

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ROBERT FERNANDEZ,

2010 MAR 18 P 12:05

EEOC Case No. NONE

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2009-01057

v.

DOAH Case No. 09-4009

SPRINT / UNITED MANAGEMENT CO.,

FCHR Order No. 10-028

Respondent.

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

Preliminary Matters

Petitioner Robert Fernandez 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, Sprint / United Management Co., committed an unlawful employment practice by discriminating against Petitioner on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on June 22, 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 by telephone on October 7, 2009, before Administrative Law Judge Eleanor M. Hunter.

Judge Hunter issued a Recommended Order of dismissal, dated January 12, 2010.

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 Administrative Law Judge's Recommended Order."

Respondent filed with the Division of Administrative Hearings a "Motion for Additional Time" to file a response to Petitioner's exceptions, and subsequently also filed with the Division of Administrative Hearings a document entitled, "Respondent's Response to Petitioner's Exceptions to the Administrative Law Judge's Recommended Order."

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).

Further, 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 excepts to the finding in Recommended Order, paragraph 22, that Petitioner suffered no adverse employment action and to the Administrative Law Judge's conclusion that Petitioner failed to establish a prima facie case of unlawful retaliation.

In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented.

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, Petitioner's exceptions are rejected.

Dismissal

This Order disposes of all motions pending before the Commission.

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

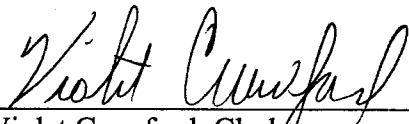
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 17th day of March, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Anice R. Prosser; and
Commissioner Mario M. Valle

Filed this 17th day of March, 2010,
in Tallahassee, Florida.



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Eleanor M. Hunter, 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 17th day of March, 2010.

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