

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAURICE G. HARGROVE, SR.,

Petitioner,

vs.

Case No. 16-3635

AMERICAN STAFF MANAGEMENT, INC.,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

This cause came on for consideration without an evidentiary hearing for the reasons set forth below.

STATEMENT OF THE ISSUE

Whether this cause is barred by a release of all claims.

PRELIMINARY STATEMENT

On December 11, 2015, Maurice G. Hargrove, Sr. ("Mr. Hargrove"), filed an Employment Charge of Discrimination ("the Charge of Discrimination") with the Florida Commission on Human Relations ("the Commission") alleging that American Staff Management ("ASM") discriminated against him due to his disability, in violation of the Florida Civil Rights Act of 1992, sections 760.01 through 760.11, Florida Statutes (2014).

Mr. Hargrove stated in his Charge of Discrimination that:

I believe I was discriminated against on the basis of disability by my former employer, American Staff Management. I began my

employment with Respondent on April 16, 2014, and worked as a Stocker until my unlawful termination on May 23, 2015. On June 18, 2014, I was injured on the job while pulling a heavy pallet on the floor. I was cleared to return to work under light duty restrictions in October 2014, but was told by Ms. Debbie (LNU) there was nothing for me to do. In May 2015, I was informed by my doctor that I had reached my maximum medical improvement (MMI) and was declared permanently disabled. Respondent, in coordination with their worker's compensation carrier, made no attempt to accommodate my disability and terminated my employment effective May 23, 2015. It is my firm belief I was terminated solely due to my disability.

The Commission assigned Case No. 201600313 to Mr. Hargrove's case.

On June 15, 2016, the Commission determined that there was no reasonable cause to believe that an unlawful employment practice had occurred. The Commission explained its reasoning as follows:

[ASM] is a professional employment organization (PEO), providing administrative support, including payroll and Worker's Compensation support, to KES Grocery d/b/a Save-a-Lot (KES). KES hired [Mr. Hargrove] on April 16, 2014, and [he] was injured on the job on June 18, 2014. [Mr. Hargrove] was out of work on Worker's Compensation until May 2015, when he asked KES to return to work with light duty restrictions. According to [Mr. Hargrove], a representative of KES denied the request. [ASM] asserts and [Mr. Hargrove] does not dispute that KES hired [Mr. Hargrove] and that [Mr. Hargrove] worked within the grocery store performing the functions of

the grocery store. Thus, it is obvious KES employs [Mr. Hargrove]. Additionally, the evidence in the record demonstrates that KES and [ASM] are not a single employer and are not joint employers. [ASM] submitted its contract for services. The contract language confirms [ASM]'s position that it did not have any ownership or control over KES's business or operations and did not have any control over [Mr. Hargrove]'s work at the grocery. For that reasons [sic], there is no basis for liability in [ASM].

In addition to notifying Mr. Hargrove of its decision, the Commission advised him that he could challenge its determination by requesting an administrative hearing before the Division of Administrative Hearings ("DOAH").

Mr. Hargrove timely filed a Petition for Relief requesting an administrative hearing, and the Commission referred the instant case to DOAH on June 23, 2016.

On August 15, 2016, ASM filed a Motion to Dismiss alleging that Mr. Hargrove had signed a document releasing ASM from any claim relating to his "employment" with ASM. The document in question is entitled "General Release of All Claims" ("the General Release") and was attached to the Motion to Dismiss.

Mr. Hargrove responded to the Motion to Dismiss by filing a motion asking the undersigned to allow him to amend his Petition for Relief by adding KES as a Respondent.^{1/}

The undersigned considered the Motion to Dismiss during a telephonic conference convened on September 13, 2016.

UNDISPUTED FACTS

1. On July 26, 2016, Mr. Hargrove executed the General Release.
2. The General Release refers to workers' compensation case no. 14-27830 and lists June 18, 2014, as the date of the accident.
3. The General Release lists Mr. Hargrove as the "employee/claimant" and notes that he was represented by Bruce Alexander Minnick of the Minnick Law Firm.
4. In addition, the General Release lists ASM as the "employer."
5. A provision within the body of the General Release states the following:

As further consideration for the lump sum payment, the Claimant releases, settles and waives any and all claims whether or not asserted, including but not limited, to those claims asserted in the pending Complaint with the Florida Commission on Human Relations, case number 201600313 and the pending EEOC Charge number 15D201600185, against the Employers or any of their officers, agents, servants, Employees, directors, successors, assigns and any other person or entity without any limitation including any and all past, present or future claims as to the Americans with Disabilities Act, wrongful discharge, violation of the Florida Civil Rights Act of 1992, and Title VII of the Civil Rights Act of 1964 claims or lawsuits, or any other claims, causes of action, demands, obligations, complaints, damages, costs or liabilities of any kind or nature whatsoever

whether asserted or not asserted, known or unknown, contingent or non-contingent, whether based upon tort, contract, statutory or other civil penalties that Maurice Hargrove, Sr. may have, could have asserted or may arise in the future against [ASM]. The Claimant stipulates that he was considered returning to work within the reasonable accommodations, provided by the Employer, but is unable to do so, even with the reasonable accommodations without imposing an undue hardship on the Employer. The Employer agrees to pay the Claimant \$500.00 for this release/settlement/waiver, which is in addition to the \$7,500.00 settlement amount contained in the attached 440.20(11)(c), (d) and (e) lump sum settlement paperwork.

6. Mr. Hargrove has not asserted that he did not execute the General Release serving as the basis for ASM's Motion to Dismiss.

7. Mr. Hargrove has not asserted that the General Release serving as the basis for ASM's Motion to Dismiss is not the document he signed.

8. Mr. Hargrove has not asserted that the General Release serving as the basis for ASM's Motion to Dismiss was procured through any improper means such as fraud or duress.

9. Mr. Hargrove's only response to the Motion to Dismiss was a request that he be allowed to amend his Charge of Discrimination by adding KES as a respondent.

10. By executing the General Release, Mr. Hargrove released ASM from the claim that was the basis for his Charge of Discrimination.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2016).

12. The Commission forwarded this matter for the assignment of an Administrative Law Judge to conduct "all necessary proceedings" and issue a recommended order.

13. Section 760.10, Florida Statutes (2014), part of the Florida Civil Rights Act of 1992, as amended, provides in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

14. It is settled law that a person may waive his or her right to pursue an employment discrimination claim. See, gen., Puentes v. UPS, 86 F.3d 196, 198 (11th Cir. 1996).

15. As found above, Mr. Hargrove released ASM from the claim that was the basis for his Charge of Discrimination.

Accordingly, Mr. Hargrove has no cognizable claim under the Florida Civil Rights Act of 1992, as amended, and the Commission has no jurisdiction in this matter. This conclusion is consistent with results reached in previous DOAH cases. See Bovea v. Mercantile Commercebank, Case No. 09-0394 (Fla. DOAH June 30, 2009; FCHR Sept. 22, 2009) (concluding "based on the findings of fact herein, that Mr. Bovea released Commercebank, as an affiliate of Banco Universal, from all claims he might have against them in the Settlement Agreement he executed January 8, 2008. Mr. Bovea, therefore, has no claims cognizable under the Florida Civil Rights Act of 1992, as amended, and the FCHR has no jurisdiction in this matter."); Wunderlich v. WCI Communities, Inc., Case No. 08-0684 (Fla. DOAH April 8, 2008; FCHR July 1, 2008) (stating "[t]he subject complaint of discrimination was brought by Petitioner pursuant to the Florida Civil Rights Act of 1992, as amended. Pursuant to the Separation Agreement, Petitioner has released any claims he has or had under that Act. Unless and until a court of competent jurisdiction permits Petitioner to rescind the Separation Agreement, he is precluded from bringing this complaint of discrimination."); Parys v. MacFarlane, Ferguson & McMullen, P.A., Case No. 10-8309 (Fla. DOAH Dec. 9, 2010; FCHR March 2, 2011) (concluding that "[u]nder Florida law and FCHR precedent, Petitioner's release of claims against Respondent means that Petitioner has no claims cognizable

under the Florida Civil Rights Act of 1992, as amended, and the FCHR has no jurisdiction in this matter.”).

16. Finally, even if Mr. Hargrove was asserting that the General Release was procured through improper means, such as fraud or duress, the Commission has previously determined that it lacks jurisdiction to determine the validity of settlement agreements. See Wunderlich v. WCI Communities, Inc., FCHR Order No.08-040 (July 1, 2008) (noting that “in the absence of a showing of legislative authority to ‘go behind’ a settlement agreement by the parties in order to determine whether a settlement by the parties resulted from just or unjust pressure, it must be concluded that in the face of the existing settlement agreement between the parties the case should be dismissed.”).

RECOMMENDATION

Based on the foregoing Undisputed Facts and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing Maurice G. Hargrove, Sr.’s, Petition for Relief from employment discrimination due to a lack of jurisdiction.

DONE AND ENTERED this 28th day of September, 2016, in
Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of September, 2016

ENDNOTE

^{1/} Mr. Hargrove's motion was denied through a separately issued Order.

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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.