

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

VENIS CHARLOT,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2010-00279

v.

DOAH Case No. 10-9727

COUNTY OF MIAMI-DADE AVIATION
DEPARTMENT,

FCHR Order No. 12-035

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE AND DENYING
RESPONDENT'S MOTION FOR ATTORNEY'S FEES AND COSTS**

Preliminary Matters

Petitioner Venis Charlot filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2008), alleging that Respondent County of Miami-Dade Aviation Department committed an unlawful employment practice on the basis of Petitioner's National Origin (Haitian) and on the basis of retaliation when it terminated Petitioner from employment.

The allegations set forth in the complaint were investigated, and, while a determination finding that there was reasonable cause to believe that an unlawful employment practice had occurred was initially issued, the Executive Director subsequently issued a Rescission of Dismissal indicating 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 Miami, Florida, on September 13 and 14, 2011, and by video teleconference at sites in Miami and Tallahassee, Florida, on October 28, 2011, before Administrative Law Judge Errol H. Powell.

Judge Powell issued a Recommended Order of dismissal, dated April 26, 2012.

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 Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to Recommended Order," received by the Commission on May 10, 2012.

Respondent filed "Respondent Miami-Dade County's Response and Opposition to Petitioner's Exceptions to Administrative Law Judge's Recommended Order," received by the Commission on May 25, 2012.

Petitioner's exceptions document excepts to Recommended Order paragraph numbers 19, 22, 28, 35, 36, and 47-53.

The exception to Recommended Order paragraph 19 takes issue with inferences drawn from the evidence presented. The exceptions to Recommended Order paragraphs 22 and 28 simply provide argument or discussion on the facts found therein.

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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

Petitioner's exceptions to Recommended Order paragraphs 19, 22, and 28, are rejected.

The exceptions to Recommended Order paragraphs 35, 36, and 47-53, all deal with the issue of whether the employees presented as comparators to the Petitioner are similarly situated to Petitioner. This is an issue that is central to whether Petitioner established a prima facie case of discrimination. We note that the Administrative Law Judge concluded that, even if Petitioner had established a prima facie case of discrimination, Respondent established a legitimate nondiscriminatory reason for terminating Petitioner, and there was no showing that this reason was a pretext for unlawful discrimination. See Recommended Order, paragraphs 54 and 55.

Petitioner's exceptions to Recommended Order paragraphs 35, 36, and 47-53, are rejected.

Respondent's Motion for Attorney's Fees and Costs

"Respondent Miami-Dade County's Response and Opposition to Petitioner's Exceptions to Administrative Law Judge's Recommended Order" states, "Respondent respectfully requests that it be awarded costs and attorney's fees for the defense of this hearing or at the very least for the defense of these exceptions which are patently frivolous."

The Florida Civil Rights Act of 1992 states, "In any action or proceeding under this subsection, the [C]ommission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action." Section 760.11(7), Florida Statutes (2011).

In conclusions of law adopted by a Commission panel, it has been stated that a prevailing Respondent may be awarded attorney's fees by the Commission, under the Florida Civil Rights Act of 1992, "if it is determined that an action was 'frivolous, unreasonable, or without foundation,' or 'that the plaintiff continued to litigate after it clearly became so.'" Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978)." Tadlock v. Westinghouse Electric Corporation, d/b/a Bay County Energy Systems, Inc., 20 F.A.L.R. 776, at 777 (FCHR 1997), citing Wright v. City of Gainesville, 19 F.A.L.R. 1947, at 1959 (FCHR 1996). Accord, generally, Asher v. Barnett Banks, Inc., 18 F.A.L.R. 1907 (FCHR 1995).

In conclusions of law adopted by a Commission panel, this pronouncement is given explanation: "It is within the discretion of a district court to award attorney's fees to a prevailing defendant in a Title VII action upon a finding that the action was 'frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.'" Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978). The standard has been described as a 'stringent' one. Hughes v. Rowe, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980). Moreover, the Supreme Court has cautioned that in applying these criteria, the district court should resist the temptation to conclude that because a plaintiff did not ultimately prevail, the action must have been unreasonable or without foundation. Christianburg Garment, 434 U.S. at 421-22, 98 S.Ct. at 700-01. Therefore, in determining whether a prevailing defendant is entitled to attorney's fees under Title VII, the district court must focus on the question of whether the case is seriously lacking in arguable merit. See Sullivan v. School Board of Pinellas County, 773 F.2d 1182, 1188 (11th Cir. 1985)." Doshi v. Systems and Electronics, Inc., f/k/a Electronics and Space Corp., 21 F.A.L.R. 188, at 199 (FCHR 1998). Accord, Quintero v. City of Coral Gables, FCHR Order No. 07-030 (April 20, 2007), and Haynes v. Putnam County School Board, FCHR Order No. 04-162 (December 23, 2004).

The Commission has applied these same legal standards to requests for costs other than attorney's fees. See, e.g., Green v. Miami-Dade County, FCHR Order No. 09-075 (August 18, 2009), and Columbus v. Mutual of Omaha, FCHR Order No. 09-052 (June 3, 2009).

Applying the above-stated legal standards, and considering the arguments contained in Respondent's requesting document and the record of the case, itself, we are unable to say that the record as it exists before us reflects that "the case is seriously lacking in arguable merit," or that the action brought by Petitioner is "unreasonable or without foundation."

We conclude, as is our discretion (see, Section 760.11(7), Florida Statutes (2011)), the record as it exists does not reflect entitlement to attorney's fees and costs under the standards set out above. Accord, generally, Carter v. City of Pompano, FCHR Order No. 12-013 (March 27, 2012), Tucker v. Crane Aerospace and Electronics, FCHR Order No. 09-104 (November 24, 2009), Perry v. Embry-Riddle Aeronautical University, FCHR Order 08-020 (March 13, 2008), Quintero, supra, and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

Dismissal

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

Respondent's request for attorney's fees and costs as set out in "Respondent Miami-Dade County's Response and Opposition to Petitioner's Exceptions to Administrative Law Judge's Recommended Order," is DENIED.

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 July, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo; and
Commissioner Michell Long

Filed this 17th day of July, 2012,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Venis Charlot
c/o Mayra L. Kadzinski, Esq.
Kadzinski Law Firm
1200 N. Federal Highway, Suite 200
Boca Raton, FL 33432

County of Miami-Dade Aviation Department
c/o Eric Alberto Rodriguez, Esq.
Office of Dade County Attorney
111 Northwest First Street, Suite 2810
Miami, FL 33128-1930

Errol H. Powell, 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 July, 2012.

By: _____/s/_____
Clerk of the Commission
Florida Commission on Human Relations