STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IAN H. WILLIAMS,

Petitioner,

vs. Case No. 17-3261

FIRST COMMERCE CREDIT UNION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on August 15, 2017, in Tallahassee, Florida, before R. Bruce McKibben, a duly-designated Administrative Law Judge with the Division of Administrative Hearings, 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 Petitioner: Ian H. Williams, pro se
Apartment 311C
2315 Jackson Bluff Road
Tallahassee, Florida 32304

For Respondent: Jason Curtis Taylor, Esquire
McConnaughhay, Duffy, Coonrod,
Pope and Weaver, P.A.
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1709 Hermitage Boulevard
Tallahassee, Florida 32308

STATEMENT OF THE ISSUES

Whether Respondent, First Commerce Credit Union ("First Commerce"), discriminated against Petitioner, Ian H. Williams, in violation of the Florida Human Rights Act; and, if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On or about December 12, 2016, Mr. Williams filed an Employment Charge of Discrimination form with the Florida Commission on Human Relations ("FCHR"). The charge form alleged discrimination against Mr. Williams by First Commerce, a prospective employer, based on race (African-American) and gender (male). FCHR issued a Determination: No Reasonable Cause dated May 3, 2017. Mr. Williams then timely filed his Petition for Relief dated May 27, 2017. The Petition was forwarded to the Division of Administrative Hearings ("DOAH") and assigned to the undersigned.

At the final hearing, Mr. Williams testified on his own behalf and offered Exhibits 5 and 6 into evidence, both of which were accepted without objection. First Commerce called one witness: Sarah Sorne, human resources specialist. First Commerce's Exhibits 3, 4, 7 through 9, and 11 through 14.were admitted into evidence.

The parties advised the undersigned that a transcript of the final hearing would not be ordered. By rule, the parties'

proposed recommended orders ("PROs") were due at DOAH on or before August 25, 2017. Each party timely submitted a PRO.

FINDINGS OF FACT

1. Mr. Williams is a 29-year-old, African-American male who contends he was discriminated against by First Commerce when he applied for a position as a teller at that institution.

2. First Commerce is a credit union doing business in Tallahassee, Florida. It has more than 15 employees.

3. On December 2, 2016, Mr. Williams submitted an employment application with First Commerce. He was seeking a part-time position as a teller, identified internally by First Commerce by Job ID No. 10201603.

4. In his application, Mr. Williams indicated that he had received a bachelor's degree from the University of Colorado, but that he had no experience as a teller in a bank or credit union. He also answered a question in the application about his experience handling cash; he indicated he had "None." However, in his resume attached to the application, Mr. Williams noted that he had "Adept skill in infrastructure of cash operations." The resume did not provide any explanation as to what that skill may have entailed.

5. Ms. Sorne reviewed about 170 applications for the part-time teller position. Her initial review was done to determine which applicants met the minimum requirements for the job, i.e.,

whether the applicant had teller experience and/or experience handling cash. Ms. Sorne did not know the age, race, or gender of the applicants at that point in time. From her review of Mr. Williams' application, Ms. Sorne determined that Mr. Williams did not meet the minimum qualifications. That is, she did not interpret the statement concerning "infrastructure of cash operations" as meeting the "cash handling" requirement.

6. Ms. Sorne sent letters by way of email to all applicants who did not meet the minimum requirements. Unfortunately, when she sent the email to Mr. Williams, she selected the wrong "form letter" from her computer drop-down selections. The letter in the email to Mr. Williams stated: "Thank you for taking time to interview for our Teller position at First Commerce Credit Union. It was a pleasure meeting you. Although your credentials are impressive, we have chosen to pursue other candidates that better align with the needs of our company."

7. In fact, Mr. Williams had not been afforded an interview and had never met Ms. Sorne. He apparently believed the emailed letter was therefore indicative of some discriminatory animus by First Commerce. How he made the connection between the erroneously-selected letter and discrimination was not made clear from the evidence presented at

final hearing. Nonetheless, he replied to Ms. Sorne's email, stating, "I did not interview with you people."

8. Upon receiving Mr. Williams' email response, Ms. Sorne called him to explain her mistake in sending the erroneous "form letter" concerning rejection of his application. During the telephone conversation, Mr. Williams simply advised Ms. Sorne that he would be filing a complaint with the FCHR and that he would see her in court within the year. He did not attempt to correct his erroneous application, i.e., he offered no other information concerning his experience handling cash. True to his word, Mr. Williams filed a complaint with FCHR.

9. First Commerce, meanwhile, hired two people to fill the part-time teller position it had advertised. Both of the hired individuals were African-American; one was male and the other was female.

10. At final hearing, Mr. Williams pointed out that the two applicants hired for the teller position may have had less education or experience than he had. He noted that he was a graduate of the University of Colorado (although his application says that he attended there for less than one year), while the two hired applicants attended Florida A & M University. He did not explain why that fact may have contributed to the discrimination against him by First Commerce. However, both of the other applicants had indicated on their application forms

that they had teller experience and cash-handling experience. That is, each of them met the minimum requirements for the position. That was enough to get them a job interview. Inasmuch as Mr. Williams' application said he did not have that experience, he was not chosen for an interview.

