

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TONJA J. HUNT,

EEOC Case No. 510200604713

Petitioner,

FCHR Case No. 2007-00077

v.

DOAH Case No. 08-1516

SEARS HOME IMPROVEMENTS, INC.,

FCHR Order No. 09-059

Respondent.

2009 JUL -2 A 10:52
DIVISION OF
ADMINISTRATIVE
HEARINGS
FILED

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

Preliminary Matters

Petitioner Tonja J. Hunt 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 Sears Home Improvements, Inc., committed an unlawful employment practice on the basis of Petitioner's sex (female) by sexually harassing Petitioner.

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 for the conduct of a formal proceeding.

An evidentiary hearing was held in Orlando, Florida, on March 4, 2009, before Administrative Law Judge Susan B. Harrell.

Judge Harrell issued a Recommended Order of dismissal, dated April 15, 2009.

The Commission panel designated below considered the record of this matter and 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 Recommended Order," received by the Commission on April 22, 2009.

By page and line number, Petitioner's document takes exception to nine indicated portions of the findings of fact. The document does not explain what Petitioner's exception is to each of these findings. Also, the Recommended Order is seventeen pages, but eight of the nine indicated exceptions refer to page numbers greater than seventeen. In addition, the document indicates that Petitioner excepts to the conclusions of law, seemingly arguing with the Administrative Law Judge's ultimate finding that Respondent could not be held liable for any sexual harassment that might have occurred.

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).

In addition, it is well settled that since an Administrative Law Judge's finding of whether discrimination occurred is a finding of fact, the Commission may overturn such a finding only if, after reviewing the complete record of the case, the Commission determines that the finding is not supported by competent substantial evidence in the record or that the proceeding leading to the determination did not comply with the essential requirements of law. See, Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1210 (Fla. 1st DCA 1991); accord Alexander, et al. v. Solid Wall Systems, FCHR Order No. 08-024 (April 14, 2008) and Perry v. Embry-Riddle Aeronautical University, FCHR Order No. 07-048 (September 7, 2007).

Petitioner's exceptions are rejected.

Dismissal

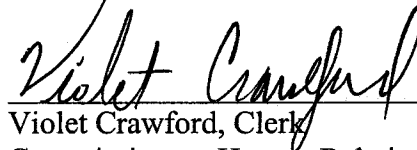
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 1st day of July, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Mario M. Valle

Filed this 1st day of July, 2009,
in Tallahassee, Florida.



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

Copies furnished to:


Tonja J. Hunt
516 Windchase Boulevard
Sanford, FL 32773

Sears Home Improvements, Inc.
c/o Donald C. Works, Esq.
Jackson Lewis LLP
390 North Orange Avenue, Suite 1285
Orlando, FL 32801

Susan B. Harrell, 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 1st day of July, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations