

8-30-02

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ADMINISTRATIVE LAW
HEARINGS

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

MODESTO A. TORRES,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 21-02585

v.

DOAH Case No. 02-1901

JUL-CWS

WINN DIXIE STORES, INC.,

FCHR Order No. 02-074

Respondent.

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

Petitioner, MODESTO A. TORRES, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that Respondent, WINN DIXIE STORES, INC., committed an unlawful employment practice by unfairly terminating Petitioner because of his national origin (Puerto Rican).

The allegations set forth in the complaint were investigated, and, on March 29, 2002, the Executive Director issued his 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 on April 10, 2002, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Miami, Florida, on August 1, 2002, before Administrative Law Judge John G. Van Landingham.

Judge Van Landingham issued a Recommended Order of Dismissal dated August 30, 2002.

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

The Administrative Law Judge found that Petitioner was working as a bagger in one of the Respondent's grocery stores. The Petitioner was at work bagging groceries on July 14, 2000, when a customer checking out in one line asked him—who was stationed in another lane—to bag his groceries. Petitioner refused and the customer called him an "asshole." Petitioner admitted that he retorted in kind, "You're the asshole" in front of a "whole line of customers." They then engaged in a loud shouting match until, the assistant store manager who

was in the parking lot at the time, came inside to restore calm and order. The assistant manager separated the disputants, apologized to the customer and sent Petitioner home to cool off.

The next day, when Petitioner reported for work, he was fired. The ALJ further found there is no credible, competent evidence that Respondent tolerated similar behavior in non-Hispanic (or non-Puerto Rican) employees or that Respondent feigned disapproval of Petitioner's dustup with a shopper as a pretext for discrimination. ¶ 6 and 7 of the Recommended Order.

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

Neither party submitted exceptions to the Recommended Order.

Dismissal

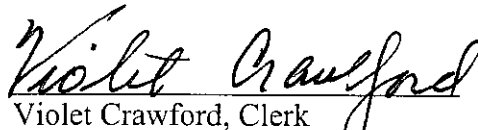
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 10th day of February, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Gayle Cannon, Panel Chairperson
Commissioner Donna Elam
Commissioner P.C. Wu

Filed this 10th day of February, 2003
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:

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John G. Van Landingham, Administrative Law Judge

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 10th day of February, 2003.

By: *Kerlet Crawford*
Clerk of the Commission
Florida Commission on Human Relations