplined by Respondent, neither suffered any cut in pay, and neither man suffered any other action that affected his compensation, terms, or privileges of employment.

62. The doctrine of constructive discharge does not serve to excuse Petitioners' departure. As noted above, neither man has established that he faced discriminatory harassment. Even if Petitioners had made such a showing, constructive discharge requires a showing that working conditions had become so intolerable that no reasonable person would have remained employed. Merely facing harassment or discrimination is not enough, as an employee is expected to remain employed and either take advantage of available internal remedies or file a charge of discrimination with EEOC or FCHR. Only when all reasonable avenues have been exhausted is a plaintiff justified in leaving

employment. Because Petitioners did not complain to Meyer or other corporate officials and did not file a charge of discrimination prior to leaving, they cannot show that they were subjected to a constructive discharge.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order that:

1. Dismisses the Petition for Relief filed by Petitioner, Jasen Baker, in DOAH Case No. 05-0623, FCHR No. 23-03891; and

2. Dismisses the Petition for Relief filed by Petitioner, Bernard Southwell, DOAH Case No. 05-0632, FCHR No. 23-03892.

DONE AND ENTERED this 10th day of November, 2005, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of November, 2005.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Jason M. Gordon, Esquire
Gordon & Cornell
103 North Atlantic Avenue
Cocoa Beach, Florida 32931

Kevin D. Johnson, Esquire
Thompson, Sizemore & Gonzalez, P.A.
501 East Kennedy Boulevard, Suite 1400
Tampa, Florida 33602

Cecil Howard, General Counsel
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in these cases.