

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

ROBINSON NELSON,

EEOC Case No. 130200600440

Petitioner,

FCHR Case No. 2008-00892

v.

DOAH Case No. 08-1436

ALUTHIQ-MELE, LLC,

FCHR Order No. 08-063

Respondent.

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

Preliminary Matters

Petitioner Robinson Nelson 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 Aluthiq-Mele, LLC, committed unlawful employment practices on the basis of Petitioner's race (Black) by denying Petitioner work hours and overtime hours. (The Petition for Relief also included allegations of National Origin discrimination – Petitioner is Haitian – and whether these allegations could be subsequently raised was an issue in the case.)

The allegations set forth in the complaint were investigated by the Equal Employment Opportunity Commission.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings (DOAH) for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference on June 11, 2008, at sites in Tallahassee and Miami, Florida, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal, dated July 23, 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 filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Exceptions to ALJ's Recommended Order." The document was filed with DOAH on August 4, 2008. While the exceptions document was sent to DOAH rather than the Commission, it was filed with DOAH within fifteen days after the issuance of the Recommended Order, and therefore is deemed timely filed. Accord, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), Lucas v. Department of Children and Family Services, FCHR Order No. 07-023 (March 12, 2007), Harris v. Lake County School District, FCHR Order No. 06-057 (June 20, 2006), Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

The document contains two exceptions.

The first appears to except to the Administrative Law Judge's finding that no adverse employment action occurred with regard to the overtime issue presented. It should be noted that while, in the conclusions of law, the Administrative Law Judge indicated that *at most* Petitioner was disappointed *on one occasion* when his request to work an extra shift was denied (Recommended Order, ¶ 20), the findings of fact made by the Administrative Law Judge call into question whether the request for overtime was ever made in the first place (Recommended Order, ¶ 4 and ¶ 5).

The second excepts to the finding that the Administrative Law Judge's conclusion that the alleged denial of "equal" hours was *at most* a miscommunication between Respondent and Petitioner.

It should also be noted that in each exception paragraph, Petitioner makes the point that Respondent did not proffer a legitimate business reason for the disparate treatment contained therein. In our view, there is no finding in the Recommended Order to support this statement. Rather, the Recommended Order concludes that because Petitioner failed to establish a *prima facie* case of discrimination in each instance alleged, the burden

never shifted to Respondent to articulate a legitimate nondiscriminatory reason for its actions, and that, therefore, it was unnecessary to make any findings in this regard. Recommended Order, ¶ 22.

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).

Based on the foregoing, Petitioner's exceptions are rejected.

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.



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John G. Van Laningham, 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: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations