

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

JAMES E. SILVEY,

Petitioner,

v.

KAUFMAN, ROSSIN & CO.,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2005-61855

DOAH Case No. 05-3608

FCHR Order No. 06-076

FILED
2006 AUG -3 P 2:11
DIVISION OF
ADMINISTRATIVE
HEARINGS

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

On June 7, 2005, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice when he was terminated on June 15, 2004, because of his age. The allegations set forth in the complaint were investigated and on September 19, 2005, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred.

A hearing was conducted on February 22, 2006, before Administrative Law Judge Florence Snyder Rivas. Judge Rivas issued her Recommended Order of Dismissal on May 25, 2006.

Findings of Fact and Conclusions of Law

Judge Rivas finds that the Petitioner failed establish a prima facie case of age discrimination. The Petitioner established the he was: (1) a member of a protected class; (2) qualified to do the job; and (3) subjected to an adverse employment action (termination). However, he failed to establish that he was replaced by a person outside of his protected class or that he suffered disparate treatment because of his membership in the protected class. In fact, the evidence established that he was not replaced. It also established that several other individuals, significantly younger than Petitioner, were also terminated.

The ALJ further found that there was no direct evidence of age discrimination and that the Respondent had articulated a legitimate, nondiscriminatory business reason for the employment decision to terminate the Petitioner. The Petitioner offered no creditable evidence that the Respondent's reason was pretextual and the ALJ specifically noted that the Respondent rebutted any presumption of discrimination based on age with persuasive evidence of legitimate, non-discriminatory business reasons for terminating the Petitioner.

Further, on July 17, 2006, the Commission received Petitioner's Motion to Dismiss Claim with Prejudice signed by the Petitioner's attorney on July 14, 2006. In the Motion, the Petitioner moves to dismiss the claim and indicates that the Respondent does not object. A

Petition may be dismissed by the Petitioner at any time before the issuance of a recommended order or, after issuance, by filing a stipulation of dismissal signed by all parties who have appeared in the action. *FCHR Rule 60Y-5.008 (7), Florida Rules of Administrative Procedure (2006)*. In this case, the Motion by the Petitioner, although indicating the acceptance by the Respondent, is not signed by all parties and, therefore, is not sufficient to allow the Commission to administratively dismiss the complaint.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

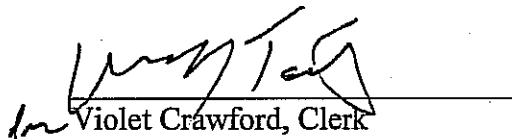
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 1st day of August, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Dominique B. Saliba, M.D.

Filed this 1st day of August, 2006,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
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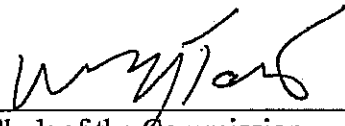
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Honorable Florence Snyder Rivas, Administrative Law Judge (DOAH)

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 1st day of AUGUST, 2006.

BY: 
for Clerk of the Commission
Florida Commission on Human Relations