

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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GWENDOLYN BOYD,

Petitioner,

v.

CITY OF NORTH MIAMI, FLORIDA,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2007-00311

DOAH Case No. 07-3030

FCHR Order No. 08-039

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Gwendolyn Boyd 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 City of North Miami, Florida, committed an unlawful employment practice on the basis of Petitioner's National Origin (African American) when it failed to allow Petitioner to keep the salary she was making as Interim City Manager when a new City Manager was hired and Petitioner transferred back to her previous position as Police Chief.

The allegations set forth in the complaint were investigated, and, on May 11, 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 by video teleconference on November 27 and 28, 2007, at sites in Tallahassee and Miami, Florida, before Administrative Law Judge Patricia M. Hart.

Judge Hart issued a Recommended Order of dismissal, dated March 4, 2008.

Commission deliberations were initially scheduled for May 22, 2008, but at the request of Respondent, and without objection by Petitioner, the Commission continued those deliberations in an order dated May 5, 2008.

Pursuant to notice, public deliberations were held on June 26, 2008, 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 document entitled, "Petitioner's Exceptions to Recommended Order," received by the Commission on March 19, 2008.

The document contains three numbered paragraph exceptions to the findings of fact, as well as a section setting out exceptions to the conclusions of law.

Paragraph 2 excepts to findings of fact found in paragraphs 11 through 13 of the Recommended Order, Paragraph 3 excepts to the findings in paragraph 22 of the Recommended Order, and the exceptions to the conclusions of law except to conclusions of law in the Recommended Order that are based on excepted-to findings of fact. In each instance, the indicated exception Paragraph takes issue with facts found, facts not found and / or 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).

Paragraph 1 takes issue with the Administrative Law Judge's statement in Endnote 10 of the Recommended Order indicating that "the parties apparently felt they were bound by the FCHR's findings." This statement is in no way dispositive of this case.

Petitioner's exceptions are rejected.

Dismissal

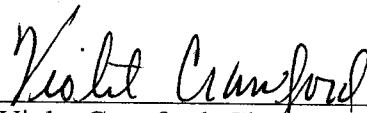
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 July, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gilbert M. Singer; and
Commissioner Mario M. Valle

Filed this 1st day of July, 2008,
in Tallahassee, Florida.



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Patricia M. Hart, 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 July, 2008.

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