

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENAN TUZLAK,

Petitioner,

vs.

Case No. 13-3257

SUNCOAST ARCHITECTURE AND
ENGINEERING, LLC,

Respondent.

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on November 19, 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).

APPEARANCES

For Petitioner: Thania Diaz Clevenger, Esquire
CAIR-FL
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For Respondent: William M. Hurter, Esquire
Spartan Law Group
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STATEMENT OF THE ISSUE

Whether Respondent, Suncoast Architecture and Engineering, LLC. (Suncoast), retaliated against Petitioner, Kenan Tuzlak,

after Petitioner filed a discrimination complaint against Suncoast and, if so, what relief should be granted to Mr. Tuzlak.

PRELIMINARY STATEMENT

On January 22, 2013, Mr. Tuzlak filed a formal charge of Discrimination with the Pinellas County Office of Human Rights (the "PCOHR"), alleging retaliation. Upon review and consideration of the complaint, the PCOHR found reasonable cause for Mr. Tuzlak's allegation. The PCOHR 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, August 23, 2013, and received on Monday, August 26, 2013.

On September 10, 2013, an agreed motion for Mr. Tuzlak to telephonically appear at hearing was filed. On September 23, an Order was issued that allowed Mr. Tuzlak to appear by telephone provided there was a notary public present to swear him in as a witness on the hearing date. Additionally, that notary public was to provide written proof that Mr. Tuzlak was sworn in by filing a Statement of Person Administering the Oath with the undersigned within seven days of administering the oath.

On November 18, 2013, "Respondent's Motion for Sanctions Pursuant to Fla. Stat. § 57.105" (motion) was filed. On November 21, "Petitioner's Response to Respondent's Motion for Fla. Stat. §57.105 Sanctions and Incorporated Memorandum of Law" was filed. Shortly thereafter Respondent filed "Respondent's Motion for Leave to Reply to Petitioner's Response to Respondent's Motion for Sanctions", which was denied by Order issued on November 22. For reasons set forth herein, the motion is now denied.

Prior to hearing, the parties submitted a Pre-hearing Stipulation Report, which included facts for which the parties stipulated no evidence would be required at hearing. Where relevant, those facts have been incorporated into this Recommended Order.

Following a one-week continuance, the hearing was re-scheduled to November 19, 2013, and heard on that day.

At the final hearing Joint Exhibits A through G were admitted into evidence. Mr. Tuzlak testified on his own behalf and called one witness, Keith Burnett. Suncoast called Mr. Burnett to testify.

The transcript was filed on December 3, 2013. Both parties timely filed a Proposed Recommended Order, and each has been considered in the rendering of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, Suncoast was an architectural and engineering company located in Clearwater, Florida. Mr. Burnett is the president and sole owner of Suncoast.

2. Suncoast was an "employer" pursuant to the definition of the term set forth within the applicable Pinellas County Code provision.

3. In November 2011, Mr. Tuzlak was first employed by Suncoast as a draftsman. He was promoted to designer, receiving an increase in pay and bonuses. His initial title at Suncoast was "Senior Engineering Technician."

4. On Monday, June 11, 2012, Mr. Tuzlak was terminated from his employment at Suncoast.

5. On November 5, 2012, Mr. Tuzlak filed a charge of employment discrimination (Charge 1) pursuant to Pinellas County Code section 70-76. Mr. Tuzlak alleged he was discriminated against based on his religion and retaliation.

6. On Friday, December 21, 2012, William Hurter, counsel to Suncoast, mailed a letter directly to Mr. Tuzlak. Mr. Tuzlak received the letter the next day. That letter, in pertinent part stated:

By way of introduction, this firm represents the interests of Suncoast Architecture & Engineering LLC ("Suncoast"). We are in

receipt of your claim and have already been in contact with the Pinellas County Office of Human Rights.

To begin, we would like to reiterate Suncoast's position: your termination from employment had nothing to do with any sort of discrimination whatsoever, and was based solely on legitimate business necessities. Our client also stated your claim is filled with falsehoods and misrepresentations. As a result, Suncoast is demanding that you withdraw your discrimination claim within 7 days of the date of this letter.

If you do not withdraw your claim, we will represent Suncoast throughout the discrimination proceedings and we will also be filing a lawsuit against you for trade slander, in addition to any other legal causes of action which Suncoast may be able to pursue against you for your meritless discrimination claim.

We would also ask that any further communications you may seek to have with Suncoast come strictly through this office. We will ensure that any statements or other information from you is forwarded to the appropriate representative of Suncoast.

Overall, we are sympathetic to your situation and understand the hardships associated with losing one's job. However, in today's economy many individuals and business [sic] are struggling and it is inappropriate and against the law to file a discrimination claim in retaliation to a lawful and necessary termination of employment. With that in mind, we hope you will accept our offer to withdraw your claim against Suncoast in exchange for Suncoast agreeing not to pursue its legal rights against you.

7. Mr. Tuzlak felt threatened and scared by the letter. Mr. Tuzlak believed the intent "of this document [letter] was to scare me off and stop me from enforcing my legal rights." Mr. Tuzlak understood the letter was a demand for him to withdraw the prior discrimination case (Charge 1) against Suncoast, or Mr. Tuzlak would be sued for, among other things, "trade slander."^{1/} The letter accused Mr. Tuzlak of filing Charge 1 with "falsehoods and misrepresentations." Mr. Tuzlak feared he would incur financial losses. His testimony is found to be credible.

