

FILED
STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS
07 MAY -3 AM 10:27

BARBARA SALBER,

Petitioner,

v.

ATLASS INSURANCE,

Respondent.

DIVISION OF
ADMINISTRATIVE
HEARINGS

EEOC Case No. 15DA600324

FCHR Case No. 2006-00684

DOAH Case No. 06-3535

FCHR Order No. 07-031

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

Preliminary Matters

Petitioner Barbara Salber 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 Atlass Insurance committed an unlawful employment practice on the basis of Petitioner's age (DOB: 12-29-35) by terminating Petitioner from employment on December 31, 2005.

The allegations set forth in the complaint were investigated, and, on August 11, 2006, the Executive Director issued a "Determination: No Jurisdiction," finding that the Commission did not have jurisdiction of the matter because Respondent did not have sufficient employees to be a covered "employer" under the Florida Civil Rights Act of 1992.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings.

An evidentiary hearing on the issue of whether Respondent had sufficient employees to be an "employer" covered by the Florida Civil Rights Act of 1992 was held on November 28, 2006, in Melbourne, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated February 1, 2007, concluding that the Commission lacked jurisdiction over the Respondent, since Respondent did not have the required number of employees to be a covered "employer" under the Florida Civil Rights Act of 1992.

Pursuant to notice, public deliberations were held on April 26, 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 letter addressed to Judge Kilbride, a copy of which was received by the Commission on February 13, 2007.

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, the document does appear to take issue with the facts found, facts not found, and inferences drawn from the evidence presented.

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).

Finally, there is no indication on Petitioner's exception document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.104(2)(f) and (4), and Fla. Admin. Code R. 28-106.110.

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 1st day of May, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Mario M. Valle

Filed this 1st day of May, 2007,
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:

Barbara Salber
200 South Banana River Boulevard, No. 1604
Cocoa Beach, FL 32931

Atlass Insurance
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Kimberly A. Gilmour, P.A.
4179 Davie Road, Suite 101
Fort Lauderdale, FL 33314

Daniel M. Kilbride, 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 1st day of May, 2007.

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