

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF ADMINISTRATIVE
HEARINGS

WADE HAMILTON,

EEOC Case No. 15D200700129

Petitioner,

FCHR Case No. 2007-00334

v.

DOAH Case No. 07-2417

THE TALKING PHONE BOOK,

FCHR Order No. 08-002

Respondent.

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

Preliminary Matters

Petitioner Wade Hamilton 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 The Talking Phone Book committed an unlawful employment practice on the bases of Petitioner's race (Black), color, and National Origin (Jamaican), by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on April 19, 2007, 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 in Gainesville, Florida, on August 8, 2007, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated October 17, 2007.

The Commission panel designated below considered the record of this matter and 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 note that in determining that a prima facie case had not been established by Petitioner the Administrative Law Judge concluded, among other things, "Petitioner did not present competent evidence to prove [one of the elements] of establishing a prima facie case regarding his being qualified for the job, except that he was hired for the job." Recommended Order, ¶ 35.

A Commission panel has noted, "For the purposes of establishing a prima facie case of discrimination, the Commission has accepted a showing that Petitioner is minimally qualified for the position." Potasek v. The Florida State University, 18 F.A.L.R. 1952, at 1953 (FCHR 1995). Another Commission panel has indicated, "Petitioners being only minimally qualified...does not mean they failed to establish a prima facie case. Only a total lack of qualification would prevent the establishment of a prima facie case." Little, et al. v. Monsanto Company, 15 F.A.L.R. 621, at 622 (FCHR 1992). In a "termination" case similar to the instant case, a Commission panel concluded that for the purpose of establishing a prima facie case of discrimination Petitioner demonstrated that "she was at least minimally qualified for the position in question by virtue of having been hired for the position." Kesselman v. Department of Transportation, 20 F.A.L.R. 166, at 169 (FCHR 1996); accord, Ricks v. City of Gainesville, FCHR Order No. 05-018 (February 22, 2005) and Brown v. Volusia County School Board, FCHR Order No. 04-160 (December 23, 2004).

We further note that, while based on the foregoing we would conclude that Petitioner in the instant case was "qualified" for the position in question for purposes of establishing a prima facie case, the conclusion of whether Petitioner was qualified for the position in question in the instant case is not dispositive of the case since the Administrative Law Judge further concluded that a prima facie case was not established since there was no showing that Respondent treated similarly situated employees who were not members of Petitioner's protected classes more favorably. Recommended Order, ¶ 34.

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

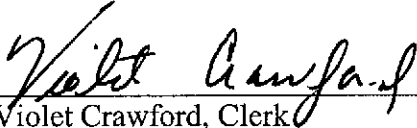
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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

DONE AND ORDERED this 14th day of January, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Billy Whitefox Stall

Filed this 14th day of January, 2008,
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:

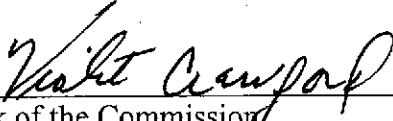
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The Talking Phone Book
c/o Jeffrey B. Jones, Esq.
Littler Mendelson, P.C.
4767 New Broad Street
Orlando, FL 32814

Barbara J. Staros, 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 14th day of January, 2008.

By: 
Clerk of the Commission
Florida Commission on Human Relations