

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JENNIFER MOREHEAD,

Petitioner,

vs.

Case No. 13-2113

DOME GRILL, INC.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on July 22, 2013, via video conference in St. Petersburg and Tallahassee, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH). The parties were represented as set forth below.

APPEARANCES

For Petitioner: Jennifer Morehead, pro se  
312 15th Avenue Northeast  
St. Petersburg, Florida 33704

For Respondent: Walter E. Smith, Esquire  
Meros, Smith, Lazzara, and Olney, P.A.  
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Dome Grill, Inc. (the Grill), discriminated against Petitioner, Jennifer Morehead, on the basis of her age.

PRELIMINARY STATEMENT

Petitioner filed a formal charge of Discrimination with the Pinellas County Office of Human Rights (the "PCOHR"). Upon review and consideration of the complaint, the PCOHR found reasonable cause. It then conducted a conciliation meeting to try to resolve the matter. The conciliation was not successful. Pursuant to the Pinellas County Code and a contract between DOAH and Pinellas County, the matter was forwarded to DOAH for the purpose of conducting a de novo formal administrative hearing to determine whether there was discrimination. The request for a hearing was sent to DOAH on Friday, June 7, 2013, and received on Tuesday, June 11, 2013.

At the final hearing Ms. Morehead called one witness and testified on her own behalf. Ms. Morehead did not offer any exhibits into evidence. Respondent called three witnesses and offered one exhibit,<sup>1/</sup> which was admitted into evidence.

The parties timely filed their Proposed Recommended Orders (PROs) with findings of fact and conclusions of law.<sup>2/</sup> Each PRO has been considered in the rendering of this Order.

## FINDINGS OF FACT

1. Ms. Morehead is now a 51-year-old female, who, at the time of this incident had three years of experience as a cashier.

2. On January 9, 2012, Ms. Morehead spoke with Michael Karamalakos (Mr. Karamalakos), the owner of the Grill, about any openings at the Grill. Mr. Karamalakos invited Ms. Morehead to come to the Grill the following day to discuss an open cashier position. The Grill is located at 561 Central Avenue, St. Petersburg, Pinellas County, Florida.

3. On January 10, 2012, Ms. Morehead arrived at the Grill for her interview. She encountered Kostas Karamalakos (K.K.), a son of the owner. When K.K. heard that Ms. Morehead was there to interview for the cashier position, K.K. stated something to the effect: "We wouldn't be interested in you. We are looking for someone young and beautiful." K.K. admitted to making a statement to this effect, although he could not remember his exact words.

4. Ms. Morehead was stunned by K.K.'s remarks. K.K. did not offer to get his father for the interview, nor did Ms. Morehead complete an interview for the cashier position. After K.K. repeated his statement to Ms. Morehead a second time, she left the Grill.

5. Once Ms. Morehead left the Grill, she confided in a friend Jennifer Zoellner about K.K.'s statement. Not believing

that anyone would verbalize that kind of discriminatory sentiment, Ms. Morehead and Ms. Zoellner returned to the Grill. Upon entering the Grill, Ms. Zoellner asked K.K. to repeat what he had said to Ms. Morehead. K.K. did so, informing Ms. Zoellner that the Grill was looking for a young and beautiful college-aged cashier. After a heated exchange between Ms. Zoellner and K.K., the two women left the Grill.

6. Alex Karamalakos (A.K.), another son of the owner was also present when Ms. Morehead and Ms. Zoellner returned to the Grill. A.K. was standing in close proximity to K.K. when the two women entered the Grill. A.K.'s testimony that he did not hear K.K.'s discriminatory statement when K.K. repeated it to the two women is not credible. A.K. became visibly upset with K.K. when K.K. uttered his discriminatory statement to the women. A.K. neither apologized for his brother's statement nor stated that it was not the position or policy of the Grill.

