

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

GERMAINE ROGERS,

2011 MAR 18 A 11: 0 BEOC Case No. 510201001306

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2010-00754

v.

DOAH Case No. 10-2803

CALDER RACE COURSE, INC.,

FCHR Order No. 11-025

Respondent.

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

Preliminary Matters

Petitioner Germaine Rogers filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2009), alleging that Respondent Calder Race Course, Inc., committed unlawful employment practices on the basis of Petitioner's race (Black) by paying Petitioner less than white managers were paid, and on the basis of retaliation by demoting Petitioner for complaining about the alleged disparate treatment.

The allegations set forth in the complaint were investigated, and, on May 10, 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 Tallahassee and Miami, Florida, on July 28, 2010, and by telephone on September 13, 2010, before Administrative Law Judge Eleanor M. Hunter.

Judge Hunter issued a Recommended Order of dismissal, dated December 23, 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.

The Administrative Law Judge indicated that for Petitioner to establish a prima facie case of discrimination in this case, it must be shown that: "(a) he belongs to a racial minority; (b) he was subjected to an adverse employment action; (c) he was qualified for his position; and (d) the employer treated similarly situated employees outside the protected class more favorably." Recommended Order, ¶ 42.

With regard to the first element of the test cited above, it should be noted that people of all races are entitled to establish discrimination claims under the Florida Civil Rights Act of 1992, not just those belonging to a "racial minority."

The Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination one of the elements a Petitioner must demonstrate is "that he belongs to a group protected by the statute..." See Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997), citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993),...or that "she belongs to a protected group." Martinez v. Boca Diner, FCHR Order No. 04-019 (February 25, 2004), adopting conclusions of law set out in the Recommended Order of DOAH Case No. 03-1277, dated October 31, 2003.

It would seem that these would be more legally correct statements of the first element required to demonstrate a prima facie case of discrimination than that used by the Administrative Law Judge, and we make this modification to the first element of the test set out by the Administrative Law Judge. Accord, Cesarin v. Dillard's, Inc., FCHR Order No. 03-037 (April 29, 2003); Saint Fleur v. Superior Protection, FCHR Order No. 03-072 (November 21, 2003); Bamawo v. Department of Corrections, FCHR Order No. 04-120 (September 22, 2004); Warren v. Department of Revenue, FCHR Order No. 04-152 (December 7, 2004); Assily v. Memorial Hospital of Tampa, FCHR Order No. 05-059 (May 31, 2005); Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005); McGee v. AIG Marketing, Inc., FCHR Order No. 06-023 (March 7, 2006); Mays v. Progress Energy Corporation, FCHR Order No. 06-024 (March 7, 2006); Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006); Cartwright v. Florida Department of Revenue, FCHR Order No. 07-018 (March 16, 2007); Pate v. Homes of Merit, FCHR Order No. 08-015 (February 8, 2008); and Alexander, et al. v. Solid Wall Systems, FCHR Order No. 08-024 (April 14, 2008); Modley v. The Fresh Market, FCHR Order No. 08-052 (July 29, 2008); and McTaggart v. Pensacola Bay Transportation Company, FCHR Order No. 10-063 (August 10, 2010), all in which similar modifications to the conclusions of law were made by Commission panels.

In modifying this conclusion of law of the Administrative Law Judge, we conclude: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating

what must be demonstrated to establish a prima facie case of unlawful discrimination under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law being substituted is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(l), Florida Statutes (2009).

With the indicated correction, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

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 17th day of March, 2011.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 17th day of March, 2011,
in Tallahassee, Florida.


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

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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, 2011.

By: 
Clerk of the Commission
Florida Commission on Human Relations