

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LATONIA M. ENZOR,)
)
 Petitioner,)
)
 vs.) Case No. 08-1228
)
 FLORIDA DEVELOPERS, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A hearing was held pursuant to notice, on June 13, 2008, in Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Latonia M. Enzor, pro se
3535 Roberts Avenue, Number 274
Tallahassee, Florida 32310

For Respondent: Frank Williams, President
Florida Developers, Inc.
642 West Brevard Street
Tallahassee, Florida 32305

STATEMENT OF THE ISSUE

Is Respondent, Florida Developers, Inc. an employer as defined in Section 760.02(7), Florida Statutes (2007), for purposes of conferring jurisdiction on the Florida Commission on Human Relations (FCHR) to consider the Charge of Discrimination filed by Petitioner Letonia M. Enzor against Respondent?

PRELIMINARY STATEMENT

On or about June 12, 2007, Petitioner filed a Charge of Discrimination with FCHR naming "Florida Developers, Inc. of Tallahassee" as the offending employer. The allegations were investigated, and on November 13, 2007, FCHR entered a Determination: No Jurisdiction and issued a Notice of Determination: No Jurisdiction. The basis for the determination was that FCHR lacked jurisdiction over the complaint in that FCHR determined that Coastal was not an "employer" in accordance with Section 760.02(7), Florida Statutes, because Petitioner was an employee of Tallahassee Contractors, not Respondent.

A Petition for Relief was filed by Petitioner on or about March 10, 2008. FCHR transmitted the case to the Division of Administrative Hearings on or about March 12, 2008. A Notice of Hearing was issued setting the case for formal hearing June 3, 2008. Petitioner filed a request for continuance which was granted. The hearing was rescheduled for June 13, 2008, and proceeded as scheduled.

At hearing, Petitioner testified in her own behalf and did not offer any exhibits. Respondent presented the testimony of Frank Williams. Respondent's Exhibits numbered 1 and 2 were admitted into evidence.

The hearing was not transcribed. The parties timely filed post-hearing written submissions which have been considered in preparing this Recommended Order.

Unless otherwise indicated, all references are to Florida Statutes (2007).

FINDINGS OF FACT

1. Petitioner, Latonia Enzor, was employed by Tallahassee Contractors, LLC, as a truck driver sometime in 2006. The exact dates of her employment are not in evidence, but Petitioner's Employment Complaint of Discrimination alleges that the most recent discrimination took place on June 1, 2007. Tallahassee Contractors is a trucking company.

2. Respondent, Florida Developers, Inc. (Florida Developers), is a general contractor and underground utility contractor. Florida Developers has been in the contracting business for 27 years.

3. Frank Williams is President of Florida Developers.

4. Mr. Williams is also a managing partner of Tallahassee Contractors, which has been in business for about two years.

5. Ms. Enzor acknowledges that she did not fill out an employment application with Florida Developers, never received a paycheck from Florida Developers, and was never told that she was an employee of Florida Developers.

6. Ms. Enzor remembers signing some papers that had Florida Developers' name on it when she was first employed by Tallahassee Contractors. However, the papers themselves nor the nature of any such papers are in evidence.

7. Ms. Enzor believes that Tallahassee Contractors, Florida Developers, and a third company, Sandco, Inc., are interrelated businesses.

8. According to Mr. Williams, the three companies which Ms. Enzor believes are related, are separate companies. This testimony is accepted as credible and found as fact.

9. Any action taken by Mr. Williams regarding Ms. Enzor's employment with Tallahassee Contractors was in his capacity as a managing partner for Tallahassee Contractors, not as president of Florida Developers.

10. No corporate documents are in evidence. No competent evidence was presented that Respondent and Tallahassee Contractors are highly integrated with respect to ownership and operations.

11. Petitioner also filed Employment Complaints of Discrimination against Tallahassee Contractors and Sandco, Inc., see Latonia Enzor v. Tallahassee Contractors, Inc., DOAH Case No. 08-1227 (Recommended Order entered May 20, 2008), and Latonia Enzor v. Sandco, Inc., DOAH Case No. 08-1229 (Recommended Order of Dismissal entered June 4, 2008).

CONCLUSIONS OF LAW

12. For purposes of this proceeding the Division has jurisdiction over the parties and the limited subject matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Section 760.02(7), Florida Statutes.

13. This case concerns the question of whether jurisdiction resides with FCHR to investigate Petitioner's Employment Charge of Discrimination. In particular, is the named Respondent an "employer" subject to the Florida Civil Rights Act of 1992. Section 760.02(7), Florida Statutes, defines the meaning of "employer" as follows:

'Employer' means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

14. Petitioner bears the burden to establish her claim consistent with the criteria above. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). Petitioner must establish this proof by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

15. The Florida Civil Rights Act on job discrimination is patterned after Title VII of the Civil Rights Act 1964, 42 U.S.C. § 2000e-2. In instances in which a Florida Statute is modeled after a federal law on the same subject, the Florida statute will take on the same construction as the federal law if such interpretation is harmonious with the spirit and policy of the Florida legislation. Brand v. Florida Power Corporation, 633 So. 2d 504, (Fla. 1st DCA 1994). See School Board of Leon County v. Hargis and the Florida Commission on Human Relations, 400 So. 2d 103 (Fla. 1st. DCA 1981).

16. Petitioner asserts that Respondent, Florida Developers, and Tallahassee Contractors are interrelated companies. To establish this, these companies must by extension of Title VII case law meet the "single employer" or "integrated enterprise" test. This test is one established in relation to Title VII actions. In that setting, it is recognized by the courts as being part of a liberal construction pertaining to the term "employer" set forth in Title VII. See Lyes v. the City of Rivera Beach, Florida, 166 F.3d 1332, 1341 (11th Cir. 1999). The court in Lyes explained at 1341:

In keeping with this liberal construction, we sometimes look beyond the nominal independence of an entity and ask whether two or more ostensibly separate entities should be treated as a single, integrated enterprise when determining whether a plaintiff's 'employer' comes within the coverage of Title VII.

We have identified three circumstances in which it is appropriate to aggregate multiple entities for the purposes of counting employees. First, where two ostensibly separate entities are 'highly integrated with respect to ownership and operations,' we may count them together under Title VII. McKenzie, 834 F.2d at 933 (quoting Fike v. Gold Kist, Inc., 514 F.Supp. 722, 726 (N.D.Ala.), aff'd, 664 F.2d 295 (11th Cir. 1981)). This is the 'single employer' or "integrated enterprise" test.

In determining whether two non-governmental entities should be consolidated and counted as a single employer, we have applied the standard promulgated in NLRA cases by the National Labor Relations Board. See, e.g., McKenzie, 834 F.2d at 933. This standard sets out four criteria for determining whether nominally separate entities should be

treated as an integrated enterprise. Under the so-called 'NLRB test,' we look for '(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.' . . .

17. There is no evidence to establish that Ms. Enzor was ever an employee of Respondent, Florida Developers. Ms. Enzor's general beliefs and suspicions about these companies is simply insufficient evidence to establish that Tallahassee Contractors and Florida Developers have an interrelation of operations, centralized control of labor relations, common management, or common ownership or financial control to be treated as an integrated enterprise.

18. Therefore, the Commission is without jurisdiction to proceed with the processing of Petitioner's Employment Charge of Discrimination.

RECOMMENDATION

Upon the consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered by the Commission finding that it is without jurisdiction to proceed in this case based upon Petitioner's failure to show that Respondent is "an employer" as defined in Section 760.02(7), Florida Statutes.

DONE AND ENTERED this 10th day of July, 2008, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of July, 2008.

COPIES FURNISHED:

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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.