

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

VERONICA TOLBERT,

EEOC Case No. 15DA600226

Petitioner,

FCHR Case No. 2006-00544

v.

DOAH Case No. 06-2460

LEON COUNTY PROPERTY APPRAISER,

FCHR Order No. 07-005

Respondent.

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

Preliminary Matters

Petitioner Veronica Tolbert 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 Leon County Property Appraiser committed unlawful employment practices on the bases of Petitioner's sex (female) and race (African-American) by failing to promote Petitioner.

The allegations set forth in the complaint were investigated, and, on June 22, 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 September 8, 2006, in Tallahassee, Florida, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated November 3, 2006.

Pursuant to notice, public deliberations were held on January 25, 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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a two-page letter to FCHR Chief Legal Counsel, Cecil Howard, seemingly received by the Commission on November 17, 2006.

There is no indication on the document that it was served on Respondent as is required by Fla. Admin. Code R. 28-106.104(2)(f) and (4) and Fla. Admin. Code R. 28-106.110.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2006).

A review of Petitioner's exceptions document suggests that the document does not comply with this statutory provision.

Nevertheless, a review of the document suggests that Petitioner does take issue with facts found, facts not found, and inferences drawn and not drawn from the evidence presented. Most notably, contrary to the Administrative Law Judge, Petitioner argues that the Incumbent Property Appraiser did state that she "was hired as a favor to his friend not to be trained or promoted into any other position," and, contrary to the Administrative Law Judge's conclusions, argues that this statement "indicates discrimination by an individual in a position with the authority to enforce his statement." (The Administrative Law Judge concluded that even if Petitioner's version of what was said is accepted, the statement does not demonstrate discrimination on the basis of race or sex, and Petitioner's inference that it does "is unreasonable." Recommended Order, ¶ 43.)

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).

Based on the foregoing, 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 29th day of January, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Shahrukh S. Dhanji; and
Commissioner Anice R. Prosser

Filed this 29th day of January, 2007,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
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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:

Veronica Tolbert
Post Office Box 180842
Tallahassee, FL 32318

Leon County Property Appraiser
c/o Robert J. Sniffen, Esq.
c/o Roger C. Salmonsens, Esq.
Sniffen Law Firm, P.A.
211 East Call Street
Tallahassee, FL 32301

Ella Jane P. Davis, 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 29th day of January, 2007.

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