8. On January 22, 2013, Mr. Tuzlak filed the retaliation charge (Charge 2) pursuant to Pinellas County Code section 70-54. At the time Charge 2 was filed, the allegations in Charge 1 had not been resolved.^{2/}

9. After Charge 2 was filed, but before this hearing was held, Mr. Tuzlak moved to Alberta, Canada, where he is currently working as a design engineer.

10. Mr. Burnett makes all the decisions regarding Suncoast. Mr. Burnett directed Mr. Hurter to write the letter to Mr. Tuzlak. Mr. Burnett wanted Mr. Tuzlak to stop pursuing the original discrimination charge. Mr. Burnett "intended to gain an end to this proceeding [Charge 1] without causing any more damage to anyone." Mr. Burnett's stated desire to "inform him [Mr. Tuzlak] that there are adverse consequences that can happen to you if this happens" is self-serving.

11. Mr. Burnett does not have any recollection of any statements Mr. Tuzlak made outside of the allegations found in Charges 1 and 2. Mr. Burnett did not receive any direct feedback from the community about any statements Mr. Tuzlak may have made. Suncoast's employees were told of the allegations in the Charges, but that information did not come from Mr. Tuzlak. Mr. Burnett conceded he had no way to know if Suncoast sustained any loss or damage as a result of either Charge.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over this matter pursuant to section 120.65(7), Florida Statutes (2013),^{3/} and the contract between DOAH and Pinellas County.

13. Mr. Tuzlak claims discrimination under the Pinellas County Code section 70-54, which states in pertinent part:

It is an unlawful discriminatory practice for a person to:

(1) Retaliate or discriminate against a person because he or she has opposed a discriminatory practice, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this division.

14. In order to prevail, Mr. Tuzlak has the burden of proving by a preponderance of the evidence that Suncoast

committed an unlawful act. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

15. To establish a prima facie case of retaliation, Mr. Tuzlak must show that: (1) he was engaged in a statutorily protected activity; (2) he experienced a materially adverse action; and, (3) there was some causal relationship between the engagement in the statutorily protected activity and the materially adverse action. Goldsmith v. Bagby Elevator Co., Inc., 513 F.3d 1261, 1277 (11th Cir. 2008). See also Pennington v. City of Huntsville, 261 F.3d 1262 (11th Cir. 2001). Courts have construed the causal-relationship between the events broadly. Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004). To satisfy the causal relationship connection requirement, Mr. Tuzlak must establish that the protected activity and the alleged retaliatory action are not completely unrelated. Wideman v. Wal-Mart Store, Inc., 141 F.3d 1453 (11th Cir. 1998).

16. After establishing a prima facie case for retaliation, the burden shifts to Respondent to articulate a non-discriminatory reason for his action. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). And, if Respondent is able to shift the burden, then Mr. Tuzlak, in order to prevail, must establish that the articulated non-discriminatory reason(s) were

a pretext to mask the unlawful discrimination. Smith v. J. Smith Lanier & Co., 352 F.3d 1342 (11th Cir. 2000).

The burden of establishing a prima facie case of retaliation is not heavy. Booth v. Pasco County, 829 F. Supp. 2d 1180 (M.D. Fla. 2011), citing Crapp v. City of Miami Beach, 242 F.3d 1017 (11th Cir. 2001).

17. In this instance, a preponderance of evidence establishes a prima facie case of retaliation. Mr. Tuzlak participated in a protected activity, as he had the right to file a complaint alleging discrimination, Charge 1. The fear and apprehension instilled in Mr. Tuzlak after receiving the December 21, 2012, letter threatening a law suit if he did not drop Charge 1 was significant. The letter was sent as a result of Mr. Tuzlak exercising his right to file the complaint. Thus, the causal connection is well-established.

18. Once Mr. Tuzlak establishes a prima facie case of discrimination, the burden shifted to Suncoast to articulate a legitimate, non-discriminatory, non-retaliatory reason for the challenged action. Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 257 (1981).

19. After receiving Charge 1, Mr. Burnett contacted counsel and directed that the letter be sent. Mr. Burnett "intended to gain an end to this proceeding without causing any more damage to anyone." The letter advised Mr. Tuzlak that a lawsuit would be

filed for, among other things, "trade slander" if Mr. Tuzlak did not withdraw Charge 1. That letter was not informative, but threatening, and sought to preclude Mr. Tuzlak from pursuing a claim that he felt was meritorious.

20. Applying the rules of law to the facts in this case, the record shows that Mr. Tuzlak established that Suncoast retaliated against Mr. Tuzlak for filing Charge 1, thereby violating Pinellas County Code section 70-54(1). Mr. Burnett did not provide a legitimate, non-discriminatory, non-retaliatory reason for the letter.

21. Under Pinellas County Code section 70-78, an Administrative Law Judge has the authority to award actual damages caused by a violation of the applicable code provisions as well as reasonable costs and attorney's fees incurred to pursue a claim of discrimination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered:

A. Finding that Respondent, Suncoast Architecture & Engineering, LLC, violated section 70-54(1), Pinellas County Code; and

B. Ordering Suncoast to pay Mr. Tuzlak reasonable costs and attorney's fees. Jurisdiction is retained to determine the

amount of costs and attorney's fees, if the parties are unable to agree to the amount.

DONE AND ENTERED this 3rd day of January, 2014, in Tallahassee, Leon County, Florida.



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 3rd day of January, 2014.

ENDNOTES

^{1/} Mr. Tuzlak provided a rudimentary definition of "trade slander" as "Trade Slander is like talking about a company lied about something, it sounded like."

^{2/} A "Determination; No Cause" to Charge 1 was entered by PCOHR prior to this hearing.

^{3/} Unless specifically stated otherwise herein, all references to the Florida Statutes will be to the 2013 version.

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.