

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CHRISTOPHER ORR,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2014-01401

v.

DOAH Case No. 15-1177

AMERI-SCAPES LANDSCAPE
MANAGEMENT, INC.,

FCHR Order No. 15-075

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Christopher Orr filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2013), alleging that Respondent Ameri-Scapes Landscape Management, Inc., committed an unlawful employment practice on the basis of Petitioner's race (African-American) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on January 27, 2015, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Daytona Beach, Florida, on June 29, 2015, before Administrative Law Judge Lawrence P. Stevenson.

Judge Stevenson issued a Recommended Order of dismissal, dated October 15, 2015.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order with the Division of Administrative Hearings on October 30, 2015. The exception document contains numbered paragraphs 1 through 54, however there are no paragraphs numbered 7, 28 or 30, and paragraph 54 appears before paragraph 53.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Bristol v. American Water, FCHR Order No. 15-041 (July 9, 2015), Medina v. Department of Children and Families, FCHR Order No. 12-016 (April 23, 2012), St. Louis v. Florida Physician Medical Group, FCHR Order No. 11-078 (October 6, 2011), Garcia v. Heart of Florida Medical Center, FCHR Order No. 10-061 (August 10, 2010) and Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "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." Section 120.57(1)(k), Florida Statutes (2015); see, also, Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012) and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not fully comply with this statutory provision. Only the material presented at paragraphs 48 through 54 of the exceptions document are actual exceptions to the Recommended Order.

For those paragraphs, it can be said that Petitioner excepts to facts found and inferences drawn from the evidence presented, and generally, that Petitioner excepts to the Administrative Law Judge's finding that no unlawful employment practice occurred in this matter.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence

presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor, supra.

In addition, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Finally, we note that Petitioner's exceptions document filed with the Division of Administrative Hearings contains no certificate that it had been served on Respondent. The administrative rules applicable to this proceeding state, "Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of service shall accompany each pleading or other document filed with the agency." Fla. Admin. Code R. 28-106.104(4). See also, Fla. Admin. Code R. 28-106.104(2)(f).

Petitioner's exceptions are rejected.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 16 day of December, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner J. Jeff Graber

Filed this 16 day of December, 2015,
in Tallahassee, Florida.

Jimmy Barton

Clerk

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Lawrence P. Stevenson, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above
listed addressees this 16 day of December, 2015.

By: Jimmy Barton
Clerk of the Commission
Florida Commission on Human Relations