Hillsborough County Florida

COUNTY ATTORNEY
Christine M. Beck
PO Box 1110 Tampa, FL 33601-1110
(813) 272-5670 | Fax: (813) 272-5231

October 30, 2019

State of Florida
Division of Administrative Hearings
Attention: Claudia Llado
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399

RE: Request for Final Agency Orders (Hillsborough County)

Dear Claudia Llado,

Per your request, please find attached the documentation that was requested from your office on October 9, 2019. If you have any questions or need further assistance, please feel free to contact our office.

Regards,

Jana Foxworth
Legal Assistant

JLF
Attachment

Hillsborough County
Florida

Office of the County Administrator
Patricia G. Bean

Certified Mail

September 12, 2008

Leslie P. Stokes
4714 Pleasant Avenue
Palm Harbor, FL 34683

RECEIVED BY
SEP 15 2008
COUNTY ATTORNEYS OFFICE

Andrew Froman, Esquire
Fisher & Phillips LLP
401 East Jackson Street, Suite 2525
Tampa, FL 33602

Re: DOAH Case No. 08-0693

Dear Sir or Madame:

Please be advised, per Section 10 (6) and 10 (7) of the Human Rights Ordinance 00-37 the recommended order was reviewed by Hillsborough County Human Relations Board and adopted.

On September 9, 2008 the Human Relations Board adopted the recommended order as the **Final Order.** Section 10 (7) also states "Either party may appeal the order by filing a Notice of Appeal with the appropriate court within thirty (30) days of adoption of this order."

This ends the processing of the above matter by this office.

Sincerely,

Gail P. Williams

Gail P. Williams
Equal Opportunity Administrator

RECEIVED
HILLSBOROUGH
COUNTY ATTORNEY
2008 SEP 15 PM 2:45

Attachment
Cc: Cynthia Oster, Assistant County Attorney

F

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Accepted - on
2nd by
Hamrell -
unanimous

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESLIE STOKES, Petitioner, vs. LEXUS OF TAMPA BAY, Respondent.	)	Case No. 08-0693

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing in this proceeding for the Division of Administrative Hearings (DOAH) on May 21, 2008, in Tampa, Florida.

APPEARANCES

For Petitioner: Leslie P. Stokes, pro se
4714 Pleasant Avenue
Palm Harbor, Florida 34683

For Respondent: Andrew Froman, Esquire
Alva L. Cross, Esquire
Fisher & Phillips LLP
401 East Jackson Street, Suite 2525
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of her race, subjected Petitioner to a hostile work environment, or retaliated against Petitioner in

violation of the Hillsborough County Human Rights Ordinance 00-37, Section 4(1)(a)(1).

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination with the Hillsborough County Human Rights Board (the Board) on June 4, 2004. Petitioner dual-filed an identical Charge with the Equal Employment Opportunity Commission (EEOC) on the same date.

The Board completed the investigation of the allegations in the Charge on January 8, 2008, and issued a determination that cause existed to believe the alleged discrimination occurred. Pursuant to Hillsborough County Human Rights Ordinance 00-37, the matter was referred to DOAH to conduct an administrative hearing.

At the hearing, Petitioner testified, presented the testimony of three other witnesses, and submitted seven exhibits for admission into evidence. Respondent cross-examined each witness and submitted seven exhibits.

The identity of the witnesses and exhibits, and any associated rulings, are reported in the Transcript of the hearing filed with DOAH on June 27, 2008. The parties timely filed their respective Proposed Recommended Orders (PROs) on July 14, 2008.

FINDINGS OF FACT

1. Petitioner is an aggrieved person within the meaning of Hillsborough County Human Rights Ordinance 00-37, Section 16. Petitioner is an African-American female and filed a complaint with the Board alleging that Respondent engaged in race, color, and gender discrimination; retaliation; and the creation of a hostile work environment.

2. Respondent is an employer within the meaning of Section 16. Respondent operates a car dealership and is in the business of selling and servicing new and used automobiles and trucks in several states, including Florida.

3. Respondent was not Petitioner's employer. Petitioner was a temporary worker during the relevant period, and her employment contract was with an employment agency. No written employment contract existed between the parties to this proceeding. The employment agency paid Petitioner, and Respondent paid the employment agency.

4. The employment agency assigned Petitioner to Respondent from January 13 through January 23, 2004. Other than Petitioner's uncorroborated testimony, there is no written or other evidence that Respondent intended Petitioner's temporary assignment either to become a permanent position or to last for six weeks. The fact-finder finds the testimony of Petitioner to be less than credible and persuasive.

5. From January 13 until January 21, 2004, Petitioner worked at Respondent's Tampa office at Lexus of Tampa Bay located on North Dale Mabry Avenue, Tampa, Florida. Respondent transferred Petitioner to its office at Lexus of Clearwater, Florida, on January 21, 2004, and terminated the assignment from the employment agency on January 23, 2004. The termination of assignment occurred in Pinellas County, rather than Hillsborough County, Florida.

6. Petitioner began her assignment at Lexus of Tampa Bay on January 13, 2004, as a receptionist. Respondent paired Petitioner with Ms. Mary Ann Browne, a full-time receptionist and Caucasian female. Respondent charged Ms. Browne with training Petitioner in the responsibilities of a receptionist.

7. Petitioner alleges that Ms. Browne engaged in unprofessional conduct during the 10 days she trained Petitioner. The unprofessional conduct, according to Petitioner's testimony included "racial undertones." For example, Ms. Browne asked Petitioner why, "Black people are all family, cousins, sisters, brothers." Petitioner responded, "Don't ask me. I wouldn't be that black."

8. Ms. Browne allegedly stated aloud that two female employees who hugged in greeting each other were lesbians. Ms. Browne allegedly called another African-American employee a "pimp" and referred to an Hispanic employee as a "macdaddy."

The fact-finder does not know the meaning of the term "macdaddy," or even how to spell the term, and the record does not provide an adequate definition or spelling. Ms. Browne allegedly referred to homosexual customers as "flamers." Finally, Ms. Browne allegedly engaged in threatening physical behavior by tossing items at Petitioner across the reception desk. No one but Petitioner heard the alleged racial and sexist comments by Ms. Browne or witnessed the physically aggressive behavior.

9. The preponderance of evidence does not establish a prima facie showing of discrimination or retaliation. Nor does the preponderance of evidence show that Respondent subjected Petitioner to a hostile work environment. Finally, a preponderance of the evidence does not show that Respondent engaged in a discriminatory practice.

10. The evidence of Ms. Browne's conduct consists of Petitioner's testimony and a diary that Petitioner created contemporaneously with the acts Petitioner attributes to Ms. Browne. No other employees at Lexus of Tampa Bay witnessed the events evidenced in Petitioner's testimony and diary. Ms. Browne left her employment with Respondent in the fall of 2004 and did not testify.

11. Ms. Toni Davis, now Ms. Toni Scotland, was a receptionist during part of the relevant time but was not

present during the entire time because she was being promoted to a position in accounting. Ms. Scotland did not recall any improper behavior by Ms. Browne in 2004.

12. The Investigative Report based its recommendation of a finding of cause on statements attributed in the Report to then Ms. Davis and the documentation of the disciplinary action taken by Respondent against Ms. Browne. However, Ms. Scotland testified that she did not recall being contacted by an investigator for the Board and denied making any statements to the investigator.

13. The investigation took approximately 3.5 years to complete because the investigator is the only investigator for the Board and because the investigator suffered a heart attack during the investigation. At the hearing, the testimony of the investigator concerning statements he attributed to Ms. Scotland, also Ms. Davis, was vague and sparse and is less than credible and persuasive.

14. A preponderance of the evidence does not show that Respondent is responsible for the acts Petitioner attributes to Ms. Browne. Petitioner complained to her employment agency about the conduct of Ms. Browne. The employment agency notified Respondent, and Ms. Helene Ott, the supervisor at the time, interviewed both Petitioner and Ms. Browne on January 19, 2004.

15. The only complaint made by Petitioner to Ms. Ott on January 19, 2004, was that Ms. Browne went to the break room to bring back a drink in separate disposable drink cups for Ms. Browne and Petitioner. Upon returning with the drinks, Ms. Browne told Petitioner that Ms. Browne had spit in Petitioner's cup. Petitioner did not tell Ms. Ott that Petitioner witnessed Ms. Browne spit in the cup.

16. Petitioner's version of events changed at the hearing. Petitioner testified that she saw Ms. Browne spit in Petitioner's cup. Petitioner testified that Ms. Browne offered to refill the cup Petitioner already had on the receptionist desk, grabbed the cup, stood, drew up a large volume of spit from deep in Ms. Browne's throat, and let the long volume of liquid drop into Petitioner's cup in full view of Petitioner. Petitioner further testified in tears that she stated repeatedly to Ms. Browne, "Give me back my cup!"

17. The foregoing testimony of Petitioner is less than credible and persuasive. The fact-finder is not persuaded that any reasonable person would have wanted Ms. Browne to return the cup. The cup was a disposable cup from the vending area which was of no value to Petitioner. Petitioner did not relate this version of the events to Ms. Ott when Ms. Ott investigated Petitioner's complaints on January 19, 2004.

18. The version of events that Petitioner related to Ms. Ott on January 19, 2004, is consistent with the contemporaneous account by Mr. Browne. When Ms. Ott interviewed Ms. Browne on January 19, 2004, Ms. Browne admitted that she told Petitioner she had spit in Petitioner's cup when Ms. Browne returned from the vending area to the reception desk with Petitioner's drink. Ms. Browne also admitted to engaging in offensive language, offensive commentary about customers, and unprofessional conduct.

19. A preponderance of evidence does not show that Respondent created or fostered a work environment that was hostile toward Petitioner. On January 19, 2004, Ms. Ott issued a written counseling/final warning to Ms. Browne for her use of "offensive language, offensive commentary about customers, and unprofessional conduct." The disciplinary action advised Ms. Browne that any further misconduct would result in the termination of her employment.

20. On January 20, 2004, Ms. Ott interviewed Petitioner again concerning additional complaints from the employment agency. Petitioner told Ms. Ott that Ms. Browne used vulgar and unprofessional language, but Petitioner did not state to Ms. Ott that Ms. Browne made racial or sexist comments.

21. On January 21, 2004, Ms. Ott needed to fill another temporary vacancy at Lexus of Clearwater. Ms. Ott asked

Petitioner to go to Clearwater, and Petitioner went to the Clearwater office voluntarily. Respondent ended the employment agency assignment on January 23, 2004.

22. Ms. Ott described Petitioner's performance as "very good." On January 23, 2004, Ms. Ott offered to write a letter of reference for Petitioner. Ms. Ott told Petitioner that Ms. Ott would consider Petitioner for a position at Lexus of Tampa Bay or Lexus of Clearwater if the need arose.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008). The parties received adequate notice of the administrative hearing.

24. Petitioner bears the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that Respondent intentionally discriminated against her on the basis of her race, color or sex or retaliated against her because of a protected activity. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 142, 120 S. Ct. 2097, 2106 (2000).

25. The burden of proving retaliation follows the general rules enunciated for proving discrimination. Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir. 1996). Federal discrimination law may be used for guidance in evaluating the Charge filed by Petitioner. Tourville v. Securex, Inc., 769 So.

2d 491 (Fla. 4th DCA 2000); Greene v. Seminole Elec. Co-op. Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994).

26. Petitioner can meet her burden of proof with either direct or circumstantial evidence. Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1358 (11th Cir. 1999), cert. denied, 529 U.S. 1109 (2000). Direct evidence must evince discrimination or retaliation without the need for inference or presumption. Standard v. A.B.E.L. Services., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998). In other words, direct evidence consists of "only the most blatant remarks, whose intent could be nothing other than to discriminate," Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990). By analogy, direct evidence of retaliation must be equally egregious.

27. There is no direct evidence of discrimination or retaliation in this case. In the absence of direct evidence, Petitioner must meet her burden of proof by circumstantial evidence.

28. Circumstantial evidence of discrimination or retaliation is subject to the burden-shifting framework of proof established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973); Reed, 95 F.3d at 1178. Petitioner must

first establish a prima facie case of discrimination or retaliation. McDonnell Douglas, 411 U.S. at 802; Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1345 (11th Cir. 2000). If Petitioner fails make a prima facie case, the inquiry ends. See Ratliff v. State, 666 So. 2d 1008, 1013 n.6 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (1996) (citing Arnold v. Burger Queen Sys., 509 So. 2d 958 (Fla. 2d DCA 1987)). A preponderance of evidence does not establish a prima facie case of discrimination.

29. In order to establish a prima facie case of race discrimination, a preponderance of the evidence must show that Petitioner is a member of a protected class, that she suffered an adverse employment action, that she received disparate treatment compared to similarly-situated individuals in a non-protected class, and that there is sufficient evidence of bias to infer a causal connection between her race, color or sex and the disparate treatment. Rosenbaum v. Southern Manatee Fire and Rescue Dist., 980 F. Supp. 1469 (M.D. Fla. 1997); Andrade v. Morse Operations, Inc., 946 F. Supp. 979, 984 (M.D. Fla. 1996).

30. A preponderance of the evidence does not show that Petitioner received disparate treatment compared to similarly-situated individuals, or that the alleged disparate treatment was causally connected to Petitioner's race, color or sex. A preponderance of the evidence does not show disparate treatment

or that any adverse treatment is causally connected to Petitioner's race, color or sex. Failure to establish the last prong of the conjunctive test is fatal to a claim of discrimination. Mayfield v. Patterson Pump Co., 101 F.3d 1371 (11th Cir. 1996); Earley, supra. See also Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

31. If it were determined that Petitioner established a prima facie case of discrimination, the burden shifts to Respondent to articulate a legitimate, non-discriminatory, non-retaliatory reason for the challenged action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 257, 101 S. Ct. 1089, 1096 (1981); Munoz, 223 F.3d at 1345; Turlington v. Atlanta Gas Light Co., 135 F.3d 1428, 1432 (11th Cir. 1998), cert. denied, 119 S. Ct. 405 (1998). Petitioner must then prove by a preponderance of evidence that the reason(s) offered by Respondent for its action(s) are mere pretexts for unlawful discrimination. Id.

32. A preponderance of evidence establishes a legitimate, non-discriminatory, non-retaliatory reason for the challenged termination of the temporary assignment by the employment agency. Respondent no longer needed a temporary receptionist. The testimony of Ms. Ott on this issue is credible and persuasive.

33. In order for Petitioner to establish that she was subjected to a hostile work environment, Petitioner must show, by a preponderance of the evidence, (1) that she belongs to a protected group; (2) that she has been subject to unwelcome harassment; (3) that the harassment was based on a protected characteristic; (4) that the workplace is permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the terms or conditions of employment and to create an abusive working environment; and (5) that the employer is responsible for such environment under either a theory of vicarious or direct liability. Miller v. Kenworth of Dothan, 277 F.3d 1269, 1275 (11th Cir. 2002); Lawrence v. Wal-Mart Stores, Inc., 236 F. Supp. 2d 1314 (M.D. Fla. 2002).

