

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAUREEN KUCHAR,)
)
 Petitioner,)
)
 vs.) Case No. 08-2578
)
 CREDITORS INTERCHANGE, LLC,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case was heard, pursuant to notice, on November 24, 2008, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida, by Eleanor M. Hunter, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maureen Kuchar, pro se
2550 Northeast 51st Street
Fort Lauderdale, Florida 33308

For Respondent: Kathryn A. Terry, Esquire
Ford & Harrison LLP
300 South Orange Avenue, Suite 1300
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of her age or gender, or sexually harassed her, or retaliated against her in violation of the

Florida Civil Rights Act of 1992, as amended, Chapter 760, Florida Statutes (2007).

PRELIMINARY STATEMENT

On November 9, 2007, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (the Commission). A Notice of Filing of Complaint of Discrimination was provided to Respondent on November 14, 2007. On December 3, 2007, Respondent filed a response denying the allegations in the complaint. Following an investigation, the Commission issued "Determination: No Cause" on April 22, 2008. Petitioner filed a Petition for Relief, and the Commission referred the matter to the Division of Administrative Hearings on May 23, 2008.

Originally set for hearing before Administrative Law Judge J. D. Parrish on August 15, 2008, the case was rescheduled for final hearing on November 24, 2008, based on requests for continuances filed by Petitioner and Respondent. Before the hearing, the case was transferred to the undersigned.

At the hearing, Petitioner appeared and testified on her own behalf, and presented the testimony of Javier Neptun, and submitted four Exhibits for admission into evidence. Petitioner's Exhibits 1 and 2, statements from co-workers who were not witnesses, were not received into evidence. Petitioner's Exhibit 3, a written statement from Javier Neptun,

was received into evidence. Initially, ruling was reserved on the admissibility of Exhibit 4 to allow Petitioner to establish the relevance of two CDs from her previous unemployment compensation hearing, and they ultimately were admitted, reviewed, and considered following the hearing, as requested by the Petitioner.

After Petitioner presented her case-in-chief, Respondent's motion to dismiss the case for the failure of Petitioner to establish a prima facie case of discrimination was denied.

Respondent presented the testimony of Sara Mangan Riggie and Christie Cahalan. Respondent's Exhibits 1-8, 16, 22, and 24-25 were received. The Transcript of the hearing was filed on December 9, 2008. Petitioner filed her Proposed Recommended Order on January 21, 2009. Respondent filed proposed findings of fact on January 23, 2009.

FINDINGS OF FACT

1. Petitioner, Maureen Kuchar (Petitioner or Ms. Kuchar), filed a complaint, dated November 8, 2007, of age and sex discrimination, sexual harassment, and retaliation with the Commission. The record filed with the Commission indicated that Ms. Kuchar was 52 years old and is a female.

2. Respondent, Creditors Interchange, LLC (Respondent or Creditors), is an "employer" within the meaning of the Florida Civil Rights Act of 1992. Respondent operates a debt collection

telephone call center in Fort Lauderdale, Florida, and has its headquarters near Buffalo, New York.

3. Creditors employed Ms. Kuchar as a debt collector from February 14, 2005, until she resigned "effective immediately" on November 10, 2006. When she was hired, Ms. Kuchar signed acknowledgments that she received a copy of the employee handbook, a code of conduct, the non-harassment policy, and sexual harassment training. The non-harassment and sexual harassment training acknowledgement forms include requirements to notify the Human Resources Department (HR) located in New York, a supervisor, or a manager of any alleged violations.

4. Javier Neptun, a co-worker of Ms. Kuchar at Creditors, sat in a nearby cubicle. Mr. Neptun identified their two supervisors as Carol Shaw and Larry Tartaglino. Mr. Neptun heard Ms. Shaw and Mr. Tartaglino and other employees calling Ms. Kuchar "stupid," "dumb" and "cry baby." Mr. Neptun never reported any of the incidents to HR.

