

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MATALYN JOHNSON,

Petitioner,

vs.

Case No. 20-4958

UCEDA SCHOOL OF ORLANDO, INC.,

Respondent.

RECOMMENDED ORDER

On August 18, 2021, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) held a final hearing via Zoom teleconferencing.

APPEARANCES

For Petitioner: Ka'Juel Washington, Esquire
The Washington Trial Group, PLLC
37 North Orange Avenue, Suite 500
Orlando, Florida 32801

For Respondent: Chris Kleppin, Esquire
The Kleppin Law Firm
8751 West Broward Boulevard, Suite 105
Plantation, Florida 33324

STATEMENT OF THE ISSUE

Whether Respondent, Uceda School of Orlando, Inc. (Uceda Orlando), discriminated against Petitioner, Matalyn Johnson (Ms. Johnson), based on her race and disability when it failed to hire her. The specific issue to be

determined is whether Uceda Orlando was an “employer” under the Florida Civil Rights Act of 1992, chapter 760, Florida Statutes (2020) (FCRA).¹

PRELIMINARY STATEMENT

On April 20, 2020, Ms. Johnson filed an Employment Complaint of Discrimination (Charge) with the Florida Commission of Human Relations (FCHR) against Uceda Orlando alleging discrimination based on race, color, sex, disability, and age (FCHR No. 2020-24645). Specifically, in the "Business Information" section of the Charge, she listed as the employer: "UCEDA School of Orlando, Inc." In the section titled "Street Address (Branch/Office in Florida)," she listed: "4586 S. Kirkman Rd." In the "Statement" section of the Charge, Ms. Johnson alleged "Mr. Ricardo [Sanchez] was the corporate representative who conducted the process" and he failed to hire her because she is African-American and has a disability regarding her speech.

On October 9, 2020, FCHR issued a "Determination: Reasonable Cause," finding reasonable cause existed to believe Uceda Orlando discriminated against Ms. Johnson based on her disability, but not based on any other protected basis. The Determination was sent to Uceda Orlando at the following address:

Uceda School of Orlando, Inc.
c/o Mr. Juan J. Uceda
5425 S Semoran Blvd, Suite 8
Orlando, FL 32822

On November 10, 2020, Ms. Johnson filed a Petition for Relief alleging Uceda Orlando had failed to hire her because of her disability and race. FCHR transferred the Petition to DOAH on November 10, 2020, where it was assigned to the undersigned and set for hearing.

¹ All references to the Florida Statutes and Florida Administrative Code are to the versions in effect in 2020.

After the parties had begun discovery in these proceedings, on December 23 and 29, 2020, Ms. Johnson moved to amend the Petition to add as a respondent Uceda School of Orlando OBT, Inc. (Uceda OBT). Petitioner's motion to amend was heard at a pre-hearing conference on January 8, 2021, and the final hearing was continued until Ms. Johnson's counsel could provide information regarding a separate Charge of Discrimination that Ms. Johnson intended to file with FCHR against Uceda OBT. The motion to amend was ultimately denied on January 27, 2021, and the matter was reset for a final hearing.

On February 9, 2021, the parties participated in a case status conference in which Ms. Johnson indicated she had filed a second related Charge of Discrimination against Uceda OBT (FCHR No. 2021-28223) (OBT Charge). Per the parties' request, the case was placed in abeyance. On April 23, 2021, a status report on the OBT Charge was filed and the parties provided dates for a final hearing in this case. The case was taken out of abeyance and a final hearing was noticed for August 18, 2021.²

At the beginning of the final hearing, Uceda Orlando made an unopposed motion to bifurcate the potential issues in the case. The undersigned agreed that the hearing would be limited to the issue of whether Uceda Orlando was the proper respondent; and if so, a subsequent hearing would be held on the issue of whether it had discriminated against Ms. Johnson for "failure to hire" based on disability and race. All evidence at the hearing related to which entity advertised and failed to hire Ms. Johnson and regarding the relationship between Uceda Orlando and Uceda OBT was accepted and considered.

² FCHR issued a Determination of "No Reasonable Cause" on the OBT Charge on July 20, 2021. After the final hearing in this case, Petitioner filed a "Petition for Relief" in FCHR No. 2021-28223. FCHR transferred that Petition to DOAH on August 23, 2021, where it was assigned to the undersigned (DOAH Case. 21-2546) and is currently pending.

