

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
09 AUG 19 AM 10:40  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

MELVIN LEE BUTLER,

EEOC Case No. 15D200800631

Petitioner,

FCHR Case No. 2008-01541

v.

DOAH Case No. 08-5374

CARDINAL STAFFING SERVICES,

FCHR Order No. 09-076

Respondent.

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

Preliminary Matters

Petitioner Melvin Lee Butler 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 Cardinal Staffing Services committed unlawful employment practices on the basis of retaliation for Petitioner's reporting a racist comment made by another employee at a client company of Respondent's where both Petitioner and the employee worked, and on the basis of Petitioner's race (Black) by Respondent's failure to reassign Petitioner to another position after he was terminated from the client company of Respondent.

The allegations set forth in the complaint were investigated, and, on October 8, 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 Tallahassee, Florida, on April 7, 2009, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated May 29, 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 Recommended Order in a one-page document, received by the Commission on June 15, 2009. This document was treated by the Commission as an ex parte communication and was published and provided to Respondent in a Notice of Ex Parte Communication, issued by the Commission on June 22, 2009.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2007); see, also, Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not comply with this statutory provision.

Nevertheless, it can be said that the document excepts to the finding that no unlawful employment practice was committed by Respondent.

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

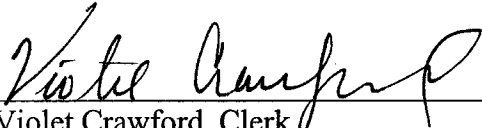
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 18<sup>th</sup> day of August, 2009.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Anice R. Prosser, Panel Chairperson;  
Commissioner Lizzette Gamero; and  
Commissioner Billy Whitefox Stall

Filed this 18<sup>th</sup> day of August, 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:

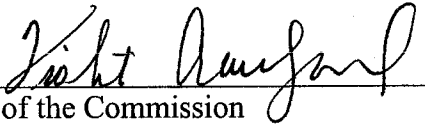
Melvin Lee Butler  
40 Jack Scott Road  
Quincy, FL 32351

Cardinal Staffing Services  
c/o Robert E. Larkin, III, Esq.  
c/o Shaina Brenner, Esq.  
Allen Norton & Blue, P.A.  
906 North Monroe Street  
Tallahassee, FL 32303

Diane Cleavinger, 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 18<sup>th</sup> day of August, 2009.

By:   
Clerk of the Commission  
Florida Commission on Human Relations

Allen N. Crawford

FCIR No. 200801541

Objection: I think this matter should be reviewed over again, because the question is, what does BR Williams has to do with this case. I never said anything about BR Williams in this case. Just Cardin, Allen, Norton & Blue, Walter Jen Pietruszka, FCIR All talk about that. The fact of matter is whites under the same rules speak them nothing said or done. That's all I talked about in this case. I don't know what else I can say. I think I've said it all.

Who put BR Williams in this case?

Melvin Bell  
# 827-3026  
155-0908