

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ARTHUR J. CHRIS-TENSEN,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2016-00717

v.

DOAH Case No. 16-7489

EARTHLINK SHARED SERVICES, LLC,

FCHR Order No. 17-071

Respondent.

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

Preliminary Matters

Petitioner Arthur J. Chris-Tensen 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 Earthlink Shared Services, LLC, committed unlawful employment practices by creating a hostile work environment on the basis of Petitioner's sex (male) and by terminating Petitioner from employment on the basis of Petitioner's sex and on the basis of unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on November 14, 2016, 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 Tampa, Florida, on March 21 and 22, 2017, before Administrative Law Judge Yolonda Y. Green.

Judge Green issued a Recommended Order of dismissal, dated June 1, 2017.

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, received by the Commission on or about June 15, 2017.

Respondent filed a response to Petitioner's exceptions.

Petitioner's exceptions document contains ten numbered exceptions and excepts to the contents of the following paragraphs of the Recommended Order: 16, 22, 32, 35, 36, 59, 66, 69, 89 and 113.

In each instance, the stated exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented and / or credibility determinations made by the Administrative Law Judge.

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.

Petitioner's exceptions are rejected.

Dismissal

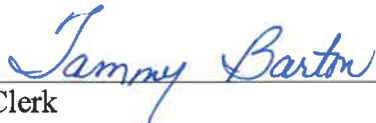
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 23 day of August, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Latanya Peterson

Filed this 23 day of August, 2017,
in Tallahassee, Florida.


Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Arthur J. Chris-Tensen
c/o Alvin M. Gomez, Esq.
Gomez Law Group
2725 Jefferson Street, Suite 7
Carlsbad, CA 92008

Earthlink Shared Services, LLC
c/o Alex S. Drummond, Esq.
c/o Salomon Laguerre, Esq.
Seyfarth Shaw, LLP
1075 Peachtree St. NE, Ste. 2500
Atlanta, GA 30309

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Yolonda Y. Green, 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 23 day of August, 2017.

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