7. K.K. admitted to making the discriminatory statement to Ms. Morehead. K.K. is the youngest son of Mr. Karamalakos and is recognized by patrons as belonging to the owner's family. K.K. lives above the Grill (with other members of his family), spends time at the Grill, and attends college. K.K. prepares and eats his breakfast and lunch at the Grill. K.K. may not be on the payroll of the Grill, but he continues to perform minor tasks at

the Grill. K.K. admitted that he has, in the past, held himself out as a manager of the Grill.

8. The Grill has hired people who are over 40 years of age. Mr. Karamalakos maintained that he is the only person who has the authority to hire and/or terminate Grill employees. However, when he is away from the Grill, A.K. is in charge, and A.K. is considered the general manager of the Grill. A.K. and K.K. do not get along.

9. Although there was testimony that other younger cashiers have been hired by the Grill, no testimony was received as to who was hired as the cashier at the time Ms. Morehead made her inquiry at the Grill. It is unknown whether a younger person was hired for the position.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over this matter pursuant to section 120.65(7), Florida Statutes (2012), and the contract between DOAH and Pinellas County.

11. Ms. Morehead claims discrimination under the Pinellas County Code section 70-53 which states that it is unlawful for an employer to participate in a discriminatory practice through failing or refusing "to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment because of

race, color, religion, national origin, sex, sexual orientation, age, marital status or disability."

12. Ms. Morehead has the burden of proving by a preponderance of the evidence that the Grill committed an unlawful employment practice. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). Ms. Morehead is claiming intentional discrimination by the Grill, an unlawful employment practice.

13. Discriminatory intent can be established through direct or circumstantial evidence. Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999). Direct evidence of discrimination is evidence that, if believed, establishes the existence of discriminatory intent behind an employment decision without inference or presumption. Maynard v. Bd. of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003).

14. "Direct evidence is composed of only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of some impermissible factor." Schoenfeld v. Babbitt, supra.

15. In order for Ms. Morehead to establish a prima facie case of discrimination, she must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was subjected to an adverse employment action; and (4) the employer treated similarly situated employees, outside of her

protected class, more favorably than she was treated. See McDonnell Douglass Corp. v. Green, 411 U.S. 792 (1973); Burke-Fowler v. Orange Cnty., 447 F.3d 1319, 1323 (11th Cir. 2004); Maynard v. Bd. of Regents of the Div. of Univs. of the Fla. Dep't of Educ., 342 F.3d 1281 (11th Cir. 2003); Dep't of Child. & Fams. v. Garcia, 911 So. 2d 171 (Fla. 3d DCA 2005).

16. Ms. Morehead established that she is a member of a protected class, and she was qualified for the position. Although she attempted to interview for a cashier position, no interview was completed. Ms. Morehead was subjected to an adverse employment action in that she was unable to interview for the position because of the discriminatory statement. However, Ms. Morehead did not establish that the employer (the Grill) treated similarly situated employees, outside her protected class in a more favorable manner. K.K.'s statement was offensive, rude and discriminatory in nature and A.K. did nothing to rectify the situation; however, Ms. Morehead failed to present any credible evidence that at the time she was seeking employment, the Grill hired a younger individual.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the claim for relief filed by Petitioner, Jennifer Morehead, should be denied.

DONE AND ENTERED this 8th day of August, 2013, in  
Tallahassee, Leon County, Florida.



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Lynne A. Quimby-Pennock  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of August, 2013.

ENDNOTES

<sup>1/</sup> Respondent's counsel faxed a copy of Respondent's Exhibit 1 to DOAH approximately 15 minutes after the hearing concluded.

<sup>2/</sup> At the conclusion of the hearing, the parties advised the undersigned that a hearing transcript would be ordered. On July 26, 2013, the parties advised that a transcript would not be ordered. On July 29, the parties were ordered to file any proposed recommended orders no later than 5:00 p.m. on Friday, August 2.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Division of Administrative Hearings to be considered by the above-signed Administrative Law Judge, which will issue the final order in this case.