

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KIM-RENEE ROBERTS,

EEOC Case No. 15D201700443

Petitioner,

FCHR Case No. 2017-00569

v.

DOAH Case No. 17-5779

THE KEYES COMPANY,

FCHR Order No. 18-033

Respondent.

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

Preliminary Matters

Petitioner Kim-Renee Roberts filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent The Keyes Company committed unlawful employment practices on the basis of Petitioner's sex (female) by subjecting Petitioner to disparate treatment and a hostile work environment.

The allegations set forth in the complaint were investigated, and, on August 22, 2017, 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 by video teleconference at sites in Tallahassee and West Palm Beach, Florida, on February 8, 2018, before Administrative Law Judge Robert L. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated April 6, 2018.

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 April 19, 2018.

Respondent filed a response to Petitioner's exceptions.

The exceptions document contains 12 numbered exceptions.

Petitioner's exceptions numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12 take issue with inferences drawn 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).

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 numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12 are rejected.

Petitioner's exception numbered 10 excepts to the Administrative Law Judge's conclusion that "independent contractors" are not protected by the Florida Civil Rights Act of 1992.

In conclusions of law adopted by a Commission Panel, it has been stated, "Section 760.10(1)(a) prohibits discrimination only against employees or prospective employees. It does not protect independent contractors from discriminatory conduct." See, Moorehand v. State Farm, Recommended Order, ¶ 43, in DOAH Case No. 14-3733, January 6, 2015, adopted by FCHR Order No. 15-016 (March 26, 2015).

Petitioner's exception numbered 10 is 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 21 day of June, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Mario Garza

Filed this 21 day of June, 2018,
in Tallahassee, Florida.


Clerk
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Robert L. Kilbride, 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 21 day of June, 2018.

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