

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ALEJANDRO LORENZO, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-1433  
 )  
 MIAMI-DADE COUNTY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing, by videoconference, in Tallahassee, Florida, on April 27, 2009. The parties, attorneys for the parties, witnesses, and court reporter participated by videoconference in Miami, Florida.

APPEARANCES

For Petitioner: Erwin Rosenberg, Esquire  
Post Office Box 416433  
Miami Beach, Florida 33141

For Respondent: Eric A. Rodriguez, Esquire  
Office of Dade County Attorney  
111 Northwest First Street, Suite 2810  
Miami, Florida 33128

STATEMENT OF THE ISSUE

The issue is whether Respondent is guilty of employment discrimination against Petitioner.

PRELIMINARY STATEMENT

On March 4, 2008, the Florida Commission on Human Relations (FCHR) issued a Right to Sue letter. The letter acknowledges that Petitioner dual-filed with FCHR and the U.S. Equal Employment Opportunity Commission, which had issued a letter stating that it was unable to conclude that the information obtained during its investigation established violations of the statutes. The FCHR letter advises Petitioner that he may pursue relief in the Division of Administrative Hearings by filing a Petition for Relief within 15 days.

By Petition for Relief filed March 17, 2008, Petitioner alleged that he is Hispanic, and Respondent's supervisor demoted him for an act that, when done by nonHispanics, has not resulted in demotions.

The case was set for hearing and continued three times before it was transferred to the undersigned Administrative Law Judge.

At the hearing, Petitioner called two witnesses and offered into evidence five exhibits: Petitioner Exhibits 1-5. Respondent called one witness and offered into evidence no exhibits. All exhibits were admitted except Petitioner Exhibits 3 and 4, which were proffered.

The court reporter filed the one-volume Transcript on July 13, 2009. Respondent filed its Proposed Recommended Order on August 24, 2009.

FINDINGS OF FACT

1. Petitioner was born in Spain and is of Hispanic origin. At all material times, he has been employed by Respondent. Since 1992, he has been employed as a truck driver.

2. At the time of the incident described below, Respondent was a Waste Truck Driver. His job was to drive a 66,000-pound truck in Miami to collect garbage from the utility customers.

3. On February 28, 2006, Petitioner was operating his truck along Northwest 54th Street. This is a major east-west arterial through central Dade County. At the location of the incident, this busy road contains five lanes of traffic.

4. Leaving a strip mall, from which he had just collected garbage, Petitioner drove the truck across this arterial, crossing double-yellow lines in the middle, in order to save time in driving to the next pick-up location. Petitioner was not at an intersection and knew that the double-yellow lines meant that his maneuver was illegal. Petitioner "explains" that he chose to do this maneuver at the urging of the Waste Collectors riding on the back of the truck and with the knowledge that other truck drivers had done it too.

5. Unable to clear all of the lanes at one time, Petitioner was forced to stop the truck around the middle of the highway at an angle closer to perpendicular than parallel to the direction of the traffic flowing around him. A collision resulted when a passenger car tried to pass the garbage truck on the left at the same time that Petitioner moved his truck forward to try to complete his maneuver.

6. After an investigation, Petitioner's supervisor, who is black, decided to demote him to Waste Collector, which resulted in a small decrease in pay, but presumably less-preferred tasks involving more direct contact with solid waste. The supervisor weighed Petitioner's substantial experience with Respondent as a driver against the facts that he could have prevented this accident, even though he did not receive a citation, and that he has had five other preventable accidents while driving Respondent's vehicles. Respondent had previously required Petitioner to take good-driving courses on three occasions due to avoidable accidents. He had also been given progressive discipline for his driving mishaps, culminating in an eight-day suspension for his last accident, which was in December 2004.

7. Petitioner claimed to his supervisor that he had done nothing wrong, that he had not violated any rules, and that everyone drives like he did. The supervisor was unfavorably impressed by his failure to accept responsibility for the

accident and his nonchalant attitude. The supervisor legitimately concluded that this attitude combined with Petitioner's driving history unreasonably raised the risk of additional accidents caused by Petitioner.

8. Petitioner's attempt to show disparate treatment was unpersuasive. Either similar discipline was imposed for a similar number of similar offenses, supervising personnel were different, or the similarity of past offenses could not be determined.

9. Petitioner's supervisor testified that she did not demote him because he is Hispanic, and this testimony is credited.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 760.11(6), Fla. Stat. (2009).

11. Section 760.10(1)(a), Florida Statutes, prohibits discrimination in employment on the basis of national origin.

12. In Valenzuela v. GlobeGround North America, LLC, \_\_ So. 3d \_\_, 2009 Fla. App. LEXIS 11586 (Fla. 3d DCA 2009), the court acknowledged that Florida follows the "three-part framework" of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973), for establishing, by circumstantial evidence, a discrimination claim based on disparate treatment in the

workplace. The court explained that a plaintiff must establish, by a preponderance of the evidence, a prima facie case of discrimination. If a prima facie showing is made, the burden of proof shifts to the employer to prove a legitimate reason for the adverse employment action. If the employer meets its burden, the plaintiff must prove that the "legitimate" reason was a pretext for discrimination.

13. Here, Petitioner has failed to prove a prima facie case of discrimination. He caused an accident by driving a large garbage truck in a careless manner. It was his sixth avoidable accident. He accepted no responsibility for this accident. The adverse job action--demotion--cost him little money and was, obviously, less than dismissal. Petitioner failed to prove that nonHispanics similarly situated were treated differently. If he had proved a prima facie case, Respondent has met its burden of proving a legitimate business reason--i.e., public safety--for the demotion.

#### RECOMMENDATION

Based on the foregoing,

It is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 11th day of September, 2009, in  
Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
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 11th day of September, 2009.

COPIES FURNISHED:

Erwin Rosenberg, Esquire  
Post Office Box 416433  
Miami Beach, Florida 33141

Eric A. Rodriguez, Esquire  
Office of Dade County Attorney  
111 Northwest First Street, Suite 2810  
Miami, Florida 33128-1930

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Larry Kranert, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

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.