At the final hearing, Ms. Johnson presented her own testimony and that of two others: Angel Rodriguez and Charo Uceda. Petitioner's Exhibits P-5, P-7, and P-8 were admitted into evidence. Uceda Orlando presented the testimony of Charo Uceda and Respondent's Exhibits R-1 through R-3 were admitted into evidence.

After the evidentiary portion of the hearing, the undersigned heard argument as to why Uceda Orlando should be dismissed as an improper respondent. Based on the evidence and argument presented, the undersigned found that Ms. Johnson had not presented sufficient evidence to establish that Uceda Orlando was the proper respondent. Rather, Uceda OBT was the entity responsible for not hiring Ms. Johnson. The undersigned further found Uceda Orlando and Uceda OBT could not be considered a "single employer" for liability purposes. The reasons for these determinations were stated on the record. Having concluded that Ms. Johnson did not establish that Uceda Orlando was the proper respondent, it was unnecessary to determine whether the alleged discriminatory action took place in this proceeding.

Although a court reporter was present, the parties declined to order a transcript. The parties were given ten days to file proposed recommended orders (PROs). Petitioner did not file a PRO. Respondent filed its PRO on August 19, 2021, which has been reviewed and considered.

FINDINGS OF FACT

PARTIES AND ENTITIES

1. Ms. Johnson is an African-American female who has a speech impediment caused by a stroke and/or cancer. She applied for an ESL teaching position at a school located on Kirkman Road in Orlando, Florida.³

2. Uceda Orlando operates a school located at 5425 South Semoran Boulevard in Orlando, Florida. Uceda Orlando was incorporated in 2003. Juan Uceda (Mr. Uceda) is the registered agent and at all relevant times was the president and director of Uceda Orlando.

3. Uceda OBT operates at least two schools located in Orlando, Florida: (1) at 12934 Deertrace Avenue, Suite B; and (2) at 4586 South Kirkman Road (Uceda Kirkman). Uceda OBT was incorporated in 2010. Charo Uceda (Ms. Uceda) is the registered agent and president of Uceda OBT.

ESL TEACHER POSITION

4. Angel Rodriguez was a teacher who worked at Uceda Kirkman from April 2019 to February 2020. For the time relevant to these proceedings, Mr. Rodriguez was supervised by Ricardo Sanchez.

5. According to Mr. Sanchez's W-2 forms, he was paid by "Uceda School of Orlando – OBT, Inc."

6. Mr. Sanchez, who interviewed Ms. Johnson and made the decision not to hire her, was employed by Uceda OBT.

7. In November 2019, Mr. Rodriguez submitted his resignation letter to Uceda Kirkman.⁴ Mr. Sanchez asked Mr. Rodriguez if he knew of anyone who could teach ESL in his place. Mr. Rodriguez suggested Ms. Johnson for the position.

³ "ESL" stands for "English as a second language."

⁴ Mr. Rodriguez continued to work as a substitute teacher at Uceda Kirkman after he resigned.

8. Mr. Rodriguez worked with Ms. Johnson at an Orange County public middle school. He told Ms. Johnson about the ESL position he was vacating at Uceda Kirkman and encouraged her to apply.

9. Ms. Johnson applied for the ESL position. Based on the overwhelming evidence at the hearing, it is clear that Ms. Johnson applied for Mr. Rodriguez's vacant position with Uceda Kirkman (operated by Uceda OBT) and not for a position with a school operated by Uceda Orlando.

10. Ms. Johnson is a public middle school teacher in Orange County. She has a bachelor's degree in English with a minor in Spanish. She is certified to teach ESL classes to students in sixth through twelfth grades.

11. Although Ms. Johnson's application was not entered into evidence, her unrebutted testimony and the testimony from Mr. Rodriguez established that she was qualified for the ESL position.

12. Ms. Johnson interviewed for the position with Mr. Sanchez. She later heard from Mr. Sanchez that she did not get the position.

13. On January 13, 2020, Ms. Johnson received an official notification that she had not been selected for the ESL position. The email was from "Uceda School of Orlando-Kirkman," and stated in relevant part:

Subject: Application for ESL Teacher at Uceda School of Orlando-Kirkman

Thank you for applying to the ESL Teacher position at Uceda School of Orlando-Kirkman. Unfortunately, Uceda School of Orlando-Kirkman has moved to the next step in their hiring process, and your application was not selected at this time.

INTERRELATION OF INDIVIDUAL UCEDA SCHOOLS

14. Mr. Uceda is the father of Ms. Uceda and Doris Uceda. Together the three co-founded the Uceda English Institute (UEI) in the 1980s, which is a chain of federally-accredited ESL schools. There are numerous locations or branches of UEI in Florida, Nevada, New Jersey, and New York.

15. Each UEI school is separately owned and incorporated, and each is overseen by different administrators. The schools that were discussed at the hearing were owned by Mr. Uceda's family members, including his daughters and grandchildren.

16. Ms. Uceda testified that she currently owns and operates Uceda OBT, which has two campuses: the Deertrace campus and Uceda Kirkman. Ms. Uceda also either has a financial interest or is on the board of UEI schools located in Boca Raton, Florida; Westin, Florida; and Elizabeth, New Jersey.

17. Ms. Uceda has 100% ownership interest in Uceda OBT and is the only officer of Uceda OBT. She does not have any ownership interest nor does she serve in any capacity with Uceda Orlando.

18. Mr. Uceda has no ownership interest in and does not serve in any capacity with Uceda OBT.

19. Although Mr. Rodriguez believed that all "Uceda schools" were owned "by the same people," there was no evidence of this at the hearing. When asked what entity paid his salary, Mr. Rodriguez did not know. He testified that he thought all "Uceda schools" shared employees and students. However, he could not provide any examples and admitted that he only worked at Uceda Kirkman.

20. Ms. Uceda convincingly testified that employees who work at one Uceda school can apply to work at another Uceda school, but they are paid separately and not allowed to just move back and forth. She also explained that Uceda OBT and Uceda Orlando have separate accounting records, bank accounts, lines of credit, payroll preparation, telephones, and offices. They do not share employees or administrators.

21. According to the corporate documents introduced at the hearing, Uceda OBT and Uceda Orlando have different operating addresses, different registered agents, and different officers and directors. Although Ms. Uceda

was listed as an officer of Uceda Orlando in the past, she has not served in any capacity at Uceda Orlando since 2013.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569, 120.57(1), and 760.11(7), Florida Statutes, and Florida Administrative Code Rule 60Y-4.016.

23. Under the FCRA, it is an unlawful employment practice for an employer to "fail or refuse to hire any individual, or otherwise to discriminate against any individual ... because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status." § 760.10(1)(a), Fla. Stat.

24. The FCRA is patterned after Title VII of the Civil Rights Act of 1964, as amended (Title VII), and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (ADA). Therefore, claims of race and disability discrimination under the FCRA are analyzed using the same framework and federal caselaw as Title VII and ADA claims. *See D'Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1224 n.2 (11th Cir. 2005); *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255 (11th Cir. 2007).

25. Ms. Johnson has a classic failure to hire claim. She must prove the following elements by a preponderance of the evidence:

- (1) she belongs to a protected class;
- (2) she applied and was qualified for a job for which the employer was seeking applicants;
- (3) despite meeting qualifications, the employer rejected her for the job; and
- (4) after the rejection, the employer hired someone outside her class, or the position remained open and the employer continued seeking applicants with similar qualifications. *See generally, Miami-Dade Cty. v. Davis*, 307 So.

3d 883 (Fla. 3d DCA 2020) (failure to hire based on race and gender).

WAS UCEDA ORLANDO THE PROPER PARTY?

26. The parties agreed that the threshold issue at the hearing was whether Uceda Orlando was the "employer" that was seeking applicants and rejected Ms. Johnson for the ESL position.

27. A discrimination claim can only be brought by an employee against an "employer." *Peppers v. Cobb Cty., Ga.*, 835 F.3d 1289, 1297 (11th Cir. 2016). Federal courts have interpreted the term "employer" liberally, and asked this basic question: "which entity is in control of the fundamental aspects of the employment relationship that gave rise to the claim." *Lyes v. City of Riviera Beach*, 166 F.3d 1332, 1345 (11th Cir. 1999) (en banc). This question can be answered by examining the totality of the employment relationship using these factors: "(1) how much control the alleged employer exerted on the employee, and (2) whether the alleged employer had the power to hire, fire, or modify the terms and conditions of the employee's employment." *Peppers*, 835 F.3d at 1297 (quotations and citations omitted).

28. Understandably, Ms. Johnson believed that the position she sought was with Uceda Orlando because the rejection notice includes a reference to "*Uceda School of Orlando-Kirkman*" (emphasis added) and does not mention Uceda OBT.

29. However, the evidence clearly established the following: (1) Uceda OBT operates Uceda Kirkman, (2) Mr. Rodriguez worked at Uceda Kirkman, (3) the position he left vacant was at Uceda Kirkman, (4) Ms. Johnson applied for the position at Uceda Kirkman, (5) Mr. Sanchez interviewed Ms. Johnson at Uceda Kirkman, (6) Mr. Sanchez rejected Ms. Johnson for the position, and (7) Mr. Sanchez was employed by Uceda OBT. All of these facts point to Uceda OBT (doing business as Uceda Kirkman) as the proper respondent.

30. Because there is no evidence that Uceda Orlando had any control over Mr. Sanchez or Uceda Kirkman, Uceda Orlando cannot be said to be the

"employer" for purposes of Petitioner's discrimination claim. Rather, Uceda OBT is the "employer" and should have been named as the respondent in this case.

CAN UCEDA ORLANDO AND UCEDA OBT BE CONSIDERED AS ONE?

31. Ms. Johnson argued at the hearing that Uceda OBT (which owns and operates Uceda Kirkman) and Uceda Orlando were so integrated that they are the same for liability purposes.

32. Courts can consider facially discrete entities together for purposes of determining whether an entity is a proper respondent under the "single employer" test.⁵ See *Lyes v. City of Riviera Beach, Fla.*, 166 F.3d 1332, 1341 (11th Cir. 1999); *Boyd v. Sports Clips, Inc.*, Case No. 19-4342, 2020 WL 4754138, at *7 (Fla. DOAH Aug. 12, 2021) ("DOAH administrative law judges have routinely applied the 'single or joint employer test' in cases involving the question of whether the Respondent is Petitioner's 'employer' under the FCRA.").⁶

33. The "single employer" or "integrated enterprise" theory involves examining four factors to determine if nominally independent entities are so interrelated that they actually constitute a single integrated enterprise. *Long v. Aronov Realty Mgmt., Inc.*, 645 F. Supp.2d 1008, 1029 (M.D. Ala. 2009).

⁵ In the Eleventh Circuit, there are two circumstances where the single employer test is used: "(1) to determine if a parent corporation should be integrated with a subsidiary corporation; and (2) to determine if a group of related companies should be integrated." *McKenzie v. Davenport-Harris Funeral Home*, 834 F.2d 930, 931-34 (11th Cir. 1987). "Courts should be highly deferential to the corporate form and should only disregard it in extraordinary circumstances. ... This deference encompasses the notion that common ownership, absent some element of economic or other integration ... will not be sufficient to warrant disregarding the corporate form." *Labovitz v. Springville Pediatrics, LLC*, No. 2:18-CV-01918-RDP, 2020 WL 1953826, at *12 (N.D. Ala. Apr. 23, 2020).

⁶ *E.g. Moss v. HCA, Inc.*, Case No. 11-3983 (Fla. DOAH Oct. 2, 2012; Fla. FCHR Dec. 19, 2012) (dismissing case where evidence did not establish corporate respondent was an integrated enterprise with local hospital); *Winsor v. Pathway Tech., LLC*, Case No. 10-1830 (Fla. DOAH May 5, 2011; Fla. FCHR July 14, 2011) (finding two companies were separate for liability purposes even though they shared ownership where they did not share employees, operated in separate states, and maintained HR and payroll separately); *Myers v. Central Fla. Inv., Inc.*, Case No. 02-3580 (Fla. DOAH Apr. 17, 2003; Fla. FCHR Dec. 30, 2003) (finding sufficient integration to treat two separate corporations as one employer).

The burden is on the petitioner to establish these factors to show the existence of an integrated enterprise. *Cardinale v. S. Homes of Polk Cty., Inc.*, 310 F. App'x. 311, 312 (11th Cir. 2009). The four factors to determine whether separate corporate entities can be treated as one are: "(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." *McKenzie*, 834 F.2d at 933. *See also Kaufman v. AutoNation, Inc.*, No. 99–8377, 2000 WL 35722358, at *12 (S.D. Fla. June 7, 2000) (using the four-prong test to determine whether companies could be considered integrated enterprises in ADA and ADEA employment discrimination case); *Keene v. TECO Energy Corp.*, Case No. 98–2406–CIV–T–17B, 2000 WL 230243, at *4 (M.D. Fla. Mar. 1, 2000) (applying the four-prong test to ADA case). In analyzing these factors, the totality of the circumstances controls and no single factor is conclusive, nor is the presence of all four factors necessary to a finding of sufficient integration or "single employer." *E.E.O.C. v. Dolphin Cruise Line, Inc.*, 945 F. Supp. 1550, 1553 (S.D. Fla. 1996) (ADA case). Each of the factors is considered below.

34. Regarding the first factor, there are several indicia considered by courts when analyzing whether entities are interrelated in operations for liability purposes. These include the existence of combined or shared (1) accounting records, (2) bank accounts, (3) lines of credits, (4) payroll preparation, (5) communication or IT systems, (6) telephone numbers, and (7) offices. *Morrison v. Magic Carpet Aviation*, 383 F.3d 1253, 1257 (11th Cir. 2004) (quotations and citations omitted).

35. Here, Ms. Johnson presented no evidence to suggest that Uceda Orlando and Uceda OBT have combined accounting records, lines of credit, bank accounts, payroll preparation, telephone numbers, or offices. There was testimony regarding a UEI website or online presence, but no specific web address or web page was offered into evidence.

To the contrary, the only evidence regarding these factors was from Ms. Uceda that Uceda OBT did not share any of these things with Uceda Orlando.

36. Regarding the second element, Ms. Johnson offered no evidence regarding labor relations in this case. Ms. Uceda testified that Uceda OBT has its own human resources department and maintains separate employment policies from Uceda Orlando.

37. Regarding the third element, "common management" is established by showing the existence of common directors and officers. *Fike v. Gold Kist, Inc.*, 664 F.2d 295 (11th Cir. 1981). Ms. Johnson did not present any evidence that Uceda Orlando and Uceda OBT shared the same ownership or management during the relevant period. Instead, the only evidence offered regarding officers identified Mr. Uceda as the director and president of Uceda Orlando and Ms. Uceda as the president of Uceda OBT. There was no sharing of officers or directors between the two entities.

38. Regarding the final element of ownership, there was no evidence regarding who owned Uceda Orlando or how it was financed. The testimony, however, did establish that Ms. Uceda had no ownership interest in Uceda Orlando and was the sole owner of Uceda OBT.

39. Ms. Johnson argued that both Uceda Orlando and Uceda OBT were part of UEI, and therefore both could be considered an "employer." Presumably, she was arguing that UEI was a franchisor, with Uceda Orlando and Uceda OBT as franchisees. A franchisor is not liable for the actions of an individual franchisee or its employees (such as Mr. Rodriguez or Mr. Sanchez), absent a sufficient factual showing of an agency or employment relationship between them. *See West v. LQ Mgmt., LLC*, 156 F. Supp. 3d 1361, 1370-71 (S.D. Fla. 2015) (examining agency relationship in the public accommodation and franchise context); *Monacelli v. The UPS Store*, No. 2:08CV174-FTM-99SPC, 2009 WL 22773, at *4 (M.D. Fla. Jan. 2, 2009) (dismissing employment discrimination claim against franchisor; "it appears

that the UPS Store is a franchisee of UPS and not wholly owned by UPS or Mail Boxes Etc."); and *Mobile Oil Corp. v. Bransford*, 648 So. 2d 119, 120 (1995) ("it is well understood that the mere use of franchise logos and related advertisements does not necessarily indicate that the franchisor has actual or apparent control over any substantial aspect of the franchisee's business or employment decisions. Nor does the provision of routine contractual support services refute this conclusion.").

40. Here, there was no evidence that Mr. Sanchez, the decision-maker for the ESL position, had any agency relationship with UEI or Uceda Orlando or that he was employed by any entity other than Uceda OBT. Therefore, if there was discrimination it can only be attributable to Uceda OBT. There was no evidence supporting a finding that UEI or another Uceda "franchise" school (such as Uceda Orlando) could be liable.

41. In conclusion, based on the totality of the evidence, Uceda Orlando is not the "employer" for Ms. Johnson's discrimination claims and was improperly named as a respondent.

42. Nothing in this Recommended Order prevents Ms. Johnson from bringing a claim against UEI, Uceda Kirkman, or Uceda OBT, or prevents these entities from asserting defenses to such claims.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing the Petition for Relief filed by Matalyn Johnson against Uceda School of Orlando, Inc.

DONE AND ENTERED this 2nd day of September, 2021, in Tallahassee,
Leon County, Florida.



HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
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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.