

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LESTER L. HALL,

EEOC Case No. 15DA500865

Petitioner,

FCHR Case No. 2005-02673

v.

DOAH Case No. 06-1052

GREENVILLE HILLS ACADEMY / DISC
VILLAGE,

FCHR Order No. 06-091

Respondent.

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

Preliminary Matters

Petitioner Lester L. Hall filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2005), alleging that Respondent Greenville Hills Academy / DISC Village committed unlawful employment practices on the basis of Petitioner's race (Black) in the manner in which it dealt with Petitioner up to and including Petitioner being told he had the choice of resigning or being terminated. The complaint of discrimination also includes allegations of unlawful disability discrimination, but these allegations were not included in the Petition for Relief.

The allegations set forth in the complaint were investigated, and, on February 20, 2006, 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 May 18, 2006, in Tallahassee, Florida, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal, dated July 20, 2006.

Pursuant to notice, public deliberations were held on October 10, 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.

Petitioner's Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, in a document entitled, "Exceptions and Responses," received by the Commission on July 25, 2006.

There is no indication on the document that it was served on Respondent as is required by Fla. Admin. Code R. 28-106.110.

Generally, referencing paragraph numbers of the Recommended Order, Petitioner excepts to facts found (paragraphs 8, 15, 16, 21, 22, 26, 29, 30, 31, 33, and 34), facts not found (paragraphs 13, 17, 19, and 20), inferences drawn (paragraph 12), and not drawn (paragraph 10) from the evidence presented, as well as to credibility determinations (paragraph 14) of the Administrative Law Judge. Some references to Recommended Order paragraphs do not seem to contain an exception, but rather seem to contain argument or new testimony (paragraph 27, 28, 35, 36, and 42).

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). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Petitioner's exceptions are rejected, except, for reasons set out below under the discussion of Respondent's exceptions, Petitioner's exception to paragraph 31 of the Recommended Order, indicating that the finding that Jonetta Chukes is white is in error, is accepted.

Respondent's Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Respondent's Exception to the Recommended Order," received by the Commission on August 4, 2006.

Respondent excepts to the Administrative Law Judge's finding that Ms. Jonetta Chukes is a white female, noting that Mr. Rohr testified at transcript page 73 that Ms. Jonetta Chukes is African-American, and requests the Commission to modify the Order to reflect the "undisputed" fact that Ms. Chukes is African-American.

Mr. Rohr did testify at page 73 of the transcript that Ms. Chukes is African-American, and a review of the record reveals no other evidence presented on this issue. Ms. Chukes did not make an appearance and testify before the Administrative Law Judge. Petitioner in his exceptions document at page 7 indicates that the finding that Ms. Chukes is "white" is incorrect and that Ms. Chukes is African-American.

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2005).

Since there appears to be no competent substantial evidence in the record to support the finding that Ms. Chukes is white, we correct this finding to reflect that Ms. Chukes is African-American.

Respondent's exception is accepted.

Dismissal

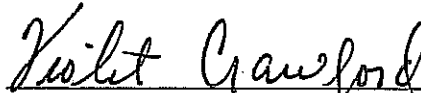
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 12th day of October, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Anice R. Prosser; and
Commissioner Billy Whitefox Stall

Filed this 12th day of October, 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:

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3871 Gaffney Loop
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c/o Lindsay A. Connor, Esq.
Ford and Harrison, LLP
225 Water Street, Suite 710
Jacksonville, FL 32202

Suzanne F. Hood, 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 12th day of October, 2006.

By: Violet Cranford
Clerk of the Commission
Florida Commission on Human Relations