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IN THE THIRD DISTRICT COURT OF APPEALS

CASE NO. DCA No. 3D06-2779

LOWER TRIBUNAL CASE NO.

FCHR CASE NO. 96-A100

DOAH CASE NO. 99-5113

ANNE R. WEBSTER,

Plaintiff/ Petitioner,

vs.

METROPOLITAN DADE COUNTY, CLERK

OF THE COUNTY COURT,
Defendant / Respondent.

PETITIONER'S INITIAL BRIEF

ON APPEAL FROM THE FLORIDA COMMISSION
OF HUMAN RELATIONS

AND

DEPARTMENT OF ADMINISTRATIVE HEARINGS

Anne R. Webster, pro se

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OTHER SOURCES REFERRED TO

Florida Civil Rights Act of 1992, as amended.

EEOC Enforcement Guidance on the Americans with Disabilities Act and
Psychiatric Disabilities, modified *Feb. 1, 2000*.

The U.S. Equal Employment Opportunity Commission, Revised Enforcement
Guidance on Recent Developments in Disparate Treatment Theory,

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RESPONDENT'S Proposed RECOMMENDED ORDER (Resp. Rec.).

Webster's Proposed Recommended Order and Supplement

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I. PRELIMINARY STATEMENT

Quote from the DOAH Recommended Order (DOAH Rec.) pages 1-2 (which hearing was held pursuant to Section 120.57(1), Florida Administrative Code).

The issue for determination is whether Employer discriminated against Webster on the basis of race, color, sex, religion, presumed handicap, national origin, age, and marital status; and whether Employer retaliated against Webster in violation of the Florida Civil Rights Act of 1992, as amended.

II. STATEMENT OF THE CASE

20. Webster contends the Clerk took unlawful actions as to taking severe mental disability actions and firing for impermissible reasons, instead of using minor discipline. Specifically Webster alleged that gender and ethnic “accent” differences led the Employer to have disparate treatment between her and largely men, such as to end up with a record of mental disability in her file before the late 1992 changes in the law and ADA EEOC Guidelines. Records were misinterpreted as to a severe mental disability and mental hospitalization which created a hostile environment and serious ADA and Retaliation violations. Due to “accent” problems, the Comptroller Baker Acted in 1992, sent on a leave of absence in early 1995 which Webster protested. The Employer retaliated, fired.

21. THE CLERK WAS NEGLIGENT IN REFUSING TO FOLLOW THE ADA EEOC GUIDELINES as to the detail of “behavior”, because they say it is “diagnosing” but the result is (1) They rely on records that are old, stereotype, gossip, mishearing. (2) Use ADA actions for impermissible reasons (3) It hides retaliator motives so they can use “McDonnell terror tactics” for top down decisions based on impermissible reason. (4) This prevents audit prevention. Comptroller Alcazar testified on the stand that “yes” that would have helped

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and the Chief of Dade's Internal audit testified they could set up prevention and audit compliance (DOAH Tr. 12-15-05 AM p.18-26)

III. STANDARD OF REVIEW

30. THE STANDARD IS THAT COOPER MUST BE COMBINED WITH ADA MENTAL DISABILITY EVILS, THAT THE FLORIDA CIVIL RIGHTS ACT OF 1992 and the ADA law must be liberally construed.

FLORIDA TITLE XLIV CIVIL RIGHTS CHAPTER 760

760.01 Purposes; construction; title.--

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because ... thereby to protect their interest in personal dignity ...

(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed ...

History.--s. 1, ch. 69-287; s. 1, ch. 72-48; s. 1, ch. 77-341; s. 1, ch. 92-177; s. 4, ch. 92-282. Note.--Former ss. 13.201, 23.161.

31. THE STANDARD OF REVIEW, IS that standard whereby of the laws that address particular evils. The Court ought not rely on cases where similar "evils" (such as severe mental stereotype) are not incorporated such as "Cooper" or "Doe" cited by Employer in his Proposed Recommended Order.

We review de novo the grant of a Rule 50(b) motion for judgment as a matter of law, and we consider all of the evidence in the light most favorable to Cooper, because she was the non-moving party. Doe v. Celebrity Cruises, Inc. 394 F.3d 891, 902 (11th Cir. 2004).

32. One must GO BACK to the intents of the applicable personnel procedures, the Florida Law which supports liberal Construction, the history of such cases and the ADA EEOC Guidelines especially as to 'reasonable' belief not being an ethnic or male protagonist's imaginings. Institutional (gender) discrimination is shown in evidence by the "RISK (Labor) Management letter in the '80'S

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condoning the sending of Webster to a physical, leave to “get along with the lads.” That “evil” continues in defiance of law.

33. ACTUAL PROGRESS OF DECISION-MAKING MUST BE THE STANDARD, HOW ONE ERROR ENTERS INTO WHAT FOLLOWS. The interim documents must be ignored. We must ask where it impacts McDonnell, Cooper and Burlington-White for preventive purposes.

34. There is the “catch-22 evil” of “the line” in mental stereotype when the Employer crosses “The Line”, becomes patronizes, makes decisions for the employee, not believing her and worse, treating (discrimination) complaints, as a “mental” symptom. This case could have been prevented otherwise.

35. There is the ‘evil’ of ‘circular loops’, of doing a discrimination complaint and the investigator getting back to the very administrator that erred.

36. The other ‘evil’, here, is relying on historical record of mental disability actions to perpetuate old ‘evils’ and refusal to follow new law that would constrain decisions to current events, as the ADA law.

37. Another “evil’ is Risk (Labor) Management relies on such old case history, demands the Director backs down “McDonnell terror tactics” drowning the employee in “pretense” that makes no sense, as if taking on a legal suit itself. The Supervisor listed everything conceivable, records bizarre gossiped mishearing as fact. “McDonnell” replaces personnel and ADA procedures that require “reasonable belief”. It becomes the “Crucible”, the “test a witch by drowning”. WWII Nazi’s must have had similar “Risk Management” and laws.

38. The “evils’ of Retaliation need to be addressed, for if each and every act of the Employer is ‘retaliation’, then is there any validity to any of their decision?

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Ideal Farms Drainage Dist. v. Certain Lands, 154 Fla. 554, 19 So. 2d 234, 239 (1944) (holding that, to ascertain the legislative intent in adopting a statute, courts are required to examine both the circumstances intended to be affected and the mischief intended to be remedied). “ There is great evidence that the legislature intended the discrimination, mental disability and retaliation provisions to encompass situations as in this case.

IV. COURSE OF THE PROCEEDINGS

40. In the DOAH Judge’s Preliminary Statements, Webster does not contest what the DOAH Judge has written on pages 2 to 9. But notice Webster’s pro se situation of not being able to get an attorney, being poor, the great difficulty of squeezing one drop of discovery, one witness, transcript or word of testimony, and the witnesses s he could have provided in the 1996 Arbitration Hearing, Mina Ruiz, Renay Davis, etc.

41. In the 1996 Arbitration Hearing they railroaded Webster at the end of the First day of hearing (pages 210 to 238) trying to close the case without giving Webster any chance, refusing Webster to get her witness list or look at her notes, and finally, (page 348-238) let the Employer decide on the witnesses to appear. I didn’t know who would recollect and what. Further the officer kept insisting that my discrimination complaint which was behind the “insubordination” (of not going to a physical) and related complaints were not a subject of the hearing. On page 226, I expressed the fears employees had of testifying and Mathews was excluded as a witness ... she was holding the threat of Baker Act over the employee’s heads. On about Page 234 he didn’t let Mina Ruiz, Ernesto Rodriguez, Delmy Ayan, Carmen Dieguez and others testify. I felt I was being subjected to extreme mental stereotype in that hearing. So I never got testimony from those who died, Carmen Davis of Labor Management on whom Schechtman relied; Leo Morfi who was ready to testify about Dade

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politics, Jack Nosworthy and Delmy Ayan. They wanted her to say what witnesses would testify to ahead of time, but Webster didn't even know who would remember what.

42. Pay attention to the DOAH Recommended Order's recount of the great difficulty of getting transcript copies 12 volumes (p. 7-8), and the brief 15 day period to make exceptions to the FCHR, who thereby toss out all testimony because of Webster's "lack of reference to the record" and simply repeats its "no cause" finding making the entire DOAH hearing pointless. Webster wasn't told they'd be unavailable after the DOAH hearing. The Judge at the very end of the hearing tossed out all important witness testimony even after Webster answered "No" to his question, "You told them what to say, didn't you?". I sent copies of the filed Affidavits to the Employer! (Thus herein I must give detail and without time I omit reference to the record.) That quote on the last pages is missing, ending with an unfinished sentence right before the Judge said to discard the exhibit about "Schizoaffective disorder", as if some fraud purposely deleted it. Further the DOAH Judge relied on interim documents that were retaliatory and filled with stereotype, and decided by Ku Klux Klan white supremacist stereotype.

43. QUOTES FROM DOAH RECOMMENDED ORDER (DOAH REC.)

PAGE 1: Pursuant to notice, a formal hearing was held in this case on November 30 and December 1-2, 2004 and February 3-4, August 24-25, and December 15, 2005, in Miami, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

Page 5. ... By Order dated April 22, 2004, among other things, the Clerk was directed to sufficiently respond to the discovery and to show cause why sanctions should not be imposed.

Page 6. Prior to hearing, the Clerk had agreed to assist in making sure that certain witnesses appeared at hearing ... Webster requested to have read into the hearing record, instead of testifying, certain affidavits prepared

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by her for her own testimony so that she would not be "misunderstood"; the Clerk objected; and this request was denied.

p.7-8 The undersigned issued an order regarding the appearances of witnesses on behalf of Ms. Webster. ... At hearing, Ms. Webster testified in her own behalf, presented the testimony of 23 witnesses, and entered 120 exhibits

... Ms. Webster, with the consent of the Clerk, proffered the testimony of some of her witnesses. The Clerk did not call any witnesses to testify and entered two exhibits (Respondent's Exhibits numbered 4 and 2) into evidence.

Ms. Webster ... was permitted to file an amended post-hearing submission. .. Ms. Webster requested to file an amendment to her post-hearing submission, ... and the amendment was accepted.

B. FCHR (from DOAH Rec.)

44. PAGE 2:(1) Anne R. Webster filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) against the Metropolitan Dade County, Clerk of the County Court (Clerk) alleging that the Clerk discriminated against her on the basis of race, color, sex, religion, presumed handicap, national origin, age, marital status, and retaliation. On August 2, 1999, the FCHR issued a Determination of No Cause and a Notice of Determination of No Cause. ... Ms. Webster filed a Petition for Relief with the FCHR against the Clerk. On December 9, 1999, the FCHR referred this matter to the Division of Administrative Hearings (DOAH).

