

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RUSTY SANTANGELO,

Petitioner,

vs.

Case No. 17-3818

OWENS FACILITY SERVICES,

Respondent.

_____ /

RECOMMENDED ORDER

On September 25, 2017, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017),^{1/} this case was heard by Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division) in Orlando, Florida.

APPEARANCES

For Petitioner: Rusty Santangelo, pro se
Post Office Box 536423
Orlando, Florida 32853

For Respondent: Arianne B. Suarez, Esquire
McGinness & Cicero
Suite 590
1000 Sawgrass Corporate Parkway
Sunrise, Florida 33323

STATEMENT OF THE ISSUES

Whether Petitioner, Rusty Santangelo, was subject to an unlawful employment practice by Respondent, Owens Facility Services (Owens), based on his disability, in violation of the Florida Civil Rights Act; and, if so, what remedy is appropriate.

PRELIMINARY STATEMENT

On May 25, 2016, Mr. Santangelo filed an employment charge of discrimination with the Florida Commission on Human Relations (FCHR), alleging that he has a disability, and that he began working as a custodian for Owens on January 1, 2011; and that in 2013 Owens failed to report his work hours to Ace Staffing, and he was "terminated on 10/2/2015, for no reason."

By letter dated June 30, 2017, FCHR notified Mr. Santangelo that Owens was not Mr. Santangelo's employer, and no reasonable cause existed to believe that an unlawful practice occurred. On July 6, 2017, Mr. Santangelo filed his Petition for Relief with FCHR, and FCHR referred the matter to the Division to resolve the dispute.

At the hearing, Mr. Santangelo testified on his own behalf and presented the testimony of Gregory Lichtarski, the current general manager of Owens. Mr. Santangelo offered Exhibits 1 through 31 into evidence, and all were admitted.^{2/} To the limited extent that any document is reasonably authentic and is relevant, and the hearsay statements therein were corroborated by other competent testimony, the document has been considered. Respondent was granted wide latitude in cross-examining Mr. Lichtarski as he was listed on its witness list; however, Respondent did not present any other witnesses. Respondent

offered Exhibits 1 through 12 into evidence, and all were admitted.

Both parties timely filed proposed recommended orders (PRO). To the extent that either PRO has information that was not subjected to cross-examination during the hearing, that information has not been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Owens provides maintenance and custodial services to multiple public facilities in Orange County, Florida. Owens does not own any of the facilities, but oversees the conversions of the facilities from one event to the next. Owens secures services from various staffing companies to fulfill its obligations.

2. In order to accommodate its staffing requirements, Owens will contact a subcontractor, discuss the event specifics, determine how many laborers are necessary, and how many laborers the subcontractor can provide. Once a verbal agreement is reached, Owens issues an initial purchase order to the subcontractor requesting the necessary staff for an event. Thereafter, the subcontractor notifies Owens of the specific laborers, their shift schedules and where those laborers will report. Once the event is completed, the laborers complete a timekeeping report, and the hours are reviewed. The

subcontractor generates an invoice and Owens then pays the subcontractor. The subcontractor then pays the laborers. The entire process may take 90 days for payment to be issued to the laborers.

3. Ace Staffing (Ace) was one of the subcontracting companies that provided day laborers to Owens. Mr. Santangelo was an employee of Ace. Ace could send Mr. Santangelo to various locations to work. Mr. Santangelo preferred to work for Owens, and specifically wanted to work during the basketball season at the Amway Center. It is undisputed that Ace set the pay scale for Mr. Santangelo, and that Mr. Santangelo received his paychecks from Ace.

4. Owens does not have any ownership interest in Ace. Owens is not responsible for any hiring decisions by Ace. Owens has the ability to review the background checks performed on Ace employees who are sent to work for Owens, but Owens does not hire or evaluate those workers. Owens has the ability to ask that certain Ace employees not return to work for Owens, but does not have the ability to fire or terminate an Ace employee.

5. Mr. Santangelo attempted to resolve a perceived discrepancy in his pay. Mr. Santangelo brought the pay issue to the attention of Mr. Lichtarski, who in turn brought the pay issue to an Ace employee. Communication between Owens, Ace and

Mr. Santangelo deteriorated. Mr. Santangelo was paid, but his employment by Ace ended.

6. Mr. Santangelo was not employed by Owens. He was, at all times, employed by Ace. Mr. Santangelo failed to present any credible evidence that Respondent discriminated against him.

CONCLUSIONS OF LAW

7. The Division has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.11(7), Florida Statutes.

8. This case involves an alleged violation of the Florida Civil Rights Act of 1992 (the "Act"), sections 760.01 through 10.

9. Section 760.02(7) provides the following definition:

"Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

10. Section 760.10(1)(a) provides that it is an unlawful employment practice for an employer:

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, pregnancy, national origin, age, handicap, or marital status.

11. Mr. Santangelo has the burden of proving by a preponderance of the evidence that Owens committed an unlawful employment practice. See § 120.57(1)(j), Fla. Stat.

12. The preponderance of evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary, 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

13. The facts presented establish that Mr. Santangelo was not employed by Owens, and therefore, within the meaning of the Florida Civil Rights Act of 1992, could not have been discriminated against by Owens.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief filed by Mr. Santangelo in its entirety.

DONE AND ENTERED this 8th day of November, 2017, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of November, 2017.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2017), unless otherwise noted.

^{2/} Petitioner also requested that Exhibits 1 through 10, which were pre-filed on September 6, 2017, with the Division be admitted to the record. The undersigned admitted these exhibits to the record. However, Petitioner did not provide any hard copies of these exhibits at hearing. The parties have these exhibits through the Division's eALJ portal.

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.