

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHELIA DEMONS,

Petitioner,

vs.

Case No. 13-4457

EMERALD GRANDE, LLC,

Respondent.

_____ /

AMENDED RECOMMENDED ORDER^{1/}

Administrative Law Judge W. David Watkins, of the Division of Administrative Hearings (Division) heard this case, as noticed, on March 11, 2014, in Fort Walton Beach, Florida.

APPEARANCES

For Petitioner: No appearance

For Respondent: Ginger Barry Boyd, Esquire
Broad and Cassel
4100 Legendary Drive, Suite 280
Destin, Florida 32541

STATEMENT OF THE ISSUE

Did Respondent, Emerald Grande, LLC (Emerald), discharge Petitioner, Shelia Demons, on account of her race in violation of chapter 760, Florida Statutes (2013)?^{2/}

PRELIMINARY STATEMENT

On July 19, 2013, Ms. Demons filed an Employment Complaint of Discrimination alleging that she was subjected to unfair

treatment, more strict terms and conditions, and ultimately discharged for allegedly violating certain employee rules and regulations. The Florida Commission on Human Relations (Commission) issued a No Cause Determination. Ms. Demons filed a Petition for Relief. On November 19, 2013, the Commission referred the matter to the Division for conduct of the requested hearing. The remainder of this case's procedural history is contained in the following Findings of Fact.

FINDINGS OF FACT

1. By Notice dated December 3, 2013, the hearing was originally scheduled for January 14, 2014.

2. On January 8, 2014, Petitioner filed a request that the hearing be continued.

3. The undersigned continued the hearing until February 4, 2014.

4. On January 17, 2014, Respondent filed an Unopposed Motion for Continuance.

5. The undersigned continued the hearing until March 11, 2014.

6. On March 7, 2014, Respondent filed a Motion to Exclude Petitioner's Undisclosed Witnesses and (Proposed) Exhibits on the grounds that Petitioner had not disclosed her witnesses and exhibits to Respondent as required by the Order of Pre-Hearing Instructions.

7. The hearing convened as scheduled at 9:00 a.m., Central Time, on March 11, 2014. Counsel for Emerald and Emerald's representative and witnesses appeared. Emerald had previously timely provided Petitioner with its witness and exhibit lists.

8. As of 9:16 a.m., Ms. Demons had not appeared or contacted the office of the undersigned.

9. At 9:17 a.m., counsel for Respondent moved, ore tenus, for an order of dismissal. The undersigned informed counsel for Respondent that a written recommended order would be entered granting Respondent's motion.

10. Ms. Demons presented no evidence. Emerald presented no evidence. The hearing was adjourned at 9:20 a.m. When the undersigned left the hearing room at 9:30 a.m., Petitioner had still not appeared or contacted the office of the undersigned.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to sections 120.569 and 120.57(1), Florida Statutes.

12. Section 760.11(7) permits a party who receives a no cause determination to request a formal administrative hearing before the Division. "If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the

Commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back-pay.”

Id.

13. Ms. Demons claims that Emerald terminated her because of race. Section 760.10(1)(a) prohibits discharging an employee on account of her race.

14. Ms. Demons must prove her claim by a preponderance of the evidence. Dep't of Banking & Fin., Div. of Sec. and Inv. Prot. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996).

15. An employee may prove a discrimination claim by direct evidence. Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1086 (11th Cir. 2004). Direct evidence of discrimination is evidence that, if believed, proves the existence of a fact without inference or presumption. Carter v. City of Miami, 870 F.2d 578, 581-82 (11th Cir. 1989).

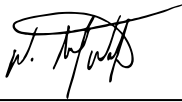
16. An employee may also prove a claim of discrimination by circumstantial evidence establishing that similarly-situated employees, who were not in her protected class, were treated more favorably than she was. Wilson v. B/E Aerospace, Inc., supra, at 1087.

17. Ms. Demons has not presented direct or circumstantial evidence tending to prove that she was discriminated against on account of her race. Consequently, she has not proven her claim by the preponderance of the evidence.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations deny the Petition for Relief of Shelia Demons.

DONE AND ENTERED this 27th day of June, 2014, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
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 27th day of June, 2014.

ENDNOTE

^{1/} This Amended Recommended Order is being entered following remand of this matter from the Florida Commission on Human Relations (FCHR). In its Order Remanding Petition for Relief from an Unlawful Employment Practice of May 21, 2014, FCHR expressed concern that Petitioner may not have received notice of the hearing that she requested but failed to appear for. In its Order, FCHR stated:

In this instance, however, it appears that the proceeding leading to the Recommended Order did not comply with the essential requirements of law because the Order Granting Continuance and Re-scheduling Hearing, dated January 21, 2014, setting the

date and time for the hearing at which Petitioner failed to appear, does not seem to have been sent to Petitioner's address of record. See, generally, section 120.57(1)(1), Florida Statutes (2013), regarding the Commission's ability to determine whether a proceeding leading to an order before it complied with the essential requirements of law; and see also Florida Administrative Code Rule 28-106.208, regarding the requirement that notices of hearing be served by the presiding officer on the parties at their address of record.

The Complaint of Discrimination, the Petition for Relief, and the Commission's "Transmittal of Petition" to the Division of Administrative Hearings (DOAH) all list Petitioner's address as 941 Central Avenue, **Apartment P**, Fort Walton Beach, Florida, 32547 [emphasis added]. However, the Order Granting Continuance and Re-scheduling Hearing, dated January 21, 2014, setting the date and time for the hearing at which Petitioner failed to appear omits the "**Apartment P**" designation from Petitioner's address.

In response to FCHR's Order, on May 23, 2014, the undersigned entered an Order on Remand which provided in relevant part:

The undersigned having reviewed the record in this cause, it is, therefore,

ORDERED that:

1. Petitioner shall advise the undersigned in writing by no later than June 23, 2014, as to whether it is her position that she did not receive the Order Granting Continuance and Rescheduling Hearing, dated January 21, 2014 (copy attached) at least 14 days prior to March 11, 2014.

2. Should Petitioner timely advise the undersigned that it is her position that she did not receive the Order Granting

Continuance and Re-scheduling Hearing, dated January 21, 2014, at least 14 days prior to March 11, 2014, the undersigned shall schedule a hearing to take the sworn testimony of Petitioner regarding the factual issue of her receipt or non-receipt of the Order Granting Continuance and Re-scheduling Hearing.

3. Should Petitioner fail to timely advise the undersigned in writing that she did not receive the Order Granting Continuance and Re-scheduling Hearing, dated January 21, 2014 at least 14 days prior to March 11, 2014, the undersigned shall conclude that Petitioner received legally sufficient notice of the administrative hearing held on March 11, 2014, and will re-issue the Recommended Order with the appropriate apartment designation, thereby starting anew the time frame for Petitioner to file exceptions to the Recommended Order.

There has been no written filing with the Division or other communication from Petitioner subsequent to entry of the Order on Remand. Accordingly, it is appropriate for this administrative law judge to conclude that Petitioner received legally sufficient notice of the administrative hearing held on March 11, 2014.

^{2/} All references to the Florida Statutes are to the 2013 edition unless otherwise noted.

COPIES FURNISHED:

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

Sheila S. Demons
941 Central Avenue, Apartment P
Fort Walton Beach, Florida 32547

Ginger L. Barry, Esquire
Broad and Cassel
4100 Legendary Boulevard, Suite 280
Destin, Florida 32541

Cheyenne Costilla, General Counsel
Florida Commission on 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.