34. A preponderance of the evidence does not show that Petitioner was subjected to a hostile work environment. The alleged statements by Ms. Browne were not made about Petitioner. Nor were the statements sufficiently severe or pervasive to constitute a hostile work environment as a matter of law. See, e.g., Mendoza v. Borden, Inc., 195 F.3d 1238, 1245 (11th Cir. 1999), cert. denied, 529 U.S. 1068 (2000)(actionable harassment must be "sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment"); Gupta v. Florida Board of Regents,

212 F.3d 571, 583 (11th Cir. 2000), cert. denied, 531 U.S. 1076 (2001) ("innocuous statements or conduct, or boorish ones that do not relate to the [protected characteristic] of the actor or of the offended party are not counted"); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)(noting that the "mere utterance of a racial epithet that engenders offensive feelings in an employee but does not alter the conditions of employment, does not present an actionable situation.")

35. It is undisputed that the term "pimp" is not a term reserved exclusively for African-Americans. Petitioner testified at the hearing that she is unaware of the definition of the epithet allegedly referencing Latin-Americans as, "macdaddy." Finally, before asking Ms. Browne what the term "flamers" meant, Petitioner was unaware that Ms. Browne allegedly used the term as a derogatory reference to homosexuals.

36. Petitioner never complained to Respondent about the alleged "unprofessional" behavior of Ms. Browne. Rather, Petitioner notified her employer, the employment agency. When Respondent received information from the employment agency, Respondent reacted quickly and effectively. Respondent is not responsible for the alleged "unprofessional" conduct of

Ms. Browne. Burlington Industries v. Ellerth, 542 U.S. 742, 118 S. Ct. 2257 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275 (1998).

37. To establish a prima facie case of retaliation, Petitioner must show that (a) she engaged in statutorily protected activity, (b) she suffered an adverse employment action, and (c) the adverse employment action was causally connected to the protected activity. Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1388 (11th Cir. 1988). Petitioner did not engage in statutorily protected activity. Petitioner did not charge, testify, assist or participate in any investigation, proceeding, or hearing or opposed any unlawful employment practice. E.E.O.C. v. Total Sys. Servs., Inc., 221 F.3d 1171, 1174 (11th Cir. 2000). An employee's statement or communication cannot be deemed to be in opposition to an unlawful employment practice unless it refers to a specific practice of the employer that is allegedly unlawful. Guess v. City of Miramar, 889 So. 2d 840, 847 (Fla. 4th DCA 2005).

38. A preponderance of the evidence does not establish a prima facie case of retaliation. A preponderance of evidence does not show that Petitioner engaged in statutorily protected activity or that there was a causal connection between Petitioner's "complaint" concerning Ms. Browne's

"unprofessional" behavior and the termination of the assignment by the employment agency.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the final order issued in this proceeding should find that Respondent is not guilty of the allegations made by Petitioner.

DONE AND ENTERED this 7th day of August, 2008, in Tallahassee, Leon County, Florida.

DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of August, 2008.

COPIES FURNISHED:

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Palm Harbor, Florida 34683

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401 East Jackson Street, Suite 2525
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from 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.

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESLIE STOKES,

Petitioner,

vs.

AUTONATION/ LEXUS OF TAMPA BAY,

Respondent.

Case No. 08-0693

PETITIONER'S EXCEPTIONS TO ALJ'S RECOMMENDED ORDER

I told the truth concerning the horrific events that I endured, I followed and abided by all the necessary procedures and policies of both employers and absolutely none of them worked for me.

Hindsight is 20/20 and although I don't regret the decisions and approaches I took to this situation; I wonder what would have happened if I had threw the mucus rippled lemonade in her face or had I took criminal action against her as advised by Deputy Lumpkin because she might have had exposed me to a communicable disease.

I didn't feel dashing her with the drink would provide the correction needed for all of her continuous transgressions against me and humankind. I weighed deeply whether to pursue criminal charges that would possibly ruin a 19 year old young person's life for something their parents didn't teach them. However, my love, kindness and concern for another have ruined my professional temping career, my credibility, and my work references from the agency world and personally have left me "devoid".

Funny, how the gross misspelling of a word can create and afford clever opportunity, for instance the word "jest" was actually "gist" but for lack of consideration for the value of spell check and a dictionary; I submit the power of persuasion to another.

AutoNation's Lexus of Tampa Bay has been recommended for vindication of an apparent wrongdoing and while they could not remember the unfavorable facts and details that surround unpleasant events and although the event took place from Tuesday January 13 - Wednesday January 21st 2004, the only date of clear remembrance for Respondent's staff was January 19th.

However, interviewing me could not be remembered, sending Ms. Browne home could not be remembered, witnessing Ms Browne throwing stuff at me could not be remembered and denies sending me to Clearwater to allow the opportunity to correct the situation. Ms. Tina (Davis) Scotland could not be consider as credible by the fact-finder, since she was not promoted until January 2004 but stated she had not worked with Ms. MaryAnne Brown more than two or three weeks (TR 178:7-17) but Ms. Davis position was full-time receptionist at Tampa location since October 2000 and Ms. Browne employment documents that were presented (TR 180: 7-24) placed the two working together much more than two or three weeks between May 2003 and January 2004 because 1)Two receptionist at the desk during the day (TR: 183:9-25) 2)Ms Ott testify that they used only one receptionist at the desk in Tampa (TR 55:17-19) Therefore, if their testimony is credible than why was I even there - Ms. Browne could have handle the call volume alone; if there sits only one receptionist. Considering there are two sits at the front reception desk, which were used for two receptionists.

Furthermore, Ms. Browne committed all these transgressions against me and others in a 10 day period, therefore it cannot be reasonable believed that Ms (Davis) Scotland didn't encounter any of this discrimination from May 2003 to Jan 2004, they both were Tampa Location front desk receptionists. Some discrimination which I witnessed but there was no one present at the hearing willing to corroborate my version of events because they "could not recall" as introduced in the Respondent attorney's opening statements.

As a general practice Temporary Agency don't send workers on paid interviews unless its 1) Permanent Direct Hire, 2) Temp to Permanent; as general practice agency find the best fit and availability for assignment and send them, if the client doesn't like it or vice versa on to the candidate. I was paid for 2 hours at $9.78 per hour for the interview on Monday January 5th. What happened between 1/5 and 1/13 that the permanent receptionist position I was interviewed for was no more? Had it been filled? Now, was I just temping on a day to day basis- because no one told me? In fact, as general temporary agency

practice I would have been replaced if not the same day the very next day - had this been a mere daily temp assignment. I am a reasonable person and would not have stayed to endure this abuse if this was a mere temporary assignment with absolutely no possibility of permanence. Note: I had been a temp for years by choice because it allowed flexibility, experience and accessibility.

Ms. Browne did not testify because she was not subpoenaed, Petitioner exhausted due diligence in trying to locate Ms Browne without the cooperation of Respondent. Respondent agreed to provide last known address of Ms. Browne when process server got to Lexus of Tampa Bay HR office they were told the attorneys said they could not provide the information without more information on what it is concerning. Petitioner, had absolutely no identifying information for Ms Browne however, there were numerous attempts made on several MaryAnn Browne's throughout Hillsborough, Pinellas, Pasco and Lake Counties Florida to no avail. While Petitioner listed Ms Browne on her list of witness the respondent did not although they proclaim she did it in "jest" (ugh-misspelling) Why wouldn't they want her present.

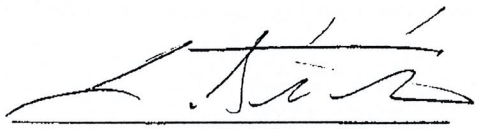
Ms. Janea Maddock did not testify because while she was located working as a plus size model the agency that represents her claimed they couldn't get in contact with her in. Again, Officeteam refused to cooperate in providing identifying information for proper search. Ms. Marsha, the night time temp receptionist again Petitioner needed access to information that Officeteam and the Respondent may of have but refused to provide. Unfortunately, Petitioner no longer had attorney, since Petitioner did not accept Lexus of Tampa Bay settlement offers.

While Respondent's version of events has Ms Browne telling me as a courtesy that she "SPIT" in my drink, I, Petitioner remains firm that Ms Browne "SPIT" in my lemonade in front of me. As well as calling me her "BITCH", calling persons PIMPS, MAC DADDIES, FLAMERS, LESBIANS, FAGS, GAYS, FAIRIES and her stereotyping of "Black People" after I placed her on notice of my discomfort and didn't want that type of behavior around me -- - instead it escalated to physical violence.

On Monday January 19th, I cannot attest to what Ms Ott did other than she didn't interview me about the event, nor was she originally notified on by Ms Maddock on the 1/19 but on Friday 1/16 the day she called and came to the front desk and took me

to a glass office and questioned me. Monday 1/19 Ms Ott interviewed numerous persons for the reception position and I was told that Ms Browne was written up for her behavior.

I am not an attorney so I cannot apply the applicable laws to what happened to me but I affirm that I wrote and spoke the truth concerning the events and circumstances that brought us to this action.



Leslie Stokes
4714 Pleasant Ave
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07-1734

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESLIE STOKES, Petitioner, vs. LEXUS OF TAMPA BAY, Respondent.	)	Case No. 08-0693

RESPONDENT'S PROPOSED RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing in this proceeding for the Division of Administrative Hearings (DOAH) on May 21, 2008, in Tampa, Florida.

APPEARANCES

For Petitioner: Leslie Stokes, pro se
4714 Pleasant Avenue
Palm Harbor, FL 34683

For Respondent: Andrew Froman, Esquire
Alva L. Cross, Esquire
Fisher & Phipps LLP
2525 SunTrust Financial Centre
401 E. Jackson Street
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of her race or color, subjected Petitioner to a hostile work environment, or retaliated against

Petitioner in violation of the Hillsborough County Human Rights Ordinance 00-37, Section 4(1)(a)(1).

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination with the Hillsborough County Human Rights Board ("Hillsborough County") on June 4, 2004. Because her Charge was "dual-filed," Petitioner also filed a Charge with the Equal Employment Opportunity Commission (EEOC) effective the same date.

Hillsborough County investigated the complaint, and on January 8, 2008, issued a "Cause" determination. Pursuant to Hillsborough County Human Rights Ordinance 00-37, the matter was referred to the Division of Administrative Hearings ("DOAH") to conduct an administrative hearing.

At the hearing, Petitioner appeared and testified on her own behalf, presented the testimony of three other witnesses, and submitted seven exhibits for admission into evidence. Respondent cross-examined the four witnesses and submitted seven exhibits for admission into evidence.

The identity of the witnesses and exhibits, and any associated rulings, are set forth in the Transcript of the hearing filed with DOAH on June 27, 2008. Respondent timely filed its Proposed Recommended Order on July 14, 2008.

FINDINGS OF FACT

1. Petitioner is an "aggrieved person" within the meaning of Section 16, Hillsborough County Human Rights Ordinance 00-37.[1] Petitioner is an African-American female and filed a complaint of race, color and gender discrimination, and retaliation, and alleged a hostile work environment with Hillsborough County.

2. Respondent is an "employer" within the meaning of Section 16.[2] Respondent operates a car dealership and is in the business of selling and servicing new and used automobiles and trucks in several states, including Florida.

3. The evidence, in its entirety, does not establish a prima facie showing of discrimination or retaliation. Nor does the evidence prove that Petitioner was subjected to a hostile work environment. Finally, there is no evidence that Respondent engaged in a discriminatory practice within the meaning of Section 16.

4. Respondent first retained Petitioner's services on or around January 13, 2004 as a temporary worker at Lexus of Tampa Bay located on North Dale Mabry Avenue. [Tr. 101:1-2, 197:7] No written employment contract has ever existed between the

[1] References to sections are to Hillsborough County Human Rights Ordinance 00-37, Chapter 16 3/4 Human Rights.
[2] To the extent Petitioner's transfer to Lexus of Clearwater constitutes a retaliatory action, Petitioner presented no evidence to contradict the testimony of Helene Ott that Petitioner was asked to work at Lexus of Clearwater because there was a need for a receptionist at Lexus of Clearwater. [Tr. 75:17-22]

parties, and other than Petitioner's testimony, there is no evidence (written or otherwise) indicating that Petitioner's temporary position was intended to be a permanent position, or that Petitioner was assigned to Lexus of Tampa Bay for six weeks. [Tr. 55:13-16, 82:11-13, 292:2-10]

5. Petitioner's temporary assignment was terminated on or about January 23, 2004 because Respondent no longer needed a temporary employee to fill-in for one of its permanent employees. [Tr. 90:9-91:2]

6. Petitioner's claim of discrimination relates to Ms. Mary Ann Browne, a Caucasian female, and a full-time receptionist who Petitioner alleges subjected her to a hostile work environment. [R-1] Petitioner's claim of retaliation relates to the termination of her temporary assignment with Respondent. [R-1]

7. Petitioner was paired with Respondent's full-time receptionist, Ms. Browne, who was charged with showing Petitioner the responsibilities of a receptionist working for Respondent. [Tr. 197:9-14]

8. Petitioner testified that Ms. Browne behaved in an "unprofessional" manner during the 10 days she was placed with Lexus of Tampa Bay. Specifically, Petitioner asserts that she experienced "verbal aggression - if I don[']t answer her questions or respond to her inquiries she badgers me. jeez!;"

"Racial Undertones - I get a lot of 'why' are black people... [questions];" "Sexual Orientation - ... vulgar comments about homosexuals;" "Selling Prescription Drugs - badgering me for moral confirmation of illegally selling prescription drugs to those who can't afford the prescription;" [and] "profanity." [P-4] In a nutshell, Petitioner described Ms. Browne as "unprofessional," not discriminatory. [Tr. 259:8-260:17]

9. Petitioner would later elaborate on Ms. Browne's "unprofessionalism" and assert that Ms. Browne referred to an African-American employee as a "pimp," referred to a Latin-American employee as a "mac daddy," and referred to two homosexual customers as "flamers." [3] [R-1, Tr. 232:9-18]

10. Petitioner's "dairy" of events, which she testified was created contemporaneously with the alleged events, is devoid of any evidence of racial, color or gender bias. [P-5] Petitioner testified that she left nothing out of her "diary." [Tr. 199:18-202:16]

11. On or about January 19, 2004, Helene "Sam" Ott, Respondent's Lexus Program Coordinator at the time, received a report from Jenea' Maddock of Office Team that Ms. Browne had

[3] Petitioner admitted that a "pimp" was not a term exclusively used to describe black people, and, in fact, acknowledged that it could be used to describe a white person as well. [Tr. 264:16-21] Additionally, and quite tellingly, when asked what a "mac daddy" was, Petitioner was unable to define the term. [Tr. 262:13-16] Further, Petitioner admittedly had "never heard the term 'flamers' before" and, therefore, asked Ms. Browne what that term meant. [Tr. 232:11-12]

been "conducting herself at the front desk in a manner that is inappropriate" for the position. [Tr. 55:1-2, R-5, R-6]

12. Specifically, she learned that Ms. Maddock was first contacted by Ms. Browne, not Petitioner, and that Ms. Browne "expressed concern that [Petitioner] would quit over her 'spitting' in her drink cup in jest." [R-6] Ms. Browne was apologetic to Ms. Maddock regarding her behavior toward Petitioner. [P-5, Tr. 278:9-17] Indeed, Petitioner did not report any "unprofessional conduct" by Ms. Browne until she was contacted by Office Team's Ms. Maddock who called Petitioner to confirm Ms. Browne's story. [Tr. 227:21-228:2]

13. Upon receiving this report, Ms. Ott spoke with both Ms. Stokes and Ms. Browne to find out what happened. [Tr. 100:17-20] This conversation took place on January 19, 2004. [101:14-17]

14. During that conversation, Petitioner told Ms. Ott that she did not actually see Ms. Browne spit into her cup. [Tr. 102:19-21] In fact, at that time, Petitioner did not tell Ms. Ott that anything else had occurred between her and Ms. Browne. [Tr. 102:22-25] The entire discussion concerned Ms. Browne's "spitting" in Petitioner's cup. [Tr. 103:13-16]

15. Petitioner did not discuss with Ms. Ott Ms. Browne's use of swear words, nor did she complain about Ms. Browne's allegedly aggressive physical behavior or Ms. Browne's alleged

use of derogatory or prejudicial terms. [Tr. 103:17-104:8] Therefore, the Respondent cannot be deemed to have knowledge or notice.

16. On January 19, 2004, Ms. Ott issued a written counseling/final warning to Ms. Browne for her use of "offensive language, offensive commentary about customers, unprofessional conduct." [R-4]

17. On January 21, 2004, Ms. Ott needed to fill another temporary vacancy at Lexus of Clearwater and asked Petitioner to go there, and Petitioner went there voluntarily. [Tr. 75:17-22, 288:22-23] Petitioner's temporary assignment ended on January 23, 2004, [P-1] and Ms. Ott, who described Petitioner's performance as "very good," offered to write a letter of reference for Petitioner. [P-1, Tr. 86:23-87:4] Ms. Ott told Petitioner she would consider her for a position at Lexus of Tampa Bay or Lexus of Clearwater if the need arose. [Tr. 135:7-13]

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the parties and the subject matter of this proceeding. Fla. Stat. §§ 120.569, 120.57(1); Sec. 16 3/4-10. The parties received adequate notice of the administrative hearing.

19. Petitioner bears the burden of proof in this proceeding. Petitioner must show by a preponderance of the

evidence that Respondent intentionally discriminated against her on the basis of her race, color or sex or retaliated against her because of activity protected by the discrimination statutes. Reeves v. Sanderson Plumbing Products., Inc., 530 U.S. 133, 142, 120 S. Ct. 2097, 2106 (2000).

20. The burden of proving retaliation follows the general rules enunciated for proving discrimination. Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1178 (2d Cir. 1996). Federal discrimination law may be used for guidance in evaluating the merits of claims arising under Hillsborough County Ordinance 00-37. See Sec. 16 3/4-1; Tourville v. Securex, Inc., Inc., 769 So. 2d 491 (Fla. 4th DCA 2000); Greene v. Seminole Elec. Co-op. Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994).

21. Petitioner can meet her burden of proof with either direct or circumstantial evidence. Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1358 (11th Cir. 1999), cert. denied, 529 U.S. 1109 (2000). Direct evidence must evince discrimination or retaliation without the need for inference or presumption. Standard v. A.B.E.L. Services., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998). In other words, direct evidence consists of "only the most blatant remarks, whose intent could be nothing other than to discriminate," Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990). By

analogy, direct evidence of retaliation must be equally egregious.

22. There is no direct evidence of discrimination or retaliation in this case. In the absence of direct evidence, Petitioner must meet her burden of proof by circumstantial evidence.

23. Circumstantial evidence of discrimination or retaliation is subject to the burden-shifting framework of proof established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973); Reed, 95 F.3d at 1178. Petitioner must first establish a prima facie case of discrimination or retaliation. McDonnell Douglas, 411 U.S. at 802; Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1345 (11th Cir. 2000), If she fails to do so, the inquiry ends. See Ratliff v. State, 666 So. 2d 1008, 1013 n.6 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (1996) (citing Arnold v. Burger Queen Sys., 509 So. 2d 958 (Fla. 2d DCA 1987)). If Petitioner establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory, non-retaliatory reason for the challenged action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 257, 101 S. Ct. 1089, 1096 (1981); Munoz, 223 F.3d at 1345; Turlington v. Atlanta Gas Light Co., 135 F.3d 1428, 1432 (11th Cir. 1998), cert. denied, 119 S. Ct. 405 (1998). Petitioner must then prove by a preponderance of

evidence that the reason(s) offered by Respondent for its action(s) are mere pretexts for unlawful discrimination. Id.

24. In order to establish a prima facie case of race discrimination, a preponderance of the evidence must show that Petitioner is a member of a protected class, that she suffered an adverse employment action, that she received disparate treatment compared to similarly-situated individuals in a non-protected class, and that there is sufficient evidence of bias to infer a causal connection between her race, color or sex and the disparate treatment. Rosenbaum v. Southern Manatee Fire and Rescue Dist., 980 F. Supp. 1469 (M.D. Fla. 1997); Andrade v. Morse Operations, Inc., 946 F. Supp. 979, 984 (M.D. Fla. 1996).

25. In order to establish that she was subjected to a hostile work environment, Petitioner must show, by a preponderance of the evidence, that (1) she belongs to a protected group; (2) has been subject to unwelcome harassment; (3) that the harassment was based on a protected characteristic; (4) that the workplace is permeated with discriminatory intimidation, ridicule and insult sufficiently severe or pervasive to alter the terms or conditions of employment and to create an abusive working environment; and (5) that the employer is responsible for such environment under either a theory of vicarious or direct liability. Miller v. Kenworth of Dothan, 277

F.3d 1269, 1275 (11th Cir.2002); Lawrence v. Wal-Mart Stores, Inc., 236 F.Supp.2d 1314 (M.D.Fla. 2002).

26. In this case, a preponderance of the evidence does not show that Petitioner received disparate treatment compared to similarly situated individuals, or that the alleged disparate treatment was causally connected to Petitioner's race, color or sex. In truth, there is no evidence whatsoever of disparate treatment or that any adverse treatment is causally connected to Petitioner's race, color or sex. Failure to establish the last prong of the conjunctive test is fatal to a claim of discrimination. Mayfield v. Patterson Pump Co., 101 F.3d 1371 (11th Cir. 1996); Earley, supra. See also Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

27. Neither does a preponderance of the evidence establish that Petitioner was subjected to a hostile work environment. The alleged statements by Ms. Browne were not made about Petitioner nor were they sufficiently severe or pervasive to constitute a hostile work environment as a matter of law. See, e.g., Mendoza v. Borden, Inc., 195 F.3d 1238, 1245 (11th Cir. 1999), cert. denied, 529 U.S. 1068 (2000) (actionable harassment must be "sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment"); Gupta v. Florida Board of Regents

212 F.3d 571, 583 (11th Cir. 2000), cert. denied, 531 U S. 1076 (2001) ("Innocuous statements or conduct, or boorish ones that do not relate to the [protected characteristic] of the actor or of the offended party are not counted"); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)(noting that the "mere utterance of a racial epithet that engenders offensive feelings in an employee but does not alter the conditions of employment, does not present an actionable situation.")

28. For example, Petitioner readily admitted that the purportedly derogatory term "pimp," was not a term reserved exclusively for African-Americans. [Tr. 264:16-21] Likewise, she admittedly was unaware of the definition of the epithet allegedly referencing Latin-Americans, "mac daddy." [Tr. 262:13-16] Finally, before asking Ms. Browne what the term "flamers" meant, she was blissfully unaware that it was a derogatory reference to homosexuals. [Tr. 232:11-12]

29. Respondent maintained an effective and well-known Policy Prohibiting Harassment. [R-2, R-7] Petitioner never complained to Respondent about the alleged "unprofessional" behavior, but instead notified her employer, Office Team, who, in turn, notified Respondent of the "unprofessional" behavior of one of its permanent employees. [Tr. 91:13-94:1, R-5] And, when Respondent received information from Ms. Maddock with Office Team concerning Ms. Browne's "unprofessionalism," it reacted

quickly and effectively. [R-4, 5] Therefore, Respondent cannot be held liable for the alleged "unprofessional" conduct of Ms. Browne. Burlington Industries v. Ellerth, 542 U.S. 742, 118 S. Ct. 2257 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275 (1998).

30. To establish a prima facie case of retaliation, Petitioner must show that (a) she engaged in statutorily protected activity; (b) she suffered an adverse employment action and (c) the adverse employment action was causally connected to the protected activity. Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1388 (11th Cir. 1988).

31. To engage in statutorily protected activity, Petitioner must have "made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing" or "opposed any practice made an unlawful employment practice by [the applicable statute]." E.E.O.C. v. Total Sys. Servs., Inc., 221 F.3d 1171, 1174 (11th Cir. 2000). Notably, however, "an employee's statement or communication cannot be deemed to be in opposition to an unlawful employment practice unless it refers to a specific practice of the employer that is allegedly unlawful." Guess v. City of Miramar, 889 So.2d 840, 847 (Fla. 4th DCA 2005).

32. Petitioner did not establish a prima facie case of retaliation. A preponderance of evidence does not show that

Petitioner engaged in statutorily protected activity, nor did Petitioner demonstrate that there was a causal connection between her "complaint" concerning Ms. Browne's "unprofessional" behavior and the termination of her temporary assignment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Commission enter a final order finding that Respondent did not violate Section 16 of the Hillsborough County Human Rights Act and dismissing the Charge of Discrimination.

DONE AND ENTERED this _____ day of July, 2008, in Tallahassee, Leon County, Florida.

DANIEL MANRY
Administrative Law Judge
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from 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.