

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHAWN JOHNSON,

Petitioner,

vs.

Case No. 18-6781

ROSEBOURNE INVESTMENTS, LLC,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division), conducted the final hearing in this matter on March 8, 2019, by video conference at locations in Tallahassee and Altamonte Springs, Florida.

APPEARANCES

For Petitioner: Shawn Johnson, pro se
2394 Great Harbor Drive
Kissimmee, Florida 34746

For Respondent: W. Nathan Meloon, Esquire
Widerman Malek, PL
Suite 201
1990 West New Haven Avenue
Melbourne, Florida 32904

STATEMENT OF THE ISSUE

Is Respondent, Rosebourne Investments, LLC (Rosebourne), along with related entities described in the "Determination: No

Reasonable Cause," an "employer" as defined by section 760.02(7), Florida Statutes (2018)?^{1/}

PRELIMINARY STATEMENT

On May 31, 2018, Petitioner, Shawn Johnson, filed his Charge of Discrimination with the Florida Commission on Human Relations (Commission) alleging that Rosebourne unlawfully discriminated against him on account of race and age and that it retaliated against him for complaining of discrimination. On November 20, 2018, the Commission issued a "Determination: No Reasonable Cause." It concluded that Rosebourne was not an employer as defined in section 760.02(7) and, therefore, could not be held liable for alleged discrimination and retaliation under chapter 760. Mr. Johnson filed a Petition for Relief with the Commission reasserting the claims of his Charge of Discrimination. The Commission transmitted the Petition to the Division to conduct a formal hearing on the charges. The undersigned conducted the final hearing on March 8, 2019.

Mr. Johnson testified on his own behalf. His Exhibits A, B, and C were admitted into evidence. Rosebourne presented the testimony of Marinus Pijpers. Rosebourne's Exhibits A and B were admitted. Neither party ordered a transcript. The parties timely filed proposed recommended orders. The undersigned considered them in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Johnson began working for Rosebourne on May 1, 2017. Mr. Pijpers, Rosebourne's owner, hired him. Rosebourne was doing business as Celebration Rental Shop. Mr. Johnson worked in long-term rental property management. His responsibilities included managing property, accounting, and vendor oversight and support. At some point Rosebourne terminated him.

2. Mr. Johnson was Rosebourne's only employee.

3. At no time did Rosebourne have 15 or more employees for each working day in each of 20 or more calendar weeks in 2018 or in 2017.

4. Mr. Pijpers owned other companies, including one called Rosebourne Real Estate, LLC. That company used the services of real estate agents who were independent contractors, not employees. The record does not establish the number of real estate agents. It also does not establish that Mr. Pijpers had the authority to direct and control the hours or tasks of the agents.

5. The record does not establish the number of employees of any Rosebourne-related entity.

6. The evidence does not show that Rosebourne and all of Mr. Pijpers' other companies combined ever employed 15 or more people.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding.

§§ 120.569, 120.57(1), and 760.11(4)(b), Fla. Stat.

8. Section 760.10(1) makes it unlawful for an employer to discriminate against an employee on account of the employee's race, color, or age, among other characteristics.

Section 760.10(7) makes it unlawful for an employer to discriminate against any person because that person has opposed an unlawful employment practice or made a charge under Section 760.10. Mr. Johnson seeks relief under these provisions.

9. Section 760.02(7) defines an employer as "any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the preceding calendar year, and any agent of such person."

10. Mr. Johnson must prove his claim that Rosebourne discriminated against him by a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996). This includes proving that Rosebourne was an employer as defined in section 760.02(7).

11. The evidence and all reasonable inferences that may be drawn from it do not prove by a preponderance that Rosebourne was an employer as defined by section 760.02(7).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations dismiss the Petition for Relief of Petitioner, Shawn Johnson.

DONE AND ENTERED this 5th day of April, 2019, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of April, 2019.

ENDNOTE

^{1/} All statutory references are to the 2018 compilation of the Florida Statutes unless otherwise noted.

COPIES FURNISHED:

Shawn Johnson
2394 Great Harbor Drive
Kissimmee, Florida 34746
(eServed)

Robert Kerr Michael, Esquire
Robert Michael Law Firm
Suite 150
3030 North Rocky Point Drive West
Tampa, Florida 33607
(eServed)

W. Nathan Meloon, Esquire
Widerman Malek, PL
Suite 201
1990 West New Haven Avenue
Melbourne, Florida 32904
(eServed)

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399-7020
(eServed)

Cheyenne Costilla, General Counsel
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399
(eServed)

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.