

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CAROLYN M. CLEVELAND,	EEOC Case No. 15D200800411
Petitioner,	FCHR Case No. 2008-01170
v.	DOAH Case No. 08-4552
WESTGATE HOME SALES, INC.,	FCHR Order No. 12-031
Respondent.	

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF FROM AN
UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Carolyn M. Cleveland filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Westgate Home Sales, Inc., committed unlawful employment practices on the basis of Petitioner's sex (female) by sexually harassing Petitioner, on the basis of Petitioner's age (DOB: 1-11-64) by paying women who are "much younger" than Petitioner doing the same level of work more money than Petitioner, and on the basis of retaliation by firing Petitioner for refusing to "do something" unethical regarding billing.

The allegations set forth in the complaint were investigated, and, on July 31, 2008, 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, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on February 1 and 2, 2011, in Gainesville, Florida, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated May 5, 2011.

The Commission panel considering this Recommended Order issued an "Order Finding That Unlawful Employment Practice Occurred and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Recommending Relief," dated August 2, 2011 (FCHR Order No. 11-062), finding that unlawful sexual harassment occurred in this matter.

A hearing on the appropriate relief to be awarded Petitioner was held in Gainesville, Florida, on February 1, 2012, before Judge Staros.

Judge Staros issued a Recommended Order as to Relief from Unlawful Employment Practice, dated April 6, 2012. In that Order, Judge Staros recommended the Commission issue a final order awarding Petitioner “back pay of a minimum of \$100,000, attorney’s fees in the amount of \$120,792.50, and costs in the amount of \$12,711.16.” In addition, Judge Staros indicated, “The undersigned has not independently calculated the amount of interest, and defers to [the Commission] in this regard.”

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order as to Relief from Unlawful Employment Practice.

Findings of Fact

We find the Administrative Law Judge’s findings of fact as set out in Recommended Order as to Relief from Unlawful Employment Practice, ¶ 1 through ¶ 17, to be supported by competent substantial evidence, with the exception of the following three representations made in ¶ 10.

First, this paragraph indicates that Petitioner seeks back pay for 230 weeks. While we agree that this is what Petitioner seeks, the 230 week time frame is not supported by the record. By our count, the number of weeks from February 15, 2008 until the date of the hearing on the appropriate remedy for this case, February 1, 2012, is 206 weeks (45.6 weeks in 2008, 52 weeks in 2009, 52 weeks in 2010, 52 weeks in 2011, and 4.4 weeks in 2012.)

Second, the Administrative Law Judge found that in findings of fact adopted by the Commission, set out in the Recommended Order, dated May 5, 2011, Petitioner’s gross earnings were “approximately \$400 per week.” In “Petitioner’s Compliance with Order on Remand,” filed on September 12, 2011, Petitioner represents that her gross weekly pay with Respondent was \$375 per week, as evidenced by a payroll ledger attached to that filing. In “Petitioner’s Reply to Respondent’s Compliance with Order on Remand and Petitioner’s Amendment to Petitioner’s Compliance,” filed October 6, 2011, Petitioner amends her back pay request, asking that it be based on the \$400 per week amount found in the May 5, 2011, Recommended Order, rather than the \$375 week amount supported by the payroll ledger Petitioner had earlier provided. We find the \$375 per week amount to be supported by the evidence provided by Petitioner and not inconsistent with a finding that Petitioner’s earnings were “approximately \$400 per week.” In awarding back pay in this matter, we will use the \$375 per week figure.

Third, the Administrative Law Judge found that Petitioner requests back pay in the amount of \$100,000. We agree that this is what Petitioner has requested. In our view, this amount is not supported by the record of this case. By our calculation the total back pay Petitioner is entitled to in this matter, from February 15, 2008 until February 1, 2012, is \$77,250 (206 weeks times \$375 per week).

With regard to the calculation of interest owed on back pay awards, the Recommended Order adopted by the Commission in Sterling v. Albertson's Southco, et al., 9 F.A.L.R. 1161, at 1172 (FCHR 1986), demonstrates how the Commission calculates simple interest on a back pay award. See also, Whitehead v. Miracle Hill Nursing and Convalescent Home, Inc., 19 F.A.L.R. 1525 (FCHR 1996). Using the appropriate statutory interest rate for each year involved (see Petitioner's Exhibit 2 and Florida Department of Financial Services Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes, set out at <http://www.myfloridacfo.com/aadir.interest.htm>) rather than just the 4.75% rate suggested in the Recommended Order as to Relief from Unlawful Employment Practice at finding of fact ¶ 13, we calculate the appropriate interest award on the back pay owed Petitioner to be \$12,556.70. (An Appendix to this Order sets out how this amount has been computed.)

With the above corrections to finding of fact, ¶ 10, and the above comment regarding finding of fact, ¶ 13, we adopt the Administrative Law Judge's findings of fact as set out in the Recommended Order as to Relief from Unlawful Employment Practice.

Conclusions of Law

We find the Administrative Law Judge's conclusions of law found in the Recommended Order as to Relief from Unlawful Employment Practice to result in a correct disposition of the matter, when our corrections to finding of fact, ¶ 10, and comments to finding of fact, ¶ 13, as set out above, are taken into consideration.

We adopt the conclusions of law, with this comment.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order as to Relief from Unlawful Employment Practice.

Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, with the corrections and comments as set out above, the remedy for the discrimination found to have occurred in FCHR Order No. 11-062 has been determined.

Respondent, Westgate Home Sales, Inc., is hereby ORDERED:

- (1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;
- (2) to pay Petitioner back pay in the amount of \$77,250;
- (3) to pay Petitioner interest on the back pay award in the amount of \$12,556.70;
- (4) to pay Petitioner attorney's fees in the amount of \$120,792.50; and
- (5) to pay Petitioner costs in the amount of \$12,711.16.

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 27th day of June, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Lizzette Romano

Filed this 27th day of June, 2012,
in Tallahassee, Florida.

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

APPENDIX – Interest Computation

<u>year</u>				<u>annual interest</u>
2008	45.6wks x \$375		adj. int. rate using 11% base	
	\$17,100	x	.096 [11 x .876 of a year]	= \$1,641.60
2009	52wks x \$375		2008	
	\$19,500	+	\$17,100 = \$36,600 x .08	= \$2,928.00
2010	52wks x \$375		2008/2009	
	\$19,500	+	\$36,600 = \$56,100 x .06	= \$3,366.00
2011	52wks x \$375		2008/2009/2010	
	\$19,500	+	\$56,100 = \$75,600 x .057*	= \$4,309.20
2012	4.4wks x \$375		2008/2009/2010/2011	
	\$1,650	+	\$75,600 = \$77,250 x (.0475 x .085 of a year)	= <u>\$311.90</u>
Total Interest				\$12,556.70

* 9mos. @ .06, 3mos @ .0475 = .057 (.75 x .06 = .045; .25 x .0475 = .012; .045 + .012 = .057)

Copies furnished to:

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Barbara J. Staros, 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 27th day of June, 2012.

By: _____/s/_____
Clerk of the Commission
Florida Commission on Human Relations