

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

STUART GILLMAN

EEOC Case No. None

Petitioner,

FCHR Case No. 2005-02963

v.

DOAH Case No. 06-1242

SAINT LEO UNIVERSITY,

FCHR Order No. 07-025

Respondent.

**ORDER GRANTING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE
AND REMANDING FOR FUTURE DETERMINATIONS**

Preliminary Matters

Petitioner Stuart Gillman 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 Saint Leo University committed an unlawful employment practice on the basis of Petitioner's handicap by terminating Petitioner.

The allegations set forth in the complaint were investigated, and, on March 16, 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 October 3 and 4, 2006, in Tampa, Florida, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order granting the Petition for relief, dated December 29, 2006.

Pursuant to notice, public deliberations were held on March 22, 2007, 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

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). Each issue raised in the exceptions has been considered by the Commission panel, and the determinations of the Administrative Law Judge are found to be supported by competent substantial evidence. Therefore, each exception Raised by Petitioner is explicitly rejected.

Petition Granted

The Petition for Relief and the Complaint of Discrimination are GRANTED.

Having found that an unlawful employment practice occurred through the termination of employment because of the Petitioner's disability, Respondent is hereby ORDERED:

(1) To cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;

(2) To reinstate the Petitioner to his position of employment with back pay and benefits;

(3) Remand to the Administrative Law Judge for determination of appropriate relief, including the appropriate amounts for attorney fees and costs, after allowing the parties 30 days from the date of the Commission's order to reach settlement.

(4) To pay Petitioner such other amounts as Petitioner may be entitled to by law.

The Commission reserves jurisdiction over the determination of the precise remedy in this matter, including, but not limited to, amounts of attorney's fees, and costs awarded Petitioner, and any additional amounts to which Petitioner may be entitled under the law.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties have agreed to the appropriate remedy amounts for the unlawful employment practice found to have occurred, the parties shall prepare and submit to the Commission a Joint Stipulation of Settlement.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties are unable to reach agreement as to the remedy amounts for the unlawful employment practice found to have occurred, the Petitioner is directed to file with the Commission a Notice of Failure of Settlement, and the case will be remanded to the Administrative Law Judge for determination of the appropriate remedy amounts in this matter, as ordered above.

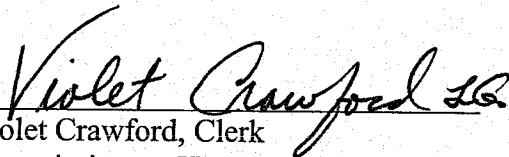
The Commission shall offer its mediation services to the parties to facilitate settlement within the specified 30-day period.

DONE AND ORDERED this 29th day of March, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Billy Whitefox Stall

Filed this 29th day of March, 2007,

in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Stewart R. Gillman
c/o Robert F. McKee, Esq.
Kelly & McKee
1718 E. 7th Ave., Ste. 301
P.O. Box 75638
Tampa, Florida 33675

Saint Leo University
c/o Scott A. Fisher, Esq.
Fowler, White, Boggs, Banker
501 First Avenue North, Ste. 900,
St. Petersburg, FL 33701

Daniel Manry, Administrative Law Judge, DOAH

Wayne Knight, Legal Advisor for Commission Panel

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I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 29th day of March, 2007.

By:

Violet Crawford Esq.

Clerk of the Commission

Florida Commission on Human Relations