

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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NITA JEAN-PIERRE,

Petitioner,

v.

NEIMAN MARCUS,

Respondent.

EEOC Case No. 07-00000

FCHR Case No. 2007-00929

DOAH Case No. 07-4430

FCHR Order No. 08-062

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Nita Jean-Pierre 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 Neiman Marcus committed an unlawful employment practice on the basis of Petitioner's National Origin (Haitian) when it terminated Petitioner from employment. Petitioner also included an allegation of unlawful discrimination on the basis of her race (Black) in the complaint of discrimination, but a race discrimination claim was not included by Petitioner in the Petition for Relief.

The allegations set forth in the complaint were investigated, and, on August 31, 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 29, 2007, at sites in Tallahassee and Fort Lauderdale, Florida, before Administrative Law Judge Patricia M. Hart.

Judge Hart issued a Recommended Order of dismissal, dated February 29, 2008.

Commission deliberations were initially scheduled for May 22, 2008, but at the request of Petitioner, and without any filed objection by Respondent, the Commission continued those deliberations in an order dated May 14, 2008.

Commission deliberations were subsequently scheduled for June 26, 2008, but at the request of Respondent, and without objection by Petitioner, the Commission continued those deliberations in an order dated June 3, 2008.

Commission deliberations were subsequently scheduled for August 14, 2008, but at the request of Petitioner, and without objection by Respondent, the Commission continued those deliberations in an order dated July 31, 2008.

Pursuant to notice, public deliberations were held on October 2, 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 200, 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's counsel 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 17, 2008.

The document contains seven numbered paragraphs.

Paragraphs 1, 2, 4, 5, 6 and 7, take issue with facts found, facts not found and / or inferences drawn from the evidence presented. Paragraph 3 simply sets out statutory provisions and is not really an exception to the Recommended Order

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).

These exceptions are rejected.

In addition, Petitioner, herself, filed exceptions to the Recommended Order in a document entitled "Comments and Rebutle [sp] to Recommended Order of Judge Patricia Hart," received by the Commission on March 18, 2008.

The Administrative Procedure Act states, "The agency shall allow each party 15 days in which to submit written exceptions to the recommended order." Section 120.57(1)(k), Florida Statutes (2007). The Recommended Order, itself, advises the parties, "All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case." See Recommended Order, page 24. The Florida Administrative Code section dealing with the filing of exceptions to Recommended Orders states, "No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail." Fla. Admin. Code R. 28-106.217(4). Finally, the Florida Administrative Code states, "In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday." Fla. Admin. Code R. 28-106.103.

The date of the Recommended Order is February 29, 2008. Fifteen days later is March 15, 2008, which is a Saturday, thereby making the filing period for filing exceptions conclude on Monday, March 17, 2008. As indicated above, Petitioner's exceptions were received by the Commission on March 18, 2008.

Petitioner's exceptions are untimely.

Nevertheless, a review of the document indicates that the first two pages contain argument of the facts as Petitioner apparently views them. The document contains exceptions to Recommended Order paragraphs 3, 4, 8, 11, 12, 13, 14, 15, 17, 18, 20, 24, 25, 28, 31, 34, 35, 36, 37, 38, 39, 41, and 42. In each instance, the exception presented either simply contains argument or comment, or takes issues with the facts found, facts not found and / or inferences drawn from the evidence presented.

These exceptions are rejected. See Barr, supra, and Bowles, supra.

Dismissal

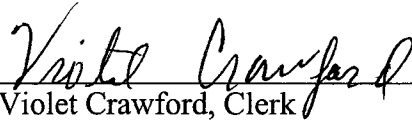
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 9th day of October, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Watson Haynes, II

Filed this 9th day of October, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
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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 9th day of October, 2008.

By: 

Clerk of the Commission
Florida Commission on Human Relations