STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KELLI LAWHEAD,

Petitioner,

vs. Case No. 13-1911

ADAMS AND REESE, FORMERLY d/b/a
IGLER & DOUGHERTY LAW OFFICES,
P.A.,

Respondent.
_______________________________/

RECOMMENDED ORDER OF DISMISSAL

A Motion hearing was conducted in this matter on January 10, 2014, in Tallahassee, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lauren F. Strickland, Esquire
310 East Bradford Road
Tallahassee, Florida 32303

For Respondent: Leslie A. Lanusse, Esquire
Adams and Reese, LLP
701 Poydras Street
4500 One Shell Square
New Orleans, Louisiana 70139

STATEMENT OF THE ISSUE

Whether Petitioner demonstrated that she was employed by Respondent, the "employer" identified in her Petition for

Relief, thus allowing her to proceed with her claim that she was the subject of an unlawful employment practice by Respondent.

PRELIMINARY STATEMENT

On January 18, 2013, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR), alleging that Respondent discriminated against her based on her disability. The basis for the charge was Petitioner's dismissal from employment following an extended hospital stay for migraine headaches.

An investigation of the charge was made by FCHR. On April 12, 2013, FCHR issued its Notice of Determination: No Cause and Determination: No Cause, which concluded that there was no reasonable cause to believe that a discriminatory employment practice had occurred.

Petitioner disagreed with FCHR's determination and timely filed a Petition for Relief (Petition) on May 17, 2013. The petition was forwarded to the Division of Administrative Hearings for a formal hearing.

The final hearing was scheduled for August 28, 2013, but was canceled and placed in abeyance upon Petitioner's Unopposed Motion for Continuance and representation that the parties were discussing settlement and that Petitioner would be seeking to amend her Petition. The undersigned requested a status report on or before September 25, 2013. No status report was filed.

On October 1, 2013, Petitioner filed an Amended Petition naming "Igler & Dougherty Law Offices, P.A.," (Igler & Dougherty) as an additional Respondent. The undersigned sua sponte entered an Order to Show Cause why Igler & Dougherty should not be dismissed for lack of jurisdiction because the entity was not named in Petitioner's original charge of discrimination. Both parties timely filed a Response thereto, and Petitioner requested an evidentiary hearing on the matter.

In addition to its Response to the Order to Show Cause, Respondent filed a Motion for Summary Judgment requesting the undersigned to dismiss Adams and Reese because it was not Petitioner's employer at the time the alleged act of discrimination occurred and did not assume any liabilities of her employer. The undersigned denied Respondent's Motion for Summary Judgment and requested available dates from the parties for an evidentiary hearing on the issue of whether Adams and Reese was Petitioner's employer at the time of her dismissal, or otherwise responsible for the alleged discriminatory act.

A hearing was scheduled for December 4, 2013, but rescheduled to January 10, 2014, on Petitioner's Unopposed Motion for Continuance. The hearing commenced as scheduled.

At the hearing, the parties offered the testimony of Petitioner and Charles P. Adams, Respondent's Managing Partner.

Petitioner's Exhibits 1 and 2 were admitted into evidence. Respondent's Exhibits 1, 3-6, and 8-10 were admitted.

At the close of the hearing, the undersigned ruled in the negative on the issue of whether Adams and Reese was Petitioner's employer at the time of her dismissal, or was otherwise responsible for the alleged discriminatory employment practice. That ruling is memorialized herein. The undersigned's ruling on the jurisdictional issue is made in an Order Denying Petitioner's Motion to Amend entered concurrently herewith.

FINDINGS OF FACT

1. Petitioner was employed as a Legal Assistant by Igler & Dougherty Law Offices, P.A. (Igler & Dougherty), in Tallahassee, Florida, for approximately three-and-a-half years.

2. Petitioner was terminated by Igler & Dougherty by letter dated February 6, 2012, allegedly for failure to make "adequate progression to date."

3. Petitioner alleges that she was unlawfully terminated after treatment for migraine headaches during an extended hospital stay.

4. Respondent, Adams and Reese, LLP, is a limited liability law partnership headquartered in Louisiana, with offices in Louisiana, Mississippi, Tennessee, Texas, Alabama, Florida, and Washington, D.C.

5. Charles P. Adams, Jr., is Respondent's Managing Partner.

6. In mid-summer 2012, Respondent approached George Igler, Partner in Igler & Dougherty, about the possibility of joining Adams and Reese to establish the firm's Tallahassee office.

7. Mr. Adams was primarily responsible for all discussions with Mr. Igler and other members of Igler & Dougherty who eventually joined Respondent.

8. On October 1, 2012, Respondent announced the official opening of its Tallahassee office. The new office was located at 2457 Care Drive, the building that formerly housed Igler & Dougherty.

9. Mr. Igler and Mr. Dougherty joined Respondent as partners. Other former Igler & Dougherty lawyers joined Respondent as partners and associates.

10. Respondent also hired some of the support staff from Igler & Dougherty. Respondent did not hire Petitioner.

11. Respondent did not merge with Igler & Dougherty, did not acquire the assets of Igler & Dougherty, and did not assume the liabilities of Igler & Dougherty.

12. Igler & Dougherty retained its accounts receivable and work in progress, and Mr. Igler and Mr. Dougherty continued to wrap up the business of Igler & Dougherty after joining Adams and Reese.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2013).

14. Section 760.10, Florida Statutes (2012), provides, in pertinent part:

> (1) It is an unlawful employment practice for an employer:
>
> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

15. Petitioner maintains that Adams and Reese, particularly Mr. Dougherty, discriminated against her on account of her disability.

16. The term "employer" is defined in section 760.02(7) as "any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person." Though not explicit in the statute, the "employer" must have an employee-employer relationship with the person alleging discrimination in order to be liable for an unlawful employment practice under section 760.10(1).

17. The facts do not support a conclusion that Adams and Reese was Petitioner's employer at the time Petitioner was terminated, or that Adams and Reese was responsible for her termination. Petitioner was neither employed nor terminated by Adams and Reese. Adams and Reese did not assume any liability Igler & Dougherty may have had for unlawful termination of Petitioner.

18. Chapter 760, Part I, is analogous to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. Cases interpreting Title VII are, therefore, applicable in construing and applying chapter 760. Brand v. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); see also Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17 (Fla. 3rd DCA 2009); Fla. State Univ. v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

19. Petitioner has the burden of proving by a preponderance of the evidence that Respondent committed an unlawful employment practice. See St. Louis v. Fla. Int'l Univ., 60 So. 3d 455 (Fla. 3rd DCA 2011); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

20. The United States Supreme Court has established the requirements for proving a prima facie case of discrimination, which can vary depending on differing factual situations.

McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802 n.13 (1973); see also, Schwartz v. State of Fla., 494 F. Supp. 574, 593 (N.D. Fla. 1980). In short, those requirements are:

> [t]hat a Title VII plaintiff carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were "based on a discriminatory criterion illegal under the Act."

Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1977)(citing Teamsters v. U.S., 431 U.S. 324, 358 (1977)).

21. If a Petitioner proves a prima facie case of discrimination, the burden shifts to the employer "to articulate some legitimate nondiscriminatory reason" for the adverse employment action. McDonnell-Douglas Corp. v. Green, 411 U.S. at 802.

22. Once the employer succeeds in carrying its burden of producing a nondiscriminatory reason for the challenged action, the employee must show that the employer's reason is pretextual. The final and ultimate burden of persuading the trier of fact, by a preponderance of the evidence, remains at all times with the employee. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507-508 (1993); Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 257 (1981).

23. In this case, Petitioner failed to prove that Respondent was her employer, thus failing in her initial prima facie case of discrimination. Respondent did not discharge Petitioner, or otherwise discriminate against Petitioner with respect to compensation, terms, conditions, or privileges of employment, because the evidence is uncontroverted that Respondent was not in an employee-employer relationship with Petitioner.

24. Petitioner simply filed her complaint against the wrong entity. While Mr. Igler and Mr. Dougherty were members of Respondent’s law firm at the time Petitioner filed her complaint, Igler & Dougherty remained an independent, legal corporate entity capable of being sued in its own name.

25. The hearing in this case was limited to a determination of the employer-employee relationship between Petitioner and Respondent. Based upon the limited scope of the proceeding, the issue of whether Petitioner was discriminated against or was the subject of an unlawful employment practice by Respondent was not reached. Thus, this order should not be construed as having any stare decisis effect in any subsequent proceeding involving Petitioner’s actual employer.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing the Petition for Relief filed by Kelli Lawhead in FCHR No. 2013-00581.

DONE AND ENTERED this 20th day of March, 2014, in Tallahassee, Leon County, Florida.

Suzanne Van Wyk
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of March, 2014.

COPIES FURNISHED:

Violet Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Lauren F. Strickland, Esquire
Marie A. Mattox, P.A.
310 East Bradford Road
Tallahassee, Florida 32303

Leslie A. Lanusse, Esquire
701 Poydras Street, Suite 4500
New Orleans, Louisiana 70139

Lauren L. Tafaro, Esquire
Adams and Reese, LLP
701 Poydras Street
4500 One Shell Square
New Orleans, Louisiana 70139

Cheyanne Costilla, General Counsel
Florida Commission of Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from 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.