WEBSTER'S ADDITIONAL FACTS

45. The FCHR "Investigator's Memorandum" dated 1-22-98 found "no cause" from failure to sign a release to get a right to sue (which Webster already had). Webster cross-filed with the EEOC on 10-23-95 and because of the response delay. The federal civil case is waiting paying the filing fee.

V. COURSE OF THE EMPLOYER ACTIONS

A. FIRING – EFFECTIVE August 22, 1956 – Facts not in dispute

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51. Dismissal

8. On August 10, 2005, Ms. Webster was issued a Disciplinary Action Report (DAR) ... recommending her dismissal from employment with the Clerk, as her performance was unacceptable and in direct violation of personnel rules. In the DAR, Ms. Webster was charged with "violating the County's Personnel Rules,... (A) ... incompetent or inefficient in the performance of his [sic] duty. (B) ... offensive in his [sic] conduct .. (D) ... insubordination (S) ... antagonistic towards superiors and fellow employees, criticizing orders, rules and policies,

17. On August 16, 1995, Ms. Schechtman met with Ms. Webster to provide Ms. Webster an opportunity to address the allegations set forth in the DAR. Ms. Webster was unable to verbally communicate her response and, therefore, Ms. Schechtman permitted Ms. Webster to submit her response in writing; which she did on or about August 18, 1995 and which consisted of several pages. ...

52. The following facts of Employer are not in dispute (Resp. Rec.)

3. Ms. Schechtman met with Webster to hear her response in the allegation set forth in the DAR (Tr. Vol. III p. 477-478). After considering Webster's response, Ms. Schechtman conducted her own independent investigation. On August 22, 1995, Ms. Schechtman ultimately upheld the recommendation of dismissal. (Id. At p. 479)

VI. AGREED ON FACTS

60. AGREED ON FACTS OF FACT IN DOAH RECOMMENDED ORDER

1. Ms. Webster is a female, Caucasian, who prefers to be referred to as "a White Anglo," and a Quaker She was born on September 7, 1943. At the time of the hearing, she was married. She is a member of the protected class as it relates to discrimination.

2. At all times material hereto, the Clerk was an employer as defined by the Florida Civil Rights Act of 1992, as amended.

3. Ms. Webster has a Bachelor of Business Administration and a Master of Business Administration. She was a certified public accountant (CPA) but voluntarily relinquished her Florida CPA license to the Board of Accountancy in October 2003.

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4. Ms. Webster had been an employee with Metropolitan Dade County since February 21, 1978. She was employed with the Clerk as an Accountant II in the Comptroller's Division since 1982. Adolphus James was the supervisor of her accounting unit and to whom she reported.

6. Ms. Alcazar reported to Ricky Schechtman, the Director of the Office of Administrative Services. Ms. Schechtman had the authority to terminate employees under her supervision.

7. Ms. Webster's unit was comprised of employees who were majority Hispanic descent. In the unit, she saw herself as a "minority White Anglo American woman of Quaker religious customs." She saw the Hispanic workers as shutting her out by speaking Spanish.

46. Ms. Webster presented evidence as to her financial situation since her termination.

47. Ms. Webster presented evidence as to costs that she incurred associated with the hearing in the instant matter.

61. WEBSTER'S ADDITIONAL FACTS.

1. Webster was under the non-exempt civil service provisions of Dade County employ which covered employees of the Clerk of the Courts, protected from politics and not an appointee..

2. As to (1) Quakers, as evidenced, are of British type English descent and that is important in this case as to the difficulty of Latinos with that type "manner of speaking". She is from California. (Webster protests WWII Nazi recall of the designation "German" as extreme hatred was dumped on Webster, as to the stereotype of German white supremacists used by the Arbitration Hearing and the DOAH Judge).

62. FINDINGS OF FACT - Webster's Proposed Recommended Order

102. Respondent was an employer at all times pertinent to this case and within the meaning of Section 760.02(6), Florida Statutes (1991). Webster was under the non-exempt civil service provisions of Dade County employ which covered employees of the Clerk of the Courts, protected from politics and not an appointee..

2. Webster was promoted in 1994 to Accountant II because of her Computer skills for which she has had extensive education and complex technical job duties.

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4. Personnel: Webster's Supervisor since '87 was Mr. James, Afro-American from Georgia, Accountant III; Ms. Alcazar, a Cuban, was Comptroller over James who supervised Accountant II's: Cubans Dalel Raide and Celine Lagoa, Latino Jose Martinez and Webster. Julio Lucia O'Farrill was a Cuban Accountant I under Raide. Devon Marrett was a Jamaican account clerk. Before firing, Ms. Enciso joined July 17, 1995 under Alcazar and supervising James. Renay Davis was chief of the Central Depository Unit elsewhere.

64. Dade County's Chief Auditor for Dade County testified they could audit compliance with the EEOC laws and recommend procedures for prevention.

63. SUSPENSION FOR DELAYING GOING TO A PHYSICAL – FACTS NOT IN DISPUTE, BUT IT WAS AN EEOC PROTEST (DOAH Findings).

Suspension

18. Prior to her termination, on February 13, 1995, Ms. Webster was suspended for six days (February 13 through 20, 1995) by the Clerk based upon a DAR dated February 3, 1995.

19. On February 3, 1995, Mr. James issued a DAR against Ms. Webster. Mr. James was recommending her suspension from employment with the Clerk. In the DAR, Ms. Webster was charged with violating the "County's Personnel Rules, Chapter VIII, Section 7: Paragraph D" as follows:
...insubordination ...

64. DOAH FINDINGS AGREED TO BUT DISPUTE WITH EMPLOYER

9. Mr. James attached to the [dismissal] DAR specific facts and instances. Some of the facts and instances included the following:
(a) Non-Performance: Ms. Webster failed to complete assigned reconciliations--after she returned from a medical leave of absence from February to mid-June, in a memo from Mr. James, dated June 19, 1995, Ms. Webster was given until July 14, 1995, to complete reconciliations of some general ledger accounts for May 1995; the reconciliations for May 1995 were not completed as directed; and two months of reconciliations were not completed as requested and they had to be assigned to other personnel.

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(b) Insubordination--Ms. Webster "exhibited" gross insubordination toward Mr. James, on August 4, 1995, when she failed to meet with him after he repeatedly directed her to meet with him before she left for the day (the meeting was rescheduled). ...

64. REQUIREMENT TO GO TO A PHYSICAL – WEBSTER DELAYED THE EXAM AS A PROTEST , BUT DID ATTEND THE PHYSICAL

Webster does not disagree with the Findings of the DOAH Judge From #24, 25 to #28 and #30 to #32 (But not #29), and summarizes them: As that the FFDPF was rescheduled repeatedly, and that ...

“... as a result of Ms. Webster's failure to appear, she failed to comply with a direct order; and that her disciplinary action session was scheduled for February 9, 1995, specifying the particular violation.

THAT EVEN BEFORE THE “PHYSICAL’ the Clerk required going to a psychiatrist, monthly status reports (Contrary to ADA Guidelines)

24. By letter dated February 13, 1995, the Clerk notified Ms. Webster that she was suspended without pay until she submitted to a FFDPE and complied with the recommendations associated therewith and that it was recommended that she participate in the EAP, with monthly status reports provided to management from her doctor or professional counselor. ...

65. DOAH - WEBSTER DID GO TO THE PHYSICAL - SUSPENSION

28. By letter dated March 10, 1995, the Clerk clarified his letter dated February 13, 1995, regarding the results of her disciplinary action hearing. He advised her, among other things, that the dates of her suspension were February 13 through 20, 1995, a six-day suspension, and that beginning February 21, 1995, she was placed on administrative leave, pending the results of the physical and psychological examinations.

30. In letters from a psychologist and a psychiatrist, dated April 12 and 19, 1995, respectively, both recommend that Ms. Webster be permitted to return to work. Neither the psychologist nor the psychiatrist was performing the FFDPE.

31. By letter dated May 9, 1995, Mr. James notified Ms. Webster, among other things, that her FFDPE was scheduled for May 12, 1995.

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32. The physician who performed the FFDPE recommended on May 12, 1995, that Ms. Webster be returned to her previous duties.

66. WEBSTER'S comment here is the County Doctor did not require going to the EAP, continuing seeing a psychiatrist nor reporting progress to her Employer, as that was a SEVERE ADA VIOLATION for the Employer to have done so.

DOAH Rec. Ord.

22. Furthermore, Mr. James recommended that Ms. Webster be suspended without pay until she complied with all the requirements of a FFDPE; that she be required to participate in the Employee Assistance Program (EAP), ... that management be provided monthly status reports from Ms. Webster's doctor and/or professional counselor ...

67. AGREED ON FACTS AS THE RESULT OF DOAH DISCOVERY

1. DESPITE the following, the DOAH Judge conducted the hearing as if the following were in dispute when they were not, and subjected Webster to harassing medical inquiries.

IN DISCOVERY, Employer admitted that it as not claiming that Webster had any record of hospitalization in the employee file, nor is it claiming that Webster has a severe mental disability.

2. That the Employer did not produce as requested, a signed Leave Request that conformed with the ADA requirements of a request for accommodation, as to giving a mental reason for a request for taking time off. Further the Supervisor's Arbitration testimony confirmed Webster gave no 'mental' reasons orally to ask for leave.

68. FOLLOWING FACTS ARE IN DISPUTE, EASILY RESOLVED

1. THE DOAH JUDGE STATED THE FOLLOWING WHICH IS FALSE,

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By what you can see that by simply looking at the letter, her and the Count's Doctor's letters. Webster's testimony was that she signed no medical release nor did her doctor give out any medical information, yet the Employer did inquiries.

29. By letter dated March 23, 1995, Ms. Alcazar notified Ms. Webster, among other things, that her (Ms. Webster's) doctor indicated that she (Ms. Webster) should return to treatment with her (Ms. Webster's) physicians who should provide the Clerk with progress reports and her recommendations concerning ability to return to work and that, based on the progress reports, Ms. Webster would be contacted regarding the terms and conditions of her returning to work.

=====

VII. SUMMARY OF THE ARGUMENT

70. Because Webster was a white American minority in a group, this case also was mental disability discrimination as to ethnicity and gender regarding taking severe mental disability actions, largely in regard to the personality conflict with "Jackhammer Julio" who sat by her" and disparate treatment.

71. The fearful Cuban Comptroller Alcazar failed to reassure upset Cubans, acted on "accent" based fears discriminatorily to take the 1992 Baker Act, and the Early 1995 send on leave and firing actions, created a hostile environment as to the personality Conflict with Jackhammer Julio.

72. The real firing reasons was for Webster the unique firing incident for being a threatening racist as to Julio mishearing the word "help Julio" as "hurt Julio" when his testimony was he was stressed by the personality conflict.

73. The Employer played the Race Card in the County Discrimination investigation, so as to, in retaliation, turned a valid ADA discrimination complaint into "white racism" and "direct threat:" Retaliation.

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74. “Cooper” does not apply because of critical differences as the administrators were like a Price-Waterhouse partnership where all types of animus can be transposed to the firing director.

75. The firing administrator relied on Labor Management advice which did not consider delay in going to the physical was an EEOC “protest” but as insubordination. Their reliance on decisions went back to the 1992 Baker act where Webster was not insubordinate but “accent” problems had Alcazar not getting Webster’s purse..

Webster has explained everything to the Clerk, so the only firing reason left was the “direct threat” firing incident.

76. Webster has a valid ADA discrimination complaint, where she does not have to prove that she had a severe mental disability. To prevent suit, the Employer has to give adequate reasons for severe mental disability actions, but used the WRONG ADA Guideline examples as to Alcazar’ false belief in a mental hospitalization, thus violating limits on medical inquiries and other rules.

77. The Employer failed to get the accommodation requested of a room divider, timely as a proximate cause of the “direct threat” firing incident. But they did get it so they admit responsibility. The accommodation of a “forced leave” was inappropriate, as only a room divider was needed between Julio.

78. Cooper’s element of shared retaliatory animus is blown away by Burlington-White that applies to the many different types of retaliation in this case that happened whenever Webster tried to clear up this matter.

79. Thus the Clerk discriminated by ethnicity, gender, mental disability, created a hostile workplace and retaliated for complaints.

=====

VIII. THE CUBAN COMPTROLLER FAILED TO REASSURE UPSET CUBANS, ACTED ON FEARS DISCRIMINATORILY AND CREATED A

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HOSTILE ENVIRONMENT... NEGLIGENCE IN NOT GETTING A ROOM
DIVIDER BETWEEN JACKHAMMER JULIO.

Pet. Prop. Rec. Ord.:

150. ... Testimony and evidence show the ethnic differences between Webster and Alcazar (and Julio), the manner of speech, led to the employer's actions.

58. ... Webster's DOAH testimony was: That the Latino employees got upset over the manner of her expression,

10. Webster's DOAH testimony was The employees were mostly close-knit Latino who shut out Webster by speaking Spanish and got upset by Webster's Anglo speech and movement as rude and offensive; Inter-ethnic misinterpretations were common, led to gossip and employee upset that Supervisors had to calm: Older employees had practiced goodwill, got used to Webster, calmed down most upset that usually disappeared the next day.

11. Webster's DOAH testimony was that it was still like a football field there and she feared that upset as newer Latinos had not got used to Webster. The newer employees were: Ms. Alcazar, Julio Lucia and Ofelia Rey, Jose Martinez.

140. WHITE ACCENT RACE, ETHNICITY, ACCENT AND GENDER. Webster's national origin is California, U.S.A., so that many locals are not used to her expression, "accent", manner of speech and woman's role. She was a minority in the Accounting Unit; whites were not a majority in employ, nor did whites control personnel decisions as Schechtman depended on Mathews.

Dieguez on her Discrimination Report (page 16) says "... the manner in which she manifests this perception (i.e. language, tone, content, and approach) may be offensive and insulting to the people she works with and others." That is the exact problem that Webster had with Latinos getting upset at the way Webster spoke or even moved . And it is NOT that reaction that she complains about, ... but that the employer acted on it such that ethnic differences led to extreme actions ..

59. ... Renay Davis afro-American who was in charge of Central Depository testified Webster got along with everyone there, her unit being equal in three ethnicities. Davis also testified as to employees always having minor squabbles and to personality conflicts. Webster's husband, testified that he is "Latino and dark , so how could she be racist?"

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IX. ETHNIC GENDER DISPARATE TREATMENT- JULIO
PERSONALITY CONFLICT

90. GENERALLY

140. GENDER AND ETHNICITY: Webster was subjected to a repeated pattern of male Supervisors showed preference for other men in the 80's and 90's, of treating Webster's personality conflicts with men as her mental symptom; lending no credence to her side of the story in he-said/she-said and harassment situations, while the behavior of men went uncorrected. Mr. James treated her complaints as mental symptoms, blamed Julio's nervousness on her. James had read the Employee file where a man's upset was blamed on her, so he repeats that error, ... [uses] a consistency test that treats normal differences as symptoms; shuts out the Employee and does not supply work needs. Worse, Webster concerns are treated as complaints and as symptoms. ...

Latinos who complained about her were not so treated and she could not complain about anything without retaliation or treating it as a mental symptom.

91. Webster was a minority so it should not be ok to discriminate like that.

Petitioner's race is white/Caucasian, a race that is not normally regarded as a protected minority class.... . See Parker v. Baltimore & Ohio R.R. Co., 652 F.2d 1012 (D.C. Cir. 1981). In accord Notari v. Denver Water Dept., 971 F.2d 585 (10th Cir. 1992). Peripherally on "reverse discrimination," see Ehlmann v. Florida A & M University, DOAH Case No. 96-2855; Final Order August 26, 1998). (Quoted from FL DOAH 02-0065 Spiller v Alachua #73)

92. DISPARATE TREATMENT WAS COMPARISON TO A Cuban male Julio Lucia-O'Farrill with whom she had an ethnic-gender role personality conflict, sat next to, and whose fears and upset were used as reason to Baker Act in 1992 and violate ADA in 1995 to send to a physical, to fire . Yet the DOAH Judge did not permit recall of Julio.

28. Julio's DOAH testimony was: He had difficulty speaking with Webster because she lowered her head and stood further away; that James Supervised him before for a long time; that he went to James many times

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1994-95 to ask to be moved because of the personality conflict and James said he would do something about it.

93. IT WAS AN EXTREMELY HOSTILE ENVIRONMENT AS
THE CUBAN COMPTROLLER ALCAZAR WAS NOT REASSURING
EMPLOYEES BUT ENCOURAGING THEIR FEARS.
Pet. Rec. Ord.:

===== ARBITRATION HEARING =====

PAGE 170 [ALCAZAR:] A. ...Also, because of other people complain-
ing about their safety. I was really concerned about that, that anything could
happen to them, so I felt I responsible for that, to take care of that.

PAGE 172: [ALCAZAR:] A. Because of your irrational behavior in the
office. That gave them cause to think that something may happen to them.

PAGE 172: [ALCAZAR:] A. It's just the way you displayed your
conversations and things like that.

48. ... A prima facie case of hostile work environment requires evidence
that (a) ... belongs to a protected group; (b) ... subject to unwelcome
harassment; (c) the harassment was based on a protected characteristic; (d)
the workplace is permeated with discriminatory intimidation, ridicule, and
insult sufficiently severe or pervasive to alter the terms or conditions of
employment and to create an abusive working environment; and

(e) the employer is responsible for such environment under either a
theory of vicarious or of direct liability. *Miller v. Kenworth of Dothan, Inc.*,
277 F.3d 1269, 1275 (11th Cir. 2002); *Lawrence v. Wal-Mart Stores, Inc.*,
236 F.Supp. 2d 1314 (M.D. Fla. 2002).

55. They both altered the conditions of employment and is an actionable
situation.” *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

56. According to the Supreme Court, if a plaintiff shows that the
supervisor effected a tangible employment action against plaintiff, then the
corporate defendant is liable for the harassment. *Faragher*, 524 U.S. at 807-
08, 118 S. Ct. 2275; *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765,
118 S. Ct. 2257, 141 L.Ed.2d 633 (1998); *Miller*, 277 F.3d at 1278.

Further the employer did not exercise (1) reasonable care to prevent them
expressing and acting on false information. ... *Miller v. Kenworth of*
Dothan, Inc., 277 F.3d at 1278 (citing *Faragher*, 524 U.S. at 807, 118 S. Ct.
2275; *Ellerth*, 524 U.S. at 765, 118 S. Ct. 2257. *Lawrence v. Wal-Mart*
Stores, Inc., 236 F.Supp. at 1327.

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X. FACT INTERPRETATION CONFLICT: ARBITRATION APPEAL
HEARING: Exhibit 15A. FIRED FOR BEING A THREATENING RACIST
BECAUSE OF JULIO MISHEARING ONE WORD WHEN HIS TESTIMONY
WAS HE WAS STRESSED BY THE PERSONALITY CONFLICT.

27. ... In January 1992 Julio was seated by Webster ... Webster put an article about sexual harassment on Julio's desk. [reason for Baker Act] Despite the evident personality conflict, Julio was again seated by Webster around 1993. "Julio was interfering with everything I was doing", with her relationships She avoided Julio's interference and discomfort a lot by moving to the shared computers or just connecting with other's around ...

45. Webster's DOAH testimony was she repeatedly conferred with Julio's supervisor, tried everything she could to resolve the personality conflict, tried Anglo expression to work it out but Julio misinterpreted whatever she said..

132. The employer was negligent in presuming that a leave of absence would resolve an interethnic gender personality conflict with a man who had extreme fears. Such presumptions discriminate by gender and ethnicity.

125. Webster made a request for accommodation in the Early 1995 Discipline Hearing to be moved away from Julio. ... A room divider was an effective and reasonable accommodation, but provided too late, six months after the initial request and directly before firing, The Employer cannot claim a room divider was a hardship. Failure to supply the room divider timely, was a direct and proximate cause of firing.

46. In her Affirmative Action complaint process, Webster complained about Julio. Dieguez' DOAH testimony was that in response to Webster piling up storage boxes between herself and Julio, Affirmative Action got the room divider. [DOAH Tr. Ib.p.82,122] Webster testified that the room divider was effective.

Meanwhile the boxes were removed, the unique firing incident occurred. .

56. Webster's DOAH testimony was the computer was put on Webster's desk, after the "light duty" due date, and that forced her to finish all her work in a "huge rush" in close proximity to Julio. Without a room divider, she felt forced to solve Julio's interference by shutting out everything else and connecting with Devon by her strongest admiration, by comparing Devon to an afro-American minister rephrasing what Devon had said to her.

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It was a private conversation where Webster got embarrassed , self-conscious, expressed herself badly at the point where Julio interfered by listening in.

133. REASONS TO FIRE were a “direct and proximate result of the absence of the lack of accommodation of a room divider between Webster and Julio as Julio imagined Webster was threatening him from the ethnic personality conflict.

... *See U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983); *Penna v. Brattleboro Retreat*, 702 F.2d 812 (10th Cir. 1978). ..., *Petitioner must prove that what motivated Respondent to discharge him was his disability or Respondent's perception of his disability*

126. The Employer was negligent for not preventing the consequences of Julio’s excessive fear expressed in the Dade investigative process.