5. After Ms. Kuchar told Ms. Shaw that she had to take leave because of a family member's attempted suicide, Mr. Neptun and Ms. Kuchar believed co-workers were also told about Ms. Kuchar's family issues in violation of Ms. Kuchar's privacy rights. That belief is based on co-workers' comments about the Baker Act that Ms. Kuchar overheard. In May 2006, Creditor's HR representative in the New York headquarters, Sara Mangan Riggie,

heard about Ms. Kuchar's concern while investigating complaints from another employee, Sherry Meredith. Ms. Riggie called and talked to Ms. Kuchar, who confirmed her concerns about Ms. Shaw, but she said things were otherwise "fine." Ms. Riggie followed up with Ms. Shaw who denied sharing the information. Ms. Shaw resigned in July 2006.

6. At her unemployment compensation hearing in February 2007, approximately three months after she quit, Ms. Kuchar for the first time named the co-workers who allegedly made comments about the Baker Act. Ms. Riggie interviewed the co-workers who denied recalling any such conversations.

7. As she "increased her numbers" of collections, Ms. Kuchar said she expected to get access to a personal computer. She considered it essential to help track debtors, many of whom had no telephones, and to contact their family members.

8. Ms. Kuchar believes she was denied the same assistance and access to the Internet by her supervisors, especially that division manager J. P. Hanson provided for younger women employees. There was, however, no evidence concerning the ages of the women whom she alleged received favorable treatment. In addition, Ms. Kuchar's failure to meet her collection goals were documented in Employee Warning Notices that she checked "I agree with the statements above," and signed on June 14, 2005,

November 22, 2005, December 14, 2005, and January 13, 2006. As a result, her pay was decreased from \$13.00 an hour to \$12.00 an hour on January 14, 2006. The evidence does not support Ms. Kuchar's claim that she was increasing her collection numbers and, therefore, reasonably expected additional support services.

9. According to Ms. Kuchar, in October 2005, Larry Tartaglino took a picture of Ms. Kuchar's behind and put it on her keyboard in her cubicle. When she asked him about the picture, Ms. Kuchar said Mr. Tartaglino just laughed.

10. She never reported the incident to HR and first raised the issue during her February 2007 unemployment compensation hearing. Mr. Tartaglino left his job at Creditors in July 2006. When Ms. Riggie attempted to investigate the claim, she could not find other employees who knew anything about the incident. The evidence of Mr. Tartaglino's alleged action is insufficient.

11. Ms. Kuchar testified that she was in the ladies restroom, which had a broken lock on the door, when co-worker Terry Cementic opened the door that led to the collection floor, left it open, and walked away. There is no evidence to support Ms. Kuchar's claim regarding this incident.

12. Ms. Kuchar and a co-worker, Ilene Calligan, age 45, engaged in ongoing arguments in October 2006. Ms. Calligan called Ms. Kuchar "stupid, dumb, you old bitch," and said she should "grow up." In another incident, towards the end of the

month, Ms. Calligan leaned on Ms. Kuchar's cubicle while talking to another co-worker, Paul Roberts. Ms. Kuchar started screaming because she said they were laughing and talking over her cubicle, interfering with her efforts to work. After each incident, both women received Coaching Notes admonishing them for their unprofessional behavior. After a verbal altercation between Ms. Kuchar and Ms. Calligan, on October 31, 2006, both were sent home for the rest of the day with pay.

13. Ms. Kuchar said she was using her cellular telephone at work, during her break in the breakroom where cell phone use was permitted at the time, when Division Manager Hansen slammed the door to the breakroom almost "in [her] face." She thinks that a co-worker was fired the next day for allowing her to "vent" to him about the incident, but there is no evidence to support her suspicion.

14. In the Employer Coaching Note related to the cell phone incident, there is no mention of her being in the break room, rather it says:

Topic of Discussion: Use of cell phone on the collection floor
Facts: Maureen has been warned in the past regarding use of her cell phone on the collection floor. On 10/20/06, at approximately 3:56 pm, Maureen was using her cell phone on the collection floor.

Under the section for employee comments, Ms. Kuchar checked, "I disagree with the statements above" and gave, as her explanation "I was punched out and on my way out the door."

15. Approximately 15 people worked in the call center, eight of whom formed a clique that Ms. Kuchar said ridiculed, laughed at, and intentionally bumped into her chair or invaded her space in her cubicle. Creditors admits that some of her co-workers were rude and did not like Ms. Kuchar, but it appropriately investigated and disciplined those involved in incidents reported to its HR Department.

16. Ms. Kuchar said she called Ms. Riggie from the telephone in the conference room in the Fort Lauderdale office, and was interrupted by her supervisor, Fort Lauderdale office manager Elizabeth Valencia, who took the telephone away from her and told Ms. Riggie that she would handle the situation. Ms. Riggie's notes do not support the claim that the call was interrupted, but that it ended with her usual advise to the employee to maintain the confidentiality of her complaints while they were being investigated. There is insufficient evidence to conclude that Ms. Kuchar was barred from or unable to make a complaint to appropriate HR personnel.

17. Ms. Riggie received an email from Ms. Valencia on November 10, 2006, notifying her that Ms. Kuchar had quit and said it was because she had been treated unfairly. Ms. Riggie

left telephone messages for Ms. Kuchar to discuss her claim of unfair treatment, but the calls were not returned.

18. Creditors, as explained by Christie Cahalan, Director of Human Resources, did not receive most of the specifics of Ms. Kuchar's allegations of discrimination until her unemployment compensation hearing in February 2007.

19. There is insufficient evidence that Ms. Kuchar's poor relationship with her co-workers were based on either her age or gender. There is no credible evidence of sexual harassment or any retaliation against her.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat (2008).

21. Petitioner bears the burden of proof to demonstrate by a preponderance of the evidence that Respondent intentionally discriminated against her on the basis of her gender and age or retaliated against her because of activity protected by the discrimination statutes. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed 2d 105 (2000).

22. The evidence does not show that Petitioner received disparate treatment compared to similarly-situated individuals, not does it show that the alleged disparate treatment is

causally connected to Petitioner's age or gender. Mayfield v. Patterson Pump Co., 101 F.3D 1371 (11th Cir. 1996).

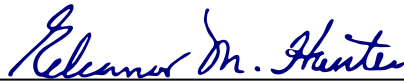
23. A preponderance of the evidence does not establish a prima facie case of sexual harassment. The alleged one-time offensive behavior of Mr. Tartaglino was, even if assumed to be true and of a sexual nature, not sufficiently severe or pervasive to constitute "sexual harassment" as a matter of law. See, e.g., Gupta v. Florida Board of Regents, 212 F.3d 571, 583 (11th Cir. 2000), cert. denied, 531 U.S. 1076 (2001)("Innocuous statements or conduct, or boorish ones that do not relate to the sex of the actor or of the offended party are not counted."); and Mendoza v. Borden, Inc., 195 F.3d 1238, 1245 (11th Cir. 1999), cert. denied, 529 U.S. 1068 (2000)(actionable harassment must be "sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment").

24. There is no direct or circumstantial evidence of retaliation against Petitioner. Ms. Kuchar agreed with her poor performance evaluations that led to a reduction in her pay. Her well-documented unprofessional behavior was the basis for the employee coaching notes issued to her and, when appropriate, to her co-workers. The actions were not a pretext for discrimination. Mayfield, supra.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law it is RECOMMENDED that the Commission enter a final order finding Respondent not guilty of the allegations, and dismissing Petitioner's Charge of Discrimination and Petition for Relief.

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



ELEANOR M. HUNTER
Administrative Law Judge
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Filed with the Clerk of the
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this 11th day of March, 2009.

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.