

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2010 MAR -1 P 12:27

DIVISION OF
ADMINISTRATIVE
HEARINGS

MAURICE ALLEN,

Petitioner,

v.

GOLD'S GYM,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2009-00063

DOAH Case No. 09-2551

FCHR Order No. 10-020

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

Preliminary Matters

Petitioner Maurice Allen 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 Gold's Gym committed unlawful employment practices on the basis of Petitioner's race by creating a hostile work environment and terminating Petitioner from employment, and on the basis of retaliation by terminating Petitioner for complaining about racist comments in the workplace.

The allegations set forth in the complaint were investigated, and, on April 2, 2009, 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 September 23, 2009, before Administrative Law Judge Lisa Shearer Nelson.

Judge Nelson issued a Recommended Order of dismissal, dated December 14, 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 document entitled "Petitioner's Exceptions to the Recommended Order," received by the Division of Administrative Hearings on December 23, 2009. Respondent filed a response to these exceptions in a document entitled "Respondent's Response to Petitioner's Exceptions to the Recommended Order," received by the Division of Administrative Hearings on January 4, 2010.

While both documents were filed with the Division of Administrative Hearings instead of the Commission, the documents were timely-filed, and, consequently, the Commission will consider the documents even though they were filed in the wrong forum. Accord, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

Petitioner's exceptions document contains seven numbered paragraphs.

Paragraph numbers 1 through 3 except to the statement in paragraph 36 of the Recommended Order "that a claim of retaliation was not in Petitioner's original complaint to the Commission," argue that Petitioner's Complaint did contain allegations of retaliation, and except to the Administrative Law Judge's conclusion that "no evidence was presented of the time frame between Petitioner's Complaints and his termination." (quoted material is from Petitioner's filing).

Recommended Order, paragraph 36, actually states that Petitioner's "Petition for Relief raises a claim of retaliation for speaking out against uneven treatment in assigning new clients to personal trainers. This claim was not in his original complaint to the Commission. Accordingly, it is beyond the scope of this proceeding and will not be discussed."

While our review of the Petition for Relief does not reveal an allegation of retaliation on the basis of complaining about uneven treatment in assigning new clients to personal trainers, we note that with regard to the allegations of retaliation the Administrative Law Judge concluded in Recommended Order, paragraph 36, "the facts presented do not support such a claim, inasmuch as no evidence was presented to establish a time-frame between Allen's complaints and his termination."

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).

Given the role of the Administrative Law Judge set out, above, and noting that we have found the facts contained in the Recommended Order to be supported by competent substantial evidence, we conclude that it cannot be said that the Administrative Law Judge committed error in drawing the inference that unlawful retaliation had not been established.

Petitioner’s exceptions set out in Petitioner’s exceptions document, paragraphs 1 through 3, are rejected.

In paragraphs 4 through 7 of the exceptions document, Petitioner takes issue with the Administrative Law Judge’s refusal to draw the inference that Petitioner was discriminated against on the basis of his race.

We again note the role of the Administrative Law Judge set out above, Barr, supra, and also note that it has been stated, “The ultimate question of the existence of discrimination is a question of fact.” Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991).

Petitioner’s exceptions set out in Petitioner’s exceptions document, paragraphs 4 through 7, are rejected.

Dismissal

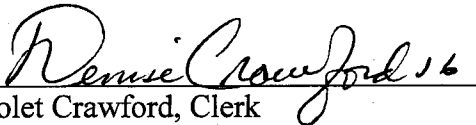
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26 day of FEBRUARY, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Watson Haynes, II

Filed this 26 day of FEBRUARY, 2010,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 200
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

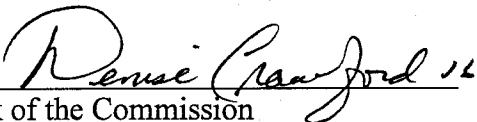
Maurice Allen
c/o Carolyn D. Cummings, Esq.
Cummings & Hobbs, P.A.
462 West Brevard Street
Tallahassee, FL 32301

Gold's Gym
c/o Deborah Stephens Minnis, Esq.
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302

Lisa Shearer Nelson, 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 26 day of FEBRUARY, 2010.

By: 
Clerk of the Commission
Florida Commission on Human Relations