

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2009 SEP 23 A 10:46
DIVISION OF
ADMINISTRATIVE
HEARINGS

GABRIEL BOVEA,

EEOC Case No. 15D200801003

Petitioner,

FCHR Case No. 2008-02676

v.

DOAH Case No. 09-0394

MERCANTILE COMMERCEBANK,

FCHR Order No. 09-089

Respondent.

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

Preliminary Matters

Petitioner Gabriel Bovea 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 Mercantile Commercebank committed unlawful employment practices on the basis of Petitioner's marital status (unmarried) and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on December 18, 2008, the Executive Director issued his "Determination: No Jurisdiction," finding that the Commission lacked jurisdiction in the matter because Petitioner had signed a general release agreement in which, for consideration, he had agreed to forego any claims against his employer.

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 by video teleconference at sites in Tallahassee and Miami, Florida, on March 17, 2009, before Administrative Law Judge Patricia M. Hart, on the issue of whether Petitioner had waived his statutory rights under the Florida Civil Rights Act of 1992 when he signed a post-termination agreement containing a general release of all claims against Respondent.

Judge Hart issued a Recommended Order of dismissal, dated June 30, 2009, finding that Petitioner had released his claims against Respondent and recommending the Commission dismiss the matter for lack of jurisdiction.

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 note that in a case in which a Petitioner alleged that he executed a settlement agreement under duress and without benefit of legal counsel, and in which the Administrative Law Judge concluded that the Division of Administrative hearings "has no authority to interpret, enforce, or nullify a private contract," a Commission panel stated, "If as suggested by [Keeley v. Millers Super Value Store, FCHR Order No. 03-057 (July 24, 2003)] and [McShane v. Brevard County Sheriff's Office, FCHR Order No. 03-040]...the Commission is without jurisdiction to enforce settlement agreements entered into in cases brought pursuant to the Florida Civil Rights Act of 1992, in our view, it would logically follow that the Commission is without jurisdiction to determine the validity of those agreements." Howard v. Colomer, USA, FCHR Order No. 06-084 (September 18, 2006).

With this comment, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

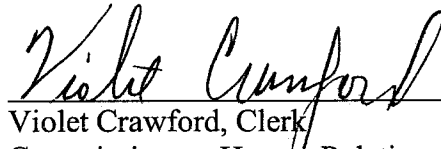
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 22nd day of September, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 22nd day of September, 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:

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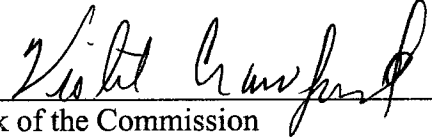
FCHR Order No. 09-089

Page 4

Patricia M. Hart, 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 22nd day of September, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations