

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DOROTHY SCOTT,

Petitioner,

vs.

Case No. 15-4432

SUNSHINE AUTO MART,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 9, 2015, in Winter Haven, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Shawn Jiles, Esquire
Jiles Law, P.A.
Post Office Box 1847
Winter Haven, Florida 33882

For Respondent: Ralph H. Schofield, Jr., Esquire
Clark, Campbell, Lancaster
and Munson, P.A.
Suite 800
500 South Florida Avenue
Lakeland, Florida 33801

STATEMENT OF THE ISSUE

Initially the issue was, whether Respondent, Sunshine Auto Mart, discriminated against Petitioner, Dorothy Scott, on the basis of her disability, and, if so, what remedy should be ordered. However, at the beginning of the hearing, the parties

agreed that the hearing would be limited to the question of whether Respondent met the definition of "employer" under the Florida Civil Rights Act.

PRELIMINARY STATEMENT

On April 16, 2015, 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. The Commission investigated the Complaint. On July 6, the Commission issued its "Notice of Determination: No Cause" and "Determination: No Cause" regarding the alleged discriminatory practice.^{1/}

On August 7, Petitioner timely filed a Petition for Relief,^{2/} which was forwarded to the Division for assignment of an Administrative Law Judge. The final hearing was set and heard on October 9.

Petitioner testified on her own behalf.^{3/} Respondent presented the testimony of John Connell and Linda Riggs. Joint Exhibit 1, Petitioner's Exhibit 1, and Respondent's Exhibits 1 through 3 were admitted into evidence.

A court reporter was present for the hearing. At the end of the hearing, the parties were advised to submit their proposed recommended orders (PROs) within 10 days of the conclusion of the hearing. Respondent's counsel then stated a transcript would be ordered, and the parties were advised that

their PROs would be due ten days after the filing of the transcript. However, on October 23, both parties filed their PROs.^{4/} Each PRO 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. Respondent is a used automobile dealership. John Connell is the sole proprietor of Respondent.

2. Petitioner was hired by Respondent in 2007. Petitioner started working for Respondent as a secretary and later became Respondent's general manager. She would work in different areas of the dealership, as needed, but she maintained a steady work schedule. Petitioner received notification that her employment was terminated on July 28, 2014.

3. Petitioner was unable to provide competent details of when and how long each alleged employee worked for Respondent. Some of the alleged employees worked a few hours each week and could come and go as they wanted.

4. At the final hearing, Respondent presented Employer's Quarterly Federal Tax Returns for 2013 and 2014, and the Florida Department of Revenue Employer's Quarterly Reports covering 2013 and 2014. Each report shows that Respondent employed fewer than 15 employees for each quarter covered by the report. These reports, supported by Mr. Connell and Ms. Riggs' testimony,

constitute competent substantial evidence that Respondent employed fewer than 15 full-time employees for each working day in the 52 calendar weeks in 2013, and in the 28 calendar weeks in 2014, the period preceding the alleged discrimination. Petitioner did not present any competent substantial evidence to counter or rebut this evidence.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.11(7), Fla. Stat.

6. 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 FCRA] 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. Fla Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

Therefore, the FCRA 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

7. 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.

8. Respondent presented unrefuted evidence establishing that it employed fewer than 15 employees for each working day in each of the 28 calendar weeks in the year in which the discrimination complaint was made (2014), and in the 52 weeks in the year preceding the discrimination claim (2013).

9. 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.

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 Petition.

DONE AND ENTERED this 4 day of November, 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 4 day of November, 2015.

ENDNOTES

1/ The July 6, 2015, "Determination: No Cause" provided in pertinent part, the following:

Respondent is an employer within the meaning of the Florida Civil Rights Act of 1992, and the timeliness and all jurisdictional requirements have been met. . . .

2/ On page 2, paragraph 5, line 5, Petitioner asserts in pertinent part, the following.

Regardless, the Petitioner contends that the Respondent does indeed have and had more than 15 employees and is a [sic] employer under the relevant Statute.

3/ Petitioner's counsel issued a self-made Subpoena to Tammy Scott, who did not appear.

4/ Respondent's Notice Regarding Proposed Recommended Orders provided notice that after the hearing, the "parties thereafter agreed that transcription would not be necessary and agreed to submission of proposed recommended orders on Friday, October 23, 2015."

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.