

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

LORRAINE SUPERGAN, 2010 AUG 11 A 11: 14

EEOC Case No. 846200920023

Petitioner,

FCHR Case No. 2009-01735

v.

DOAH Case No. 09-5970

CHEP USA,

FCHR Order No. 10-060

Respondent.

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

Preliminary Matters

Petitioner Lorraine Supergan 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 CHEP USA committed an unlawful employment practice on the basis of Petitioner's disability by denying Petitioner's requested accommodation.

The allegations set forth in the complaint were investigated, and, on September 18, 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 Orlando, Florida, on February 18, 2010, and by video teleconference at sites in Orlando and Tallahassee, Florida, on March 5, 2010, before Administrative Law Judge Susan B. Harrell.

Judge Harrell issued a Recommended Order of dismissal, dated May 17, 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 an eight-page document that appears to have been received by the Division of Administrative Hearings on June 2, 2010.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, and there may be an issue with its timeliness, the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

There is no indication on the document that it was provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case, through the issuance of a Notice of Ex Parte Communication, mailed to the parties on June 7, 2010.

The document contains 17 numbered exceptions paragraphs.

Exceptions paragraphs 1, 2, 3, 7, 9, 10, 12, 15 and 16 take issue with facts found and / or inferences drawn from the evidence presented.

Exceptions paragraphs 3, 4, 5, 6, 8, 11, 13, 14, 16, and 17 contain argument or comment from the Petitioner's perspective about the indicated findings of the Administrative Law Judge.

With regard to Petitioner's exceptions to facts found and inferences drawn from the evidence presented, and to Petitioner's comments and argument on the facts found referenced in Petitioner's exceptions document, 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

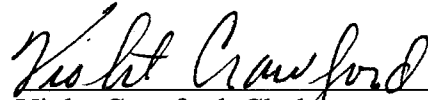
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 10<sup>th</sup> day of August, 2010.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Michael G. Keller

Filed this 10<sup>th</sup> day of August, 2010,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
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:


Lorraine Supergan  
5564 Sassparilla Lane  
Orlando, FL 32821

CHEP USA  
c/o Tracey L. Ellerson, Esq.  
Baker & Hostetler, LLP  
Post Office Box 112  
Orlando, FL 32802-0112

Susan B. Harrell, 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 10<sup>th</sup> day of August, 2010.

By:   
Clerk of the Commission  
Florida Commission on Human Relations