

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

D'SHANTE L. LEBEAUX,

Petitioner,

vs.

Case No. 17-2568

THE MELTDOWN ON 30A,

Respondent.

_____/

ERIN M. SCOTT,

Petitioner,

vs.

Case No. 17-3083

THE MELTDOWN ON 30A,

Respondent.

_____/

LATANYA M. SCOTT,

Petitioner,

vs.

Case No. 17-3084

THE MELTDOWN ON 30A,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in these consolidated cases on August 16, 2017, in DeFuniak Springs, Florida, before R. Bruce McKibben, a duly-designated Administrative Law Judge with the Division of Administrative Hearings ("DOAH"), pursuant to authority set forth in

section 120.57(1), Florida Statutes. Unless specifically stated otherwise herein, all references to the Florida Statutes will be to the 2017 codification.

APPEARANCES

For Petitioners: D'Shante LaCheryl LeBeaux, pro se
Apartment B
190 Patrick Drive
Defuniak Springs, Florida 32433

Erin M. Scott, pro se
Latanya M. Scott, pro se
Post Office Box 962
Defuniak Springs, Florida 32433

For Respondent: Timothy Tack, Esquire
Miller Tack & Madson
Suite 135
3550 Buschwood Park Drive
Tampa, Florida 33618

STATEMENT OF THE ISSUES

Whether Respondent, The Meltdown on 30A ("The Meltdown"), discriminated against Petitioners, D'Shante L. LeBeaux, Erin M. Scott, and Latanya M. Scott (collectively, the "Petitioners"), in violation of the Florida Human Rights Act; and, if so, what penalty should be imposed?

PRELIMINARY STATEMENT

Each of the three Petitioners filed an Employment Charge of Discrimination form with the Florida Commission on Human Relations ("FCHR") claiming discrimination by their employer, The Meltdown. The charges were filed with FCHR on August 30, 2016. Ms. LeBeaux claimed discrimination on the basis of

race, sex and retaliation. Erin Scott and Latanya Scott claimed discrimination on the basis of race and sex. FCHR issued a Determination: No Reasonable Cause for each of the Petitioners. The Petitioners timely filed Petitions for Relief with FCHR. The Petitions were forwarded to DOAH, assigned to the undersigned, and consolidated for final hearing.

At the final hearing, each of the Petitioners testified on their own behalf and called two witnesses in rebuttal: Carolyn Bramlett and Erica Scott. Petitioners did not offer any exhibits into evidence. The Meltdown called two witnesses: Larry Haile, general manager; and Jim Shirley, owner. The Meltdown's Exhibits 1 through 6, 8 and 10 were admitted into evidence.

The parties advised the undersigned that a transcript of the final hearing would not be ordered. Their proposed recommended orders ("PROs") were therefore due within 10 days after the final hearing, i.e., on or before August 28, 2017. Neither party timely filed a PRO.

FINDINGS OF FACT

1. The Meltdown is a restaurant operated out of a 23-foot-long Airstream trailer. It does not have tables and chairs for customers to consume their meals; it is a "to go" establishment. The trailer can comfortably hold about five people when it is in operation. The Meltdown operates on

Highway 30A (hence its name) and is generally parked near the beach in Seaside, a tourist area. The Meltdown serves between 500 and 700 sandwiches per day. The restaurant is one of five owned by Mr. Shirley and managed by Mr. Haile.

2. In February 2016, The Meltdown switched its payroll functions from Oasis to ECB. The change resulted also in a new method of signing in, on-line, by which employees were able to be paid.

3. D'Shante L. LeBeaux is an African-American woman. At final hearing, she claimed to have a disability, but did not raise that as a basis for the discrimination claim against The Meltdown. She began working for The Meltdown in June 2016. She voluntarily left her employment when her means of transportation, Latanya Scott, resigned around August 19, 2016. While working for The Meltdown, Ms. LeBeaux was never written up or disciplined for missing work or performing poorly.

4. Ms. LeBeaux did not cite any instance of discriminatory actions or words by her employer. She claimed that the manner in which her schedule was handled, i.e., that she did not always work the same hours as Latanya Scott, constituted discrimination. The testimony was not persuasive.

5. Latanya Scott is an African-American woman. She is married to Erin Scott, an African-American woman. Latanya Scott was hired on June 24, 2016. On August 10, 2016, she provided a

letter to The Meltdown which stated her intent to resign as of August 19, 2016. As of that date, she voluntarily ceased working for The Meltdown. Her reason for resigning was, primarily, that Mr. Haile had not shown any compassion when Latanya Scott's grandmother got sick (and ultimately passed away).

6. While working at The Meltdown, Latanya Scott was written up for being belligerent to other employees. She was passed over when a manager, Carolyn Bramlett, left her position and a new manager was needed. No one was hired, however, to replace Ms. Bramlett; Mr. Haile simply took over the responsibilities himself.

7. Erin Scott is an African-American woman and is the wife of Latanya Scott. She was hired at The Meltdown on May 29, 2016, and continues to work there. She cited to no discriminatory actions by The Meltdown, but suggested that other related couples may have been treated somewhat differently than were she and her wife. Her complaints were neither confirmed nor deemed discriminatory. Erin Scott continues to work in a supervisory capacity for The Meltdown and is considered a good employee.

8. Each of the Petitioners stated that they never received an employee handbook until recently, i.e., during the pendency of this administrative hearing. They never saw, therefore, the

nepotism policy set forth in the handbook. The owner and manager maintain that all employees are given the handbook when they "signed in" as an employee the first time. Based upon the facts of this case, whether or not the Petitioners were provided an employee handbook or knew about the nepotism policy is essentially irrelevant to their claims of discrimination.

9. There were a number of family members working at The Meltdown when Mr. Haile first began managing. When ECB came in, a nepotism policy was enacted that prevented any further employment of family members. The family members who were already there were grandfathered in, i.e., they were not asked to resign.

10. Mr. Haile does not remember Ms. LeBeaux raising the issue of a disability at the time of her hiring. She did begin asking for fewer hours, no more than 25 per week, at some point and Mr. Haile tried to accommodate her. He learned that she and Latanya Scott were riding together, which created a small problem, but he attempted to work around that issue as well.

11. Mr. Shirley operates all of his restaurants without tolerating discrimination or harassment. His credible testimony was that the Petitioners seem to have a problem with how the restaurant was managed rather than having a complaint about discrimination. He genuinely appears to care about his

employees and to wish to do the right thing vis-à-vis his employees.

12. In short, there was no credible or persuasive evidence of discrimination against Petitioners by The Meltdown.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and to the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

14. The general rule is that the party asserting the affirmative of an issue has the burden of presenting evidence as to that issue. Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933 (Fla. 1996) (citing Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981)). According to section 120.57(1)(k), "Findings of fact shall be based upon a preponderance of the evidence . . . except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized." In this case, Petitioners have the burden of proving, by a preponderance of the evidence, they were discriminated against in their workplace.

15. Section 760.10, Florida Statutes, provides, in relevant part:

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

(a) To discharge or 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.

16. The Meltdown is an employer pursuant to section 760.02(7). Each of the Petitioners is an employee as defined in 42 U.S.C. § 12111(4).

17. In McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-803 (1973), the U.S. Supreme Court explained that the complainant has the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996), aff'd 679 So. 2d 1183 (Fla. 1996).

18. To establish a prima facie case of discrimination in the present matter, Petitioners are required to show that each of them "(1) is a member of a protected class; (2) was qualified for the position at issue; (3) was subject to an adverse employment action; and (4) was replaced by someone outside the protected class, or, in the case of disparate treatment, shows

that other similarly situated employees were treated more favorably." Taylor v. On Tap Unlimited, Inc., 282 Fed. Appx. 801, 803 (11th Cir. 2008).

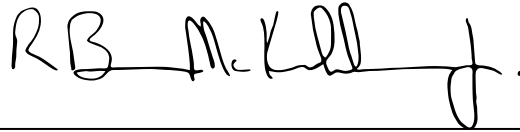
19. Each Petitioner is a member of a protected class, i.e., they are all African-American women. Each of them was "qualified for the position at issue," as confirmed by their manager. However, none of the three Petitioners proved that she was subjected to an adverse employment action. Ms. LeBeaux and Latanya Scott both voluntarily resigned from their jobs at The Meltdown. Erin Scott is still employed by The Meltdown. They each failed to satisfy this prong of the test for a prima facie case of discrimination.

20. The claims by Petitioners are not supported by the facts and evidence presented.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Respondent, The Meltdown on 30A, did not discriminate against Petitioners, D'Shante L. LeBeaux, Erin M. Scott, and Latanya M. Scott, and their Petitions for Relief should be denied.

DONE AND ENTERED this 1st day of September, 2017, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 1st day of September, 2017.

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.