

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENAN TUZLAK,

Petitioner,

vs.

Case No. 13-3257

SUNCOAST ARCHITECTURE AND
ENGINEERING, LLC,

Respondent.

FINAL ORDER

A Recommended Order was entered in this case on January 3, 2014, setting forth findings of fact and conclusions of law. The parties were given ten days from the date of the Recommended Order to submit written exceptions. Pursuant to the Pinellas County Code section 70-77(g)(13), it is the responsibility of the Administrative Law Judge to consider any written exceptions and then to issue a Final Order.

APPEARANCES

For Petitioner: Thania Diaz Clevenger, Esquire
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8056 North 56th Street
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For Respondent: William M. Hurter, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is 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.

RULINGS ON EXCEPTIONS

On January 13, 2014, Suncoast filed exceptions to the Recommended Order.

In determining how to rule upon the exceptions, the undersigned must follow section 120.57(1)(1), Florida Statutes (2013),^{1/} which provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with

particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

Additionally, section 120.57(1)(k) provides in pertinent part:

The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

In accordance with these legal standards, the following rulings are made on the exceptions filed:

Respondent's Exception Nos. 1 and 2:

Respondent's Exceptions 1 and 2 take exception to the Conclusion of Law, found in paragraph 17, page 9, that Mr. Tuzlak has proven a prima facie case of retaliation, including the second element of that prima facie case of retaliation, and to the recommendations, "A" and "B" found on pages 10 and 11 of the Recommended Order. It is noted that these exceptions are nothing more than an attempt to reargue its case, and therefore the two exceptions are rejected. The letter was in retaliation for Mr. Tuzlak filing his first claim. Respondent's threat of filing

a "trade slander" lawsuit was unsupported at hearing. Further, the exception to the recommendation is rejected because there is competent substantial evidence in the record to support the recommendation.

Respondent's Exception Number 3:

Respondent's Exception 3 takes exception to the Conclusion of Law found in paragraph 20, page 10, that "Mr. Burnett did not provide a legitimate, non-discriminatory, non-retaliatory reason for the letter." This exception is nothing more than an attempt to reargue its case, and therefore it is rejected.

Respondent's Exception Number 4:

Respondent's Exception 4 takes exception to page 10, paragraph 16, regarding the burden of establishing a prima facie case of retaliation. (The language at issue is contained in paragraph 16, page 9.) This exception is an argument regarding case law, and is rejected as unpersuasive.

Respondent's Exception Number 5:

Respondent's Exception 5 takes exception to the undersigned's denial of Respondent's Motion for Sanctions. Such exception is neither an exception to a Finding of Fact nor to a Conclusion of Law contained in the Recommended Order. Respondent violated Pinellas County Code section 70-54. This exception is rejected.

FINDINGS OF FACT

The findings of fact set forth in the Recommended Order are approved, adopted and incorporated herein by reference. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

The conclusions of law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

A. Respondent violated section 70-54(1) Pinellas County Code;

B. Respondent shall pay Mr. Tuzlak reasonable attorney's fees and costs in prosecuting this action. Jurisdiction is retained to determine the amount of reasonable attorney's fees and costs. The parties are hereby directed to confer within 20 days of the date of this Final Order concerning the amount of attorney's fees and costs. Within five days after the parties confer, the parties shall file a joint status report that informs the undersigned as to whether or not they are able to stipulate to an amount of attorney's fees and costs. If the parties are able to stipulate an amount of the attorney's fees and costs, then the stipulation shall be sent to the undersigned for review

and approval. If the parties are unable to stipulate an amount of the attorney's fees and costs, then a hearing shall be set to determine the reasonable amount of attorney's fees and costs.

DONE AND ORDERED this 17th 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 17th day of January, 2014.

ENDNOTE

^{1/} Unless otherwise specified, all citations to the Florida Statutes are to the 2013 version.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to seek judicial review by filing a petition for writ of certiorari in the circuit court of the Sixth Judicial Circuit in and for Pinellas County, Florida, within 30 calendar days of the date of this Final Order. § 70-77(14), Pinellas County Code.