

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

JOE PABON,

EEOC Case No. 15D200800124

Petitioner,

FCHR Case No. 2008-00070

v.

DOAH Case No. 08-2622

CARLTON ARMS OF OCALA,

FCHR Order No. 08-081

Respondent.

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

Preliminary Matters

Petitioner Joe Pabon filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Carlton Arms of Ocala committed unlawful employment practices on the bases of Petitioner's sex (male / sexual harassment) and National Origin (Hispanic) by subjecting Petitioner to disparate terms and conditions and wages, harassment, sexual harassment, and by ultimately terminating Petitioner from his position as a maintenance technician.

The allegations set forth in the complaint were investigated, and, on May 6, 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 on August 5, 2008, in Ocala, Florida, before Administrative Law Judge T. Kent Wetherell, II.

Judge Wetherell issued a Recommended Order of dismissal, dated September 16, 2008.

Pursuant to notice, public deliberations were held on November 20, 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 received by the Commission on September 23, 2008. Respondent filed with the Commission a document entitled "Respondent's Response to Petitioner's Exceptions," which, pursuant to Respondent's motion, was accepted by the Commission as timely-filed and made part of the record of this matter.

In a section of the exceptions document entitled "Petitioner's Response to State of Florida Division of Administrative Hearings Notice of Right to Submit Exceptions to the Recommended Order," Petitioner takes exception to Recommended Order paragraphs 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 34, and 35.

In each instance the exception takes issue with either facts found (6, 8, 9, 11, 13, 14, 15, 16, and 17), facts not found (19) and/or inferences drawn from the evidence presented (20, 21, 24, 25, 26, 27, and 28), or simply presents argument (10, 12, 18, 22, 29, 30, 31, 34, and 35).

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).

Petitioner's exceptions are rejected.

Dismissal

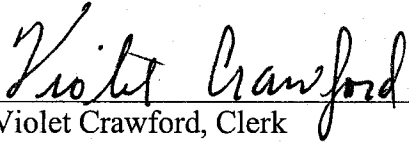
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 24th day of November, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Patty Ball Thomas; and
Commissioner Mario M. Valle

Filed this 24th day of November, 2008,
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:


Joe Pabon
10435 Southwest 49th Avenue
Ocala, FL 34476

Carlton Arms of Ocala
c/o John P. McAdams, Esq.
Carlton Fields, P.A.
4221 West Boy Scout Blvd., Ste. 1000
Tampa, FL 33607

T. Kent Wetherell, II, 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 24th day of November, 2008.

By: 
Clerk of the Commission
Florida Commission on Human Relations