

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
06 SEP 12 AM 10:32
DIVISION OF
ADMINISTRATIVE
HEARINGS

LAWRENCE HJORTSBERG,

Petitioner,

v.

GREAT BAY DISTRIBUTORS, INC.,

Respondent.

EEOC Case No. 15DA500328

FCHR Case No. 2005-00803

DOAH Case No. 05-3120

FCHR Order No. 06-086

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

Preliminary Matters

Petitioner Lawrence Hjortsberg 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 Great Bay Distributors, Inc., committed an unlawful employment practice on the bases of Petitioner's sex (male) and marital status (single) when it terminated Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 20, 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 November 30, 2005, in Panama City, Florida, before Administrative Law Judge Fred L. Buckine.

Due to Judge Buckine's retirement, the case was transferred to Administrative Law Judge R. Bruce McKibben, who issued a Recommended Order of dismissal, dated July 11, 2006.

Pursuant to notice, public deliberations were held on September 7, 2006, 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 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Exceptions to Recommended Order." The document contains exceptions paragraphs A and B, with numbered subsections under each.

Petitioner's exceptions take issue facts found, facts not found and inferences drawn from the evidence presented.

This case presents an unusual situation in terms of the Administrative Law Judges participating in the case.

The Administrative Law Judge who conducted the hearing in this matter, Judge Fred L. Buckine, apparently retired prior to the completion of the Recommended Order. Judge R. Bruce McKibben was then assigned to review the record and complete the Recommended Order. See Section 120.57(1)(a), Florida Statutes (2005), which states, "If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary."

In a situation in which the Administrative Law Judge who conducted the formal administrative hearing was not the same Administrative Law Judge who wrote the Recommended Order, a Commission panel stated the following: "We note that, in this case, the Hearing Officer who issued the Corrected Recommended Order is not the same Hearing Officer who conducted the formal administrative proceeding. [citation omitted]. In a situation similar to this, it has been stated that the agency 'has more liberty...to modify or reject the findings of fact of [the Hearing Officer] than in the usual case where the recommended order is entered by the hearing officer who presided at the final hearing.' Jones Management Corporation v. Department of Environmental Protection, 16 F.A.L.R. 1315, at 1319 (DEP 1994). This is because the Hearing Officer who prepared the Recommended Order did not see or hear the witnesses who testified, or have the benefit of observing their demeanor, general emphasis, gestures, and other nonverbal

communication. Id., at 1318 and 1319. Consequently, since the Hearing Officer who wrote the Corrected Recommended Order, in the instant case, would be in no better position to review the record and make findings of fact and conclusions of law than the Commission, the Commission will hereby decide the case by a de novo review of the record." Jacobs v. Florida Department of the Lottery, 20 F.A.L.R. 360, at 361 (FCHR 1996).

Nevertheless, as indicated above, we have adopted the findings of fact and conclusions of law set out in the Recommended Order.

Petitioner's exceptions are rejected.

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 11th day of September, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Billy Whitefox Stall

Filed this 11th day of September, 2006,
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:

Lawrence Hjortsberg
c/o Angela E. Outten, Esq.
Reeser, Rodnite, Outten & Zdravko, P.A.
3411 Palm Harbor Boulevard, Suite A
Palm Harbor, FL 34683

Great Bay Distributors, Inc.
c/o Thomas Martin Gonzalez, Esq.
Thompson, Sizemore & Gonzalez, P.A.
Post Office Box 639
Tampa, FL 33601

R. Bruce McKibben, 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 11th day of September, 2006.

By: Vivian Craneford
Clerk of the Commission
Florida Commission on Human Relations