11. Mr. Williams presented no evidence whatsoever that he was treated differently from any other applicant based on his race (black, African-American) or his gender (male). At final hearing he raised the issue of discrimination based on age, apparently because one of the competing applicants erroneously indicated on her application that she was "under the age of 18." That disclosure was later determined to have been a mistake. Age was not a consideration for the part-time teller position anyway.

12. Mr. Williams failed to establish even a prima facie case of discrimination. It is, in fact, difficult to make any connection between the way he was treated and discriminatory practices in general. Mr. Williams appears to have been treated equally with all applicants; there is no evidence that he was discriminated against for any reason.

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, Mr. Williams has the initial burden of proving, by a preponderance of the evidence, that he was discriminated against during his application for employment.

15. The Florida Civil Rights Act of 1992 (the "Act" or "FCRA") is codified in sections 760.01 – 760.11, Florida Statutes. The Act's general purpose is "to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and

general welfare, and to promote the interests, rights, and privileges of individuals within the state." § 760.01, Fla. Stat. 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 antidiscrimination laws.

16. Section 760.10 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.

17. First Commerce is an employer pursuant to section 760.02(7).

18. Complainants alleging unlawful discrimination may prove their case using direct evidence of discriminatory intent. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference

or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). But courts have held that "only the most blatant remarks, whose intent could be nothing other than to discriminate" satisfy this definition. Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999)(internal quotations omitted), cert. denied, 529 U.S. 1109 (2000). There was no such direct evidence presented by Mr. Williams in this case.

19. In the absence of direct evidence, the law permits an inference of discriminatory intent if complainants can produce sufficient circumstantial evidence of discriminatory animus, such as proof that the charged party treated persons outside of the protected class (who were otherwise similarly situated) more favorably than the complainant was treated. Such circumstantial evidence would constitute a prima facie case.

20. 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). If, however, the complainant succeeds in

making a prima facie case, then the burden shifts to the accused employer to articulate a legitimate, nondiscriminatory reason for its complained-of conduct. This intermediate burden of production, not persuasion, is "exceedingly light." Turnes v. Amsouth Bank, N.A., 36 F.3d 1057, 1061 (11th Cir. 1994). If the employer carries this burden, then the complainant must establish that the proffered reason was not the true reason but merely a pretext for discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 516-518 (1993). At all times, the "ultimate burden of persuading the trier of fact that the [charged party] intentionally discriminated against" him remains with the complainant. Silvera v. Orange Co. Sch. Bd., 244 F.3d 1253, 1258 (11th Cir. 2001).

21. To establish a prima facie case of discrimination in the present matter, Mr. Williams would be required to show that he "(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).

22. Mr. Williams proved he was a member of a protected class, i.e., African-American. Mr. Williams proved that even

though he stated to the contrary in his application, he had some experience with handling cash. Therefore, he was probably minimally qualified for the teller position. He also proved that he was subjected to an adverse employment action, i.e., his application for employment was denied. He did not provide any evidence that he was replaced by someone outside his protected class or that he was treated differently than other employees, male or female, white or black. In fact, the persons who were hired were both African-American and one of them was a male.

23. Further, even if he had timely asserted a discrimination claim based on age, he could not prove a prima facie case on that basis, either. In order to qualify for an age-based claim of discrimination, the complainant must be at least 40 years of age. Miami-Dade Cnty. v. Eghbal, 54 So. 3d 525, 526 (Fla. 3d DCA 2011). Mr. Williams is only 29 years old.

24. In short, Mr. Williams did not meet his initial burden of proof in this case, i.e., he did not establish a prima facie case, and his complaint must be dismissed. Even if he had met that burden, it is clear from the evidence that Mr. Williams' application for employment was rejected based on completely nondiscriminatory bases. His application for employment was read without knowledge of or regard for his age or race. It was reviewed in accordance with appropriate policies. No one

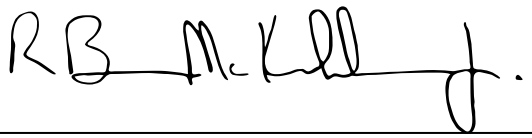
outside Mr. Williams' race was hired in his stead. In total, the application process was fair and nondiscriminatory.

25. Section 57.105(1) and (5), Florida Statutes, allow for a court or administrative law judge to, sua sponte, award attorney's fees when the losing party's claim or defense is not supported by the material facts necessary to prove the position. In this case, there is reasonable basis for finding that Mr. Williams' complaint against First Commerce was completely without basis or support. First Commerce is, therefore, entitled to an award of attorneys' fees and costs related to its defense of the frivolous claim. If First Commerce chooses to assert a claim for attorneys' fees and costs against Mr. Williams and the parties cannot agree to the amount to be paid, the undersigned will entertain a written motion for determination of the correct amount.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the Complaint filed by Ian H. Williams.

DONE AND ENTERED this 29th day of August, 2017, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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Filed with the Clerk of the
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this 29th day of August, 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.