

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PATRICIA DAVIDOWITZ,

Petitioner,

v.

MILLER'S ALE HOUSE, INC.,

Respondent.

2010 DEC 16 P 12:05

DIVISION OF
ADMINISTRATIVE
HEARINGS

EEOC Case No. NONE

FCHR Case No. 2009-02875

DOAH Case No. 10-1857

FCHR Order No. 10-089

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

Preliminary Matters

Petitioner Patricia Davidowitz 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 Miller's Ale House, Inc., committed unlawful employment practices on the basis of Petitioner's sex (female) by subjecting Petitioner to sexual harassment and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on March 3, 2010, 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 video teleconference at sites in West Palm Beach and Tallahassee, Florida, on August 16, 2010, before Administrative Law Judge John D. C. Newton, II.

Judge Newton issued a Recommended Order of dismissal, dated September 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 on or about September 29, 2010. The document contains exceptions to the following numbered paragraphs of the Recommended Order: 3, 4, 5, 6, 7, 8, 9, 10, 20, 24, 26, 29, 31, 38, 42, 44, 45, 46, and 47.

In response, Respondent filed "Respondent's Opposition to Petitioner's Exceptions to Recommended Order."

Petitioner's exceptions to Recommended Order paragraphs 3, 4, 5, 7, 8, 29, 31, 38, 44, 45, and 46 take issue with facts found and / or inferences drawn from the evidence presented.

Petitioner's exceptions to Recommended Order paragraphs 3, 5, 6, 8, 9, 10, 20, 24, 26, 42, and 47 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.

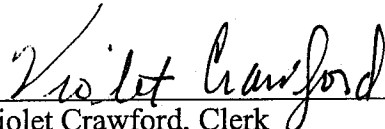
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

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

DONE AND ORDERED this 15th day of December, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Watson Haynes, II; and
Commissioner Billy Whitefox Stall

Filed this 15th day of December, 2010,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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John D. C. Newton, II, 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 15th day of December, 2010.

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