

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LAUREN M. BUECKER,

EEOC Case No. 15D200700743

Petitioner,

FCHR Case No. 2007-02186

v.

DOAH Case No. 08-2132

TT OF SAND LAKE, INC., d/b/a
CENTRAL FLORIDA CHRYSLER JEEP
DODGE,

FCHR Order No. 09-010

Respondent.

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

Preliminary Matters

Petitioner Lauren M. Buecker 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 TT of Sand Lake, Inc., d/b/a Central Florida Chrysler Jeep Dodge, committed unlawful employment practices on the basis of Petitioner's sex (female) by subjecting Petitioner to sexual harassment and terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on March 20, 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 in Orlando, Florida, on August 13 and 14, 2008, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated November 13, 2008.

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

Neither party filed exceptions to the Administrative Law Judge's Recommended Order taking issue with the Administrative Law Judge's recommended outcome of the case.

Respondent filed exceptions to the Recommended Order, in a document received by the Commission on December 1, 2008, entitled, "Respondent's Exception to the Recommended Order," indicating that "[t]o the extent that the Recommended Order prohibits or otherwise does not allow Respondent to pursue its claim for attorney's fees and costs, Respondent takes exception to the Recommended Order."

We conclude that the Recommended Order does not preclude the prevailing party from pursuing attorney's fees and costs upon the issuance of this Order. Indeed, it is only upon the issuance of this Order that it becomes known which party is the prevailing party.

To this extent, Respondent's exception is accepted. See, generally, Quintero v. City of Coral Gables, FCHR Order No. 07-030 (April 20, 2007).

We note that nothing in this ruling on Respondent's exception is to be construed that Respondent is actually entitled to attorney's fees and costs as the prevailing party. In our view, that issue has not yet been placed before the Commission.

Dismissal

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

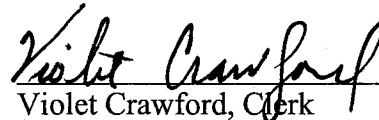
It is the Commission's position that this Order resolves all issues related to the relinquishment to the Commission by the Division of Administrative Hearings of jurisdiction over matters raised in Division of Administrative Hearings Case No. 08-6224F.

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 27th day of January, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Patty Ball Thomas

Filed this 27th day of January, 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:

Lauren M. Buecker
c/o Jeremy K. Markman, Esq.
King & Markman, P.A.
4767 New Broad Street
Orlando, FL 32814


TT of Sand Lake, Inc., d/b/a Central Florida Chrysler Jeep Dodge
c/o Donald St. Denis, Esq.
c/o Michael J. Lufkin, Esq.
St. Denis & Davey, P.A.
1300 Riverplace Boulevard, Suite 101
Jacksonville, FL 32207

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Daniel Manry, 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 27th day of January, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations

DC

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAUREN M. BUECKER,)
)
 Petitioner,)
)
 vs.)
)
 TT OF SAND LAKE, INC. D/B/A)
 CENTRAL FLORIDA CHRYSLER)
 JEEP DODGE,)
)
 Respondent.)
 _____)

Case No.: 08-2132
 FCHR No.: 2007-02186
 EEOC No.: 15D200700743

RESPONDENT'S EXCEPTION TO THE RECOMMENDED ORDER

Respondent, TT OF SAND LAKE, INC., d/b/a CENTRAL FLORIDA CHRYSLER JEEP DODGE (hereinafter referred to as "Respondent"), by and through its undersigned counsel, hereby files this Exception to the Recommended Order issued on November 13, 2008 by Administrative Law Judge, Daniel Manry, of the Florida Division of Administrative Hearings, and states as follows:

1. In paragraph sixty-one (61) of the Recommended Order, the Administrative Law Judge found that Respondent did not file a Motion for Attorney's Fees and Costs prior to the entry of the Recommended Order, nor did Respondent submit evidence of the amount and reasonableness of any claim for fees and costs.

2. Respondent specifically made a claim for attorneys' fees and costs. On October 14, 2008, Respondent filed its Proposed Recommended Order with the Division of Administrative Hearings. In paragraph ninety-nine (99), Respondent set forth that, as a prevailing party, it was entitled to recovery of a reasonable award of attorneys' fees and costs.

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3. Pursuant § 760.11, Florida Statutes, “[i]n any action or proceeding under this subsection, the [Florida Commission on Human Relations] (hereinafter referred to as the “Commission”), in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.” § 760.11(7), Fla. Stat. (2004).

4. Further, the Commission has previously entertained requests for attorneys' fees and costs under the Florida Civil Rights Act of 1992 by a prevailing party after the Commission had issued its Final Order. *See e.g. Haynes v. Putnam County Sch. Bd.*, FCHR Order No. 04-162 (December 23, 2004).

5. It was Respondent's understanding and belief that the respective claims for attorneys' fees and costs by both Petitioner and Respondent were deferred until after the merits of the case were determined by the Commission's entry of a Final Order.

6. To the extent that the Recommended Order prohibits or otherwise does not allow Respondent to pursue its claim for attorneys' fees and costs, Respondent takes exception to the Recommended Order.

WHEREFORE, Respondent, TT OF SAND LAKE, INC., d/b/a CENTRAL FLORIDA CHRYSLER JEEP DODGE, respectfully requests that the Florida Commission on Human Relations grant and adopt the above Exception to the Recommended Order.

ST. DENIS & DAVEY, P.A.**DONALD W. ST. DENIS, ESQUIRE**

Florida Bar Number 0794864

MICHAEL J. LUFKIN, ESQUIRE

Florida Bar Number 0152366

1300 Riverplace Boulevard, Suite 101

Jacksonville, FL 32207

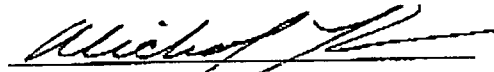
(904)396-1996 (Telephone)

(904)396-1991 (Facsimile)

Attorneys for Respondent, TT of Sand Lake, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 25th day of November, 2008, to **Jeremy K. Markman**, *Attorney for Petitioner*, King & Markman, P.A., 4767 New Broad Street, Orlando, Florida, 32814; the **Honorable Daniel Manry**, *Administrative Law Judge*, Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and **Larry Kranert**, *General Counsel*, Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida 32301.


Attorney