

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SCARLETT D. EVANS,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2015-01130

v.

DOAH Case No. 16-0097

MOMMA G'S, INC.,

FCHR Order No. 16-041

Respondent.

**INTERLOCUTORY ORDER AWARDING AFFIRMATIVE RELIEF
FROM AN UNLAWFUL EMPLOYMENT PRACTICE
AND REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR ISSUANCE OF RECOMMENDED ORDER REGARDING AMOUNTS OF
BACK PAY, ATTORNEY'S FEES AND COSTS OWED PETITIONER**

Preliminary Matters

Petitioner Scarlett D. Evans filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2014), alleging that Respondent Momma G's, Inc., committed unlawful employment practices on the basis of Petitioner's marital status by demoting Petitioner, and on the basis of retaliation for filing a complaint with the EEOC by reducing Petitioner's hours and, subsequently, by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on December 7, 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 on March 29, 2016, in Panama City, Florida, before Administrative Law Judge Garnett W. Chisenhall.

Judge Chisenhall issued a Recommended Order, dated May 26, 2016, recommending that the Commission find that an unlawful employment practice occurred on the basis of retaliation when Respondent attempted to discipline Petitioner and ultimately terminated Petitioner from employment, and recommending affirmative relief.

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.

We note that the Recommendation section of the Recommended Order states, "...it is RECOMMENDED that the Florida Commission on Human Relations issue a final order awarding Scarlett Evans back pay, a reasonable attorney's fee and any other relief she is entitled to under Section 760.11, Florida Statutes." In our view, in addition to the relief indicated in this statement, Petitioner is also entitled to an award of costs reasonably incurred in the bringing of this action, reinstatement, and a directive prohibiting the unlawful employment practice found to have occurred. See Mills v. Bay St. Joseph Care and Rehabilitation Center, FCHR Order No. 10-092 (December 15, 2010).

Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Exceptions to Recommended Order."

Respondent's exceptions document contains four numbered exceptions. Exception 1 excepts to Recommended Order, ¶ 31. Exception 2 excepts to Recommended Order, ¶ 41. Exception 3 excepts to Recommended Order, ¶ 48 through ¶ 58. Exception 4 excepts to Recommended Order, ¶ 76 through ¶ 78.

A review of these exceptions suggests that Exceptions 1, 3 and 4 except to inferences drawn by the Administrative Law Judge from the evidence presented, and that Exception 2 excepts to a credibility determination of the Administrative Law Judge.

The Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction... 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 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 the essential requirements of law.” Section 120.57(1)(l), Florida Statutes (2015).

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 v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014).

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.

Respondent’s exceptions are rejected.

Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge’s findings of fact and conclusions of law, as set out above, we find that unlawful employment practices occurred in this matter in the manner found by the Administrative Law Judge and have adopted the Administrative Law Judge’s recommendations for the remedy of the unlawful employment practices, as set out in the “Conclusions of Law” section of this Order. In addition, we conclude the case should be remanded to the Administrative Law Judge for determination of the back pay amount owed Petitioner, recognizing that interest is to be applied to the back pay amount owed as a matter of law, and for determination of the amounts of attorney’s fees and costs owed Petitioner.

Respondent is hereby ORDERED:

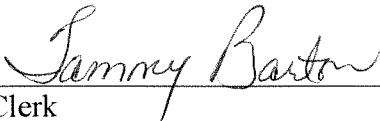
- (1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;
- (2) to reinstate Petitioner to her position with all seniority and benefits as if she had not been terminated;
- (3) to pay Petitioner back pay as recommended by the Administrative Law Judge;
- (4) to pay Petitioner attorney’s fees that have been reasonably incurred in this matter by Petitioner; and
- (5) to pay Petitioner the amount of costs that has been reasonably incurred in this matter by Petitioner.

This matter is REMANDED to the Administrative Law Judge for further proceedings to determine the amounts of back pay, including interest, attorney's fees and costs owed Petitioner and the issuance of a Recommended Order as to those amounts.

DONE AND ORDERED this 4 day of August, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Donna Elam

Filed this 4 day of August, 2016,
in Tallahassee, Florida.


Clerk
Commission on Human Relations
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Garnett W. Chisenhall, 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 4 day of August, 2016.

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