127. The Employer did not make a reasonable effort to communicate with Webster.... Her superiors shut her out and assigned a personnel officer who did not communicate well with her ethnic speech. Webster was sent to the EAP, but it ... referred her to Affirmative action. ... Finally, Affirmative Action recommended a room divider, but it was too late..

“Where an employer does not obstruct the process, but instead makes reasonable efforts to communicate with the employee, liability for failing to make reasonable accommodation will not follow. Beck (v. University of Wisconsin Board of Regents), 75 F.3d at 1137. [Quoted from FL DOAH 01-3837 #40 BELOW “EGADAPD” refers to Quotes taken from: Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, modified Feb. 1, 2000.)

130. ... Leave and “light duty” were not needed, requested, nor medically indicated. A room divider was needed so no undue hardship came from the unneeded forced leave of absence.

[EGADAPD: 23. ... Permitting the use of accrued paid leave or providing additional unpaid leave for treatment or recovery related to a disability is a reasonable accommodation, unless (or until) the employee's absence imposes an undue hardship ... 58 (Footnote 58. 29 C.F.R. pt. 1630 app. § 1630.2(o) (1996)

XI. REAL FIRING REASON: THE CLERK PLAYED THE RACE CARD TO TURN A VALID DISCRIMINATION COMPLAINT INTO “WHITE RACISM” AND A MISHEARING INTO “DIRECT THREAT”

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110. RESP. Rec. Ord.

5. Webster appealed her dismissal pursuant to the Clerk's civil service appeal system. Independent hearing examiner William McGinnis was appointed by American Arbitration Association (AAA). The hearing was held on Jan 11 and 12 1996. During the hearing Webster cross-examined witnesses and introduced documents. On March 1, 1996, McGinnis concluded that Webster's termination should be sustained.

DOAH Rec. 35 "... recommended sustaining the six-day suspension and dismissal of Ms. Webster.

Appeal of Suspension and Dismissal

[DOAH FINDING ABOUT ARBITRATION HEARING]

39. On March 20, 1996, the County Manager, Armando Vidal, P.E., having reviewed the record of the Hearing Examiner, upheld the six-day suspension and dismissal of Ms. Webster.

111. The "UNDERHANDED" playing the race card was done PRIOR TO THIS incident. in the Discrimination Investigation (in which Julio expressed his fears) which McGinnis and the DOAH Judge relied on although it was heavily affected by the Supervisor's and other administrators' retaliation. They falsely presume that Webster was being sent to a physical for being a "white racist" and her complaint was about that when IT WAS NOT.

112. THE REAL FIRING REASON, that the Clerk and DOAH omit is the following paragraph that guarantees the County Manager signs off on it and leaves Webster's pleas unheard likewise in the Arbitration and DOAH appeal.

"The potential for violence or threats of violence in the work place is something that every employer must be cognizant of in our work world today. In this case, The Appellant clearly conveyed a serious potential threat to a fellow employee that as stated in the work place in hearing distance to other employees and the person who was threatened.

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The employee who received the threat properly brought it to the attention of supervision and he also notified the police.

The Appellant clearly made a statement that would be considered by any reasonable person to be a threat.

Pet. Prop. Rec. Ord:

55. Arbitration testimony was that Julio heard Webster ask Devon to “hurt” him. Webster’s DOAH Testimony was that she said “help” Julio and that she had informed the Supervisor at that time; Devon’s DOAH testimony was he heard “take care of Julio” with no negative connotation; Julio’s DOAH testimony was he was stressed by the personality conflict; doesn’t hear Webster well. Alcazar’s Arbitration testimony was that James did not inform her that Webster told him she said “help.”

113. THREAT MUST BE REAL HARM NOT ETHNIC/GENDER FEARS.

134. THE DIRECT REASON FOR FIRING WAS FOR THREAT as Schechtman’s Arbitration testimony says: *When employees fear for their safety in the office it becomes a safety problem, Anne...* “, But, it must be of real harm, not imagined because someone of another ethnicity has unreasonable ethnic fears:

[EGADAPD, under “Direct Threat”]: *" Under the ADA, an employer may lawfully exclude an individual from employment for safety reasons ...if ...employment of the individual would pose a "direct threat."*
"Employers ... may not use safety concerns to justify exclusion of persons with disabilities when persons without disabilities would not be excluded ... “ ... "direct threat" means "a significant risk of substantial harm to the health or safety of the individual An individual does not pose a "direct threat" simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability."

So, the actual and real reason for firing was a “direct threat” yet the DOAH Judge in consideration of Devon’s and Julio’s testimony only considered it to be an extreme concern . In Devon’s testimony, the DOAH Judge clearly believes the County Attorney is intimidating Devon into saying the County Attorney’s

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words (Tr. Vol.IV. 12-2-04 p.650-651) and that Devon's back was to Julio.

Webster denies saying "take care of."

114. There Devon testifies as to what was conveyed to him:

"I remember when she first came to me, I remember she was asking me... If I remember, she as saying "help take care of Julio" (Ib.p.617)

DOAH Judge's Rec. Order:

15. Both Messrs. Lucio-O'Farrill and Marrett were extremely concerned with Ms. Webster's behavior. Mr. Lucio-O'Farrill was so concerned that he called the police, and a police report was filed.

14. As to Mr. Marrett, the evidence demonstrates that he was offended by Ms. Webster's remark to him,

115. Webster does agree she erred in speaking informally like that in front of others, repeating back what Marrett had to her in private is a basic Supervisor principle that Webster forgot because the personality conflict. On (Ib. p.627) Devon testifies that it wasn't important enough to go to a Supervisor. Webster, perhaps, deserves a reprimand.

116. Significantly, Devon with British Jamaican speech testified he had no problem talking with Webster (Ib. p.608). While Julio testified as to considerable difficulty with Webster's customs of speech of standing further away.(Ib. p. 691.703) . Julio's DOAH testimony as he repeatedly over six months (that would include the "send to physical actions) complained to Webster's Supervisor about it and asked to be moved. He said he didn't have to co-operate at work with Webster, repeatedly fed-up with the personality conflict he had endured for six months. Julio further testified that others made remarks that Webster was crazy that may have led to him feeling threatened.(Ib. p.706-707).

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117. Employer's DOAH Proposed Recommended order implies falsely that racist behavior was the reason for sending to a physical, by citing:

In reaching this conclusion Mr. McGinnis found as follows:

The County expended great efforts to assist the Appellant as a long-term employee to resolve the behavior she was exhibiting in the workplace. The County has as responsibility to make every effort to help an employee who has a long history and holds a responsible position.

118. This incident is the only thing left in Employer's "Facts"(Resp.Rec. 2), and Webster said "help", not "take care of" and never was informed the derogatory form was misinterpreted.

2. On August 10, 1995, Webster was issued a Disciplinary Action Report ("DAR")for violating the Personnel Rules for the Classified Service. The DAR set forth with specificity how and when Webster violated the Personnel Rules. Webster was charge[sic] with inter alia making inappropriate threatening remarks to co-workers Mr. Lucio O'Farrill and Devon Marrett. For example, on August 7, 1995, Webster asked Mr. Marrett if he knew anyone like him ho could take care of Mr. O'Farrill. Mr. Marret asked her what she meant by like him and she responded " a big black and ferocious man from Liberty City".

XII. THE ACTIONS DEPENDENT ON DEFECTIVE LABOR
MANAGEMENT ADVICE AND ON MISINTERPRETING PRIOR ACTIONS,
SO NO ACTIONS ARE VALID.

120. SCHECHTMAN'S RELIED ON LABOR MANAGEMENT'S advice, which didn't consider (per testimony) that the delay in going to the physical was an EEOC "protest".

These were NOT insubordinations:

- (1). The 1992 Baker act was where they forgot to get Webster's purse
- (2). The Early 1995 delay to go to the physical was an EEOC protest

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116. Webster was not insubordinate before she delayed going to the physical. Delaying going to the physical was the only disobedience in the Early 1995 action.

PAGE 108-109: ARBITRATION HEARING

=====

WEBSTER: "So, not obeying a direct order, which order did that refer to?"

JAMES: "That referred to the fitness of duty that was given to you."..

=====

(3). The pre-firing insubordination was a "pretense" as Schechtman needs one 'on the record' to comply with Labor Management's decision, which is based on presuming that (1) and (2) are insubordinations. It came the day after the discrimination investigation on-site interviews such as to blame Webster for Julio's fears as two negative actions occurred the next day. Pet. Rec. Ord.:

47. In the 8-3-95 Affirmative Action on-site interviews, Dieguez' DOAH testimony was Mathews attended, that Julio expressed excessive fears and that the worst discrimination comes from fear. Webster's DOAH testimony was she felt they blamed her for Julio's fears as two negative actions occurred the next day:.. (1) The performance evaluation, extremely negative, of 2/14/94-2/12/95 dated Aug. 4, 1995, had been delayed many months, yet James superiors wanted 8-4 for Webster to meet with James about it. (2) James' superiors charged Webster with insubordination for delaying that meeting, which James' Arbitration testimony contradicted..

=====

PAGE 42: CANDELA: Did she fail to follow direct orders?

JAMES: No.

CANDELA: Did she fail to meet with you on August 4th of 1995.

JAMES: No. I had asked to meet with her that particular day and basically told her that I needed to meet with her. She was telling me that she had some other things that she wanted to do in central depository, but I told Anne that she had a doctor's appointment. I told her that I needed to meet with her and fit it into her schedule. ...

=====

48. FIRING TIMELINE

8-3-95 Affirmative Action on-site fact-finding interviews (by Dieguez).
Where Julio expressed extreme fears.

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8-4 ... insubordination event.
8- 5/6 Weekend
8-7-95: ... PM: Julio misheard one word;
8-9-95 11:22 AM Julio called Police Officer
8-10-95 9 AM firing DAR
8-21-95 Discrimination Report Date

XIII. THIS CASE IS UNLIKE COOPER IN THE FOLLOWING WAYS.

130. Unlike Cooper, Webster's file contained few disciplinary actions or reprimands. They thought she was "a valuable employee to us in the past."

131. Webster was unable to get an attorney. She was not given "every opportunity" to refute the allegations in the D.A.R. as Schechtman stated (Tr. Vol.III p.478-479). The charges did not make sense as they couldn't be traced to detailed documents of counseling, clearly communicated, so she could improve. Webster does not admit that the Employer had any legitimate reason to fire. Cooper must be seen in the context of ADA mental disability evils and her discrimination complaint that she wasn't believed. Unlike Cooper, Webster is white and Supervised by an afro-American, every complaint taken as racism.

132. SCHECHTMAN TESTIFIED SHE LACKED PERSONNEL EXPERIENCE. So she saw "common squabbles" as "safety reason", