

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

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JEANETTE V. COX,

EEOC Case No. 15D200603639

Petitioner,

FCHR Case No. 2006-01708

v.

DOAH Case No. 08-1117

GULF BREEZE RESORTS  
REALTY, INC.,

FCHR Order No. 09-037

Respondent.

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

Preliminary Matters

Petitioner Jeanette V. Cox 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 Gulf Breeze Resorts Realty, Inc., committed unlawful employment practices by sexually harassing Petitioner, and harassing and terminating Petitioner because of her sex (female) and age (DOB: 7-30-38).

The allegations set forth in the complaint were investigated, and, on February 5, 2008, 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 on August 26, 2008, in Clearwater, Florida, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of dismissal, dated January 29, 2009.

Pursuant to notice, public deliberations were held on April 9, 2009, 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.

In discussing Petitioner's claim of age discrimination, the Administrative Law Judge made reference to the age of "40" at three places in the Recommended Order.

Specifically, the Administrative Law Judge noted that two thirds of the sales representatives in Respondent's office "were over 40 years old" (Recommended Order, ¶ 10); in discussing whether a prima facie case of age discrimination had been established the Administrative Law Judge noted that Petitioner established that she was a member of the protected class "in that she is over 40 years old" (Recommended Order, ¶ 92); and, finally, in discussing an individual as a possible comparative to Petitioner, the Administrative Law Judge noted that based on the evidence presented "it can not be determined that he is under 40, and outside the protected class" (Recommended Order, ¶ 93).

Commission panels have concluded that one of the elements for establishing a prima facie case of age discrimination under the Florida Civil Rights Act of 1992 is a showing that individuals similarly-situated to Petitioner of a "different" age were treated more favorably, and Commission panels have noted that the age "40" has no significance in the interpretation of the Florida Civil Rights Act of 1992. See, e.g., Downs v. Shear Express, Inc., FCHR Order No. 06-036 (May 24, 2006), and cases and analysis set out therein; see also, Boles v. Santa Rosa County Sheriff's Office, FCHR Order No. 08-013 (February 8, 2008), and cases and analysis set out therein.

Consequently, we yet again note that the age "40" has no significance in the interpretation of the Florida Civil Rights Act of 1992. Accord, e.g., Toms v. Marion County School Board, FCHR Order No. 07-060 (November 7, 2007), and Stewart v. Pasco County Board of County Commissioners, d/b/a Pasco County Library System, FCHR Order No. 07-050 (September 25, 2007).

In our view, no error has been made in the ultimate recommended disposition of this case, because the Administrative Law Judge concluded that even if a prima facie case of age discrimination had been established, Respondent articulated a legitimate nondiscriminatory reason for terminating Petitioner (insubordination for failing to leave the building after being asked to do so), and there was no showing that this reason was a pretext for unlawful discrimination. Recommended Order, ¶ 94 and ¶ 95.

With this comment, we adopt the Administrative Law Judge's conclusions of law.

### Exceptions

Petitioner filed exceptions to the Recommended Order in a document entitled, "Notice of Right to Submit Exceptions," received by the Commission on February 12, 2009. Petitioner also filed on February 12, 2009, and two-page supplement / correction to her exceptions document. This latter document was treated by the Commission as an ex parte communication and was published and provided to Respondent in a Notice of Ex Parte Communication, issued by the Commission on February 18, 2009.

The numbering system of the exceptions document is difficult to discern.

From a content standpoint, it can be said that the document takes issue with facts found (page 7 of exceptions document under "Subjective"; page 10 of exceptions document under "89"; page 11 of exceptions document, all material presented), facts not found (page 2 of exceptions document under "Page 5 – paragraph 11"; page 4 of exceptions document, first two paragraphs continuing from page 3; page 4 of exceptions document under "15"; page 5 of exceptions document under "20"; page 7 of exceptions document under "82"), inferences drawn from evidence presented (page 5 of exceptions document under "21-70," "71," "72," and "22"; page 8 of exceptions document, all material presented) and/or simply presents additional argument (page 1 of exceptions document, all material presented; page 2 of exceptions document under "Page 6" and under "Page 6-7"; page 3 of exceptions document, all material presented; page 4 of exceptions document under "13-39," "14," "15-48," "16," "17," and "18"; page 6 of exceptions document, all material presented; page 9 of exceptions document, all material presented; page 10 of exceptions document under "90," "91 and 92," "93" and "95").

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).

Petitioner's exceptions are rejected.

### Dismissal

All motions pending before the Commission are disposed of by this Order.

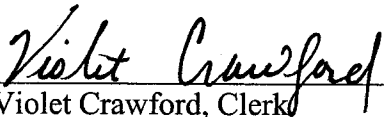
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 13<sup>th</sup> day of April, 2009.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Elena Flom; and  
Commissioner Billy Whitefox Stall

Filed this 13<sup>th</sup> day of April, 2009,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 200  
Tallahassee, FL 32301  
(850) 488-7082

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:

Jeanette V. Cox  
801 Chestnut Street  
Apartment 1603  
Clearwater, FL 33756

Gulf Breeze Resorts Realty, Inc.  
c/o Richard W. Epstein, Esq.  
c/o Myrna L. Maysonet, Esq.  
Greenspoon Marder, P.A.  
201 East Pine Street, Suite 500  
Orlando, FL 32801

Carolyn S. Holifield, 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 13<sup>th</sup> day of April, 2009.

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