

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SHERRY MALTER,

Petitioner,

v.

ORCHARD RIDGE,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2008-02150

DOAH Case No. 08-5371

FCHR Order No. 09-044

FILED

2009 MAY 14 A 10:44

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Sherry Malter 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 Orchard Ridge committed an unlawful employment practice on the bases of Petitioner's age (DOB: 3-29-49) and disability / perceived disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on September 17, 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 New Port Richey, Florida, on February 4, 2009, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated March 4, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and

Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004). See, also, Villamizar, et al. v. Gomez, FCHR Order No. 06-093 (November 13, 2006).

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.

Dismissal

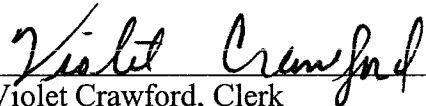
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 12th day of May, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon, Panel Chairperson;
Commissioner Patty Ball Thomas; and
Commissioner Mario M. Valle

Filed this 12th day of May, 2009,
in Tallahassee, Florida.



Violet Crawford, Clerk
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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 12th day of May, 2009.

By: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations