

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
11 JAN 14 AM 11:25
DIVISION OF
ADMINISTRATIVE
HEARINGS

DEBORAH MCRAE,

EEOC Case No. 15D200900625

Petitioner,

FCHR Case No. 2009-02135

v.

DOAH Case No. 09-6222

KASH N' KARRY, d/b/a SWEETBAY
SUPERMARKET,

FCHR Order No. 11-004

Respondent.

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

Preliminary Matters

Petitioner Deborah McRae 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 Kash N' Karry, d/b/a Sweetbay Supermarket, committed unlawful employment practices against Petitioner on the bases of Petitioner's disability / perceived disability, age (DOB: 7-19-53), marital status (not specified in complaint), and on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on October 23, 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 Fort Myers, Florida, on May 18, 19, and 20, 2010, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated October 29, 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 received by the Commission on November 22, 2010 (although the document is dated as being served on November 11, 2010). Without further explanation, the document states, "The testimony on record does not support the information expressed in..." the following finding of fact paragraphs of the Recommended Order: 4, 6, 8, 9, 10, 12, 14, 15, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 41, 42, 44, 45, 46, and 48. The document also states, "The respective contradictions will be submitted under separate cover with a brief and supporting documents from the record."

The Administrative Procedure Act states, "The agency shall allow each party 15 days in which to submit written exceptions to the recommended order." Section 120.57(1)(k), Florida Statutes (2009). The Recommended Order, itself, advises the parties, "All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case." See Recommended Order, page 38. Finally, the Florida Administrative Code section dealing with the filing of exceptions to Recommended Orders states, "No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail." Fla. Admin. Code R. 28-106.217(4).

The date of the Recommended Order is October 29, 2010, and, as indicated above, Petitioner's exceptions were received by the Commission on November 22, 2010, 24 days after the date of the Recommended Order.

Petitioner's exceptions are untimely. Accord, Carrion v. Energy Savings Systems, FCHR Order No. 09-054 (May 18, 2009).

With regard to exceptions to the findings of fact in the Recommended Order, we note that we have concluded, above, that the Administrative Law Judge's findings of fact are supported by competent substantial evidence

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). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010).

Based on the foregoing, Petitioner's exceptions are rejected.

Dismissal

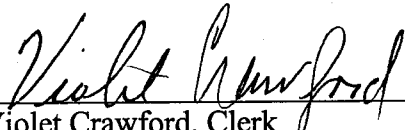
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 13th day of January, 2011.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Joanna Cunningham; and
Commissioner Lizzette Romano

Filed this 13th day of January, 2011,
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:

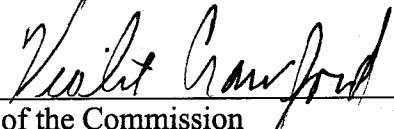
Deborah McRae
c/o Geralyn Farrell Noonan, Esq.
Law Office of Geralyn F. Noonan
8250 College Parkway, Suite 202-B
Post Office Box 07338
Fort Myers, FL 33919

Kash N' Karry, d/b/a Sweetbay Supermarket
c/o Jay P. Lechner, Esq.
c/o Peter W. Zinober, Esq.
Greenberg Traurig, P.A.
625 East Twiggs Street, Suite 100
Tampa, FL 33602

Daniel M. Kilbride, 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 13th day of January, 2011.

By: 
Clerk of the Commission
Florida Commission on Human Relations

Geralyn F. Noonan

ATTORNEY AT LAW

8250 College Pkwy., Suite 202-B • Fort Myers, FL 33919

P.O. Box 07338

Telephone (239) 694-7070 • (888) 858-9189 • Facsimile (239) 481-0993

Justice@NoonanLaw.com • www.NoonanLaw.com

DC
For Justice in the
workplace



200902135

November 11, 2010

Attn: Denise Crawford, Agency Clerk
The Honorable Daniel Kilbride
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
10 NOV 22 PM 12:07

Re: Deborah McRae v. Kash N' Karry, d/b/a Sweetbay
DOAH Case No.: 09-6222

Dear Ms. Crawford:

Enclosed please find the "Petitioner's Exceptions" in reference to the above described matter for filing.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Regular United States Mail to Attention: Denise Crawford, Agency Clerk, The Honorable Daniel Kilbride, Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301; Jay P. Lechner, Esquire and Peter W. Zinober, Greenberg Traurig, P.A. 625 E. Twiggs Street, Suite 100, Tampa, FL 33602; Larry Kranert, General Counsel, Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 on this 11th day of November, 2010.

