

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHELLE M. BENTON,

Petitioner,

vs.

Case No. 14-6142

CAUFFIELD AND ASSOCIATES,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 24, 2015, via video-teleconference between Fort Myers and Tallahassee, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Michelle Marie Benton, pro se
Apartment L-169
4654 DeLeon Street
Fort Myers, Florida 33907

For Respondent: Christine R. Sensenig, Esquire
Sensenig Law Firm, P.A.
Suite 103
2055 Wood Street
Sarasota, Florida 34237

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent engaged in an unlawful employment practice by discriminating against Petitioner on the basis of a handicap in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On September 17, 2014, Petitioner filed a Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (Commission), alleging unlawful employment discrimination by Respondent on the basis of her disability and in retaliation. The Commission investigated the Complaint. On December 4, 2014, the Commission issued its "Notice of Determination: No Cause" and "Determination: No Cause" regarding the alleged discriminatory practices.

On December 14, 2014, Petitioner timely filed a Request for Administrative Hearing which was forwarded to the Division for assignment of an administrative law judge. On February 18, Respondent filed a Motion in Limine and Request for Expedited Pre-Hearing Conference and Resolution (Motion). On February 19, Petitioner filed a response to the Motion. On February 20, Respondent filed a notice of scrivener's error on the Motion, and on February 23, Petitioner filed a response to the scrivener's error. The Motion was addressed at the beginning of the hearing, and for the reasons stated herein, the Motion is denied as moot.

The final hearing was scheduled for February 24, and was completed on that day.

Petitioner testified on her own behalf and presented the testimony of Robert Tonetti, Debbie Tonetti, and Valerie Brown. Respondent presented the testimony of Scott Eller, Christine Cauffield, and Maureen Terwilliger. Petitioner did not offer any exhibits.^{1/} Respondent's Exhibits A through G were admitted into evidence.^{2/}

At the conclusion of the hearing, Respondent's counsel requested that the post-hearing submissions be filed within 20 days of the filing of the hearing transcript. Petitioner did not oppose the request, and it was granted.

The Transcript of the hearing was filed on March 18, 2015. On March 18, 2015, a Notice of Filing Transcript was issued wherein the parties were informed that the Transcript had been filed and their proposed recommended orders (PROs) were to be filed before 5:00 p.m. on April 7. Both parties timely filed a PRO, and each has been considered in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2014 codification.

FINDINGS OF FACT

1. Petitioner is a female. She was employed by Respondent beginning in mid-August 2013. Her employment with Respondent ended in the first quarter of 2014.

2. Respondent is an active limited liability company established and doing business pursuant to Florida law. Respondent provides case management services to Medicare and Medicaid recipients.

3. Christine Cauffield, appearing on behalf of Respondent, is Respondent's founder and CEO. Cauffield testified that Respondent never had more than 14 employees. The undersigned finds Cauffield's testimony credible.

4. Scott Eller is the founder and CEO of Community Assisted and Supported Living, Inc., a/k/a Renaissance Manor (CASL). CASL never employed Petitioner, and CASL did not share employees with Respondent. The two entities had a business agreement, but the companies are separate and independent of each other.

5. At the final hearing, Respondent presented a Florida Department of Revenue Employer's Quarterly Report covering each quarterly reporting period commencing on March 31, 2012, and ending September 30, 2014. Each report shows that Respondent employed fewer than 15 employees for each quarter covered by the report. These reports, supported by Cauffield's testimony, constitute competent substantial evidence that Respondent

employed fewer than 15 employees for each working day in each of the 52 calendar weeks in 2012, the year preceding the alleged discrimination; that Respondent employed fewer than 15 employees for each working day in each of the 52 calendar weeks in 2013; and that Respondent employed fewer than 15 employees for each working day in each of the first 40 calendar weeks in 2014.^{3/} Petitioner did not present any competent substantial evidence to counter or rebut this evidence.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), Fla. Stat.

7. The Florida Civil Rights Act of 1992 (the Act) is codified in sections 760.01 through 760.11, Florida Statutes, and prohibits discrimination in the workplace. When "a Florida statute [such as the Act] is modeled after a federal law on the same subject, the Florida statute will take on the same constructions as placed on its federal prototype." Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994). Therefore, the Act should be interpreted, where possible, to conform to Title VII of the Civil Rights Act of 1964, which contains the principal federal anti-discrimination laws.

Lack of Jurisdiction under Chapter 760, Florida Statutes

8. Based on the foregoing, it is concluded that Respondent is not an "employer" to which the Act applies. "Employer," for purposes of the Act's jurisdiction, means "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 a person." § 760.02(7), Fla. Stat.

9. Respondent presented unrefuted evidence establishing that it employed fewer than 15 employees for each working day in each of the first 40 calendar weeks in the current year in which the discrimination complaint was made (2014), and in the years preceding the discrimination claim (2012-2013).

10. Under these circumstances, it is concluded that the Commission lacks statutory jurisdiction under the Act to find any employment discrimination on the part of Respondent or to provide a remedy to Petitioner.^{4/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioner's Request for Administrative Hearing.

DONE AND ENTERED this 15th day of April, 2015, 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 15th day of April, 2015.

ENDNOTES

^{1/} On February 17, Petitioner filed a pleading that indicated her written evidence was being sent via certified mail to the Division. The materials were delivered to the Division on February 24; however, the undersigned did not receive them until after the hearing was completed. A review of the materials shed no light on the number of employees for Cauffield and Associates. The material was hearsay regarding the alleged discriminatory conduct, and can not support a finding of fact.

^{2/} Exhibits B, C, and D were composite Exhibits and each section was appropriately authenticated by the CEO of the respective company. Exhibits B and E were admitted over objection.

^{3/} The Department of Revenue Employer's Quarterly Report for the quarter ending December 31, 2014, was not provided.

^{4/} Petitioner did not provide any evidence of discrimination. However, in light of the fact that Respondent did not employ more than 15 people to invoke the Commission's jurisdiction, such evidence, if provided, would not have resulted in a recommendation for Petitioner.

COPIES FURNISHED:

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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.