

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

BERNARD BROOKS,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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MICHAEL HARRISON,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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MARK SMITHERS,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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CODY LUCAS,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

EEOC Case No. 15D201700388

FCHR Case No. 2017-00729

DOAH Case No. 17-5010

FCHR Order No. 18-035

EEOC Case No. 15D201700316

FCHR Case No. 2017-00586

DOAH Case No. 17-5066

FCHR Order No. 18-035

EEOC Case No. 15D201700322

FCHR Case No. 2017-00590

DOAH Case No. 17-5068

FCHR Order No. 18-035

EEOC Case No. 15D201700378

FCHR Case No. 2017-00714

DOAH Case No. 17-5070

FCHR Order No. 18-035

DAVID OKKER,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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MARVIN L. RAGLAND,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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JACOB P. MILLER,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.

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KYLIE SMITHERS,

Petitioner,

v.

XENCOM FACILITY MANAGEMENT, LLC,

Respondent.  
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EEOC Case No. 15D201700383

FCHR Case No. 2017-00717

DOAH Case No. 17-5072

FCHR Order No. 18-035

EEOC Case No. 15D201700372

FCHR Case No. 2017-00720

DOAH Case No. 17-5074

FCHR Order No. 18-035

EEOC Case No. 15D201700374

FCHR Case No. 2017-00723

DOAH Case No. 17-5076

FCHR Order No. 18-035

EEOC Case No. 15D201700379

FCHR Case No. 2017-00726

DOAH Case No. 17-5078

FCHR Order No. 18-035

FAITH TAPPAN,

EEOC Case No. 15D201700380

Petitioner,

FCHR Case No. 2017-00732

v.

DOAH Case No. 17-5080

XENCOM FACILITY MANAGEMENT, LLC,

FCHR Order No. 18-035

Respondent.

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

**Preliminary Matters**

Petitioners Bernard Brooks, Michael Harrison, Mark Smithers, Cody Lucas, David Okker, Marvin L. Ragland, Jacob P. Miller, Kylie Smithers, and Faith Tappan filed complaints of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent Xencom Facility Management, LLC, committed unlawful employment practices. Michael Harrison and Mark Smithers alleged that Respondent unlawfully subjected them to sexual harassment and unlawfully retaliated against them for complaining about the sexual harassment. Cody Lucas, David Okker, Marvin L. Ragland, Jacob P. Miller, Kylie Smithers, Faith Tappan and Bernard Brooks alleged that Respondent unlawfully retaliated against them for opposing an unlawful employment practice under the Florida Civil Rights Act of 1992.

The allegations set forth in the complaints were investigated, and, in each case, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioners filed Petitions for Relief from an Unlawful Employment Practice, and the cases were transmitted to the Division of Administrative Hearings for the conduct of formal proceedings.

On October 2, 2017, the Division of Administrative Hearings issued an order consolidating the nine cases referenced in the caption of this order.

An evidentiary hearing was held in Gainesville, Florida, on December 1, 2017, before Administrative Law Judge John D. C. Newton, II.

Judge Newton issued a Recommended Order of dismissal, dated May 11, 2018.

The Commission panel designated below considered the records of these consolidated cases 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 consolidated cases.

We adopt the Administrative Law Judge's conclusions of law.

### Exceptions

Petitioners filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioners' Exceptions to the Recommended Order."

Respondent filed a response to Petitioners' exceptions document.

The exceptions document contains four numbered exceptions.

With regard to the four numbered exceptions to the Recommended Order, in each instance Petitioners take issue with inferences drawn by the Administrative Law Judge from the evidence presented.

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).

Petitioners' exceptions are rejected.

### Dismissal

The Petitions for Relief and Complaints 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 19 day of July, 2018.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;  
Commissioner Donna Elam; and  
Commissioner Rebecca Steele

Filed this 19 day of July, 2018,  
in Tallahassee, Florida.



Clerk

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

Copies furnished to:

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David Okker, Marvin L. Ragland, Jacob P. Miller,  
Kylie Smithers, Faith Tappan and Bernard Brooks  
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John D. C. Newton, II, 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 19 day of July, 2018.

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