Very truly yours,

Geralyn F. Noonan, Esquire
Geralyn F. Noonan
Attorney at Law

Enclosure

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

10 NOV 22 PM 12:08

DEBORAH MCRAE,)
)
 Petitioner,)
)
 vs.)
)
)
 KASH N' KARRY, d/b/a SWEETBAY)
 SUPERMARKET,)
)
 Respondent)
 _____)

CASE NO: 09-6222
2009-02135
150200900625

Petitioner's Exceptions

COMES NOW, the Petitioner, DEBORAH MCRAE, by and through her undersigned attorney, Geralyn Farrell Noonan, and files the following exceptions:

- 1) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 4. The testimony on record does not support the information expressed in Paragraph 4.
- 2) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 6. The testimony on record does not support the information expressed in Paragraph 6.
- 3) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 8. The testimony on record does not support the information expressed in Paragraph 8.
- 4) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 9. The testimony on record does not support the information expressed in Paragraph 9.
- 5) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 10. The testimony on record does not support the information expressed in Paragraph 10.

- 6) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 12. The testimony on record does not support the information expressed in Paragraph 12.
- 7) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 14. The testimony on record does not support the information expressed in Paragraph 14.
- 8) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 15. The testimony on record does not support the information expressed in Paragraph 15.
- 9) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 18. The testimony on record does not support the information expressed in Paragraph 18.
- 10) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 19. The testimony on record does not support the information expressed in Paragraph 19.
- 11) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 20. The testimony on record does not support the information expressed in Paragraph 20.
- 12) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 21. The testimony on record does not support the information expressed in Paragraph 21.
- 13) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 22. The testimony on record does not support the information expressed in Paragraph 22.
- 14) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 23. The testimony on record does not support the information expressed in Paragraph 23.

- 15) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 24. The testimony on record does not support the information expressed in Paragraph 24.
- 16) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 26. The testimony on record does not support the information expressed in Paragraph 26.
- 17) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 27. The testimony on record does not support the information expressed in Paragraph 27.
- 18) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 28. The testimony on record does not support the information expressed in Paragraph 28.
- 19) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 29. The testimony on record does not support the information expressed in Paragraph 29.
- 20) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 30. The testimony on record does not support the information expressed in Paragraph 30.
- 21) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 31. The testimony on record does not support the information expressed in Paragraph 31.
- 22) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 32. The testimony on record does not support the information expressed in Paragraph 32.
- 23) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 34. The testimony on record does not support the information expressed in Paragraph 34.

- 24) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 35. The testimony on record does not support the information expressed in Paragraph 35.
- 25) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 36. The testimony on record does not support the information expressed in Paragraph 36.
- 26) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 37. The testimony on record does not support the information expressed in Paragraph 37.
- 27) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 38. The testimony on record does not support the information expressed in Paragraph 38.
- 28) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 39. The testimony on record does not support the information expressed in Paragraph 39.
- 29) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 41. The testimony on record does not support the information expressed in Paragraph 41.
- 30) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 42. The testimony on record does not support the information expressed in Paragraph 42.
- 31) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 44. The testimony on record does not support the information expressed in Paragraph 44.
- 32) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 45. The testimony on record does not support the information expressed in Paragraph 45.

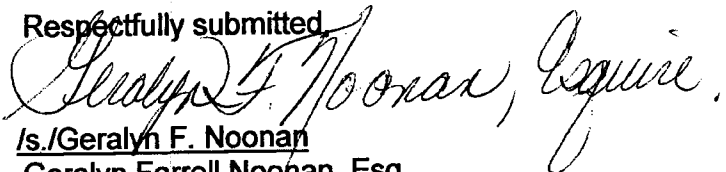
- 33) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 46. The testimony on record does not support the information expressed in Paragraph 46.
- 34) Petitioner, DEBORAH MCRAE, hereby files exception to the recent Order, Paragraph 48. The testimony on record does not support the information expressed in Paragraph 48.

The respective contradictions will be submitted under separate cover with a brief and supporting documents from the record.

Certificate of Service

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Respectfully submitted



/s./Geraldyn F. Noonan

Geraldyn Farrell Noonan, Esq.

Florida Bar No.: 968020

P.O. Box 07338

Fort Myers, FL 33919

E-mail Justice@NoonanLaw.com

Phone (239) 694-7070

Fax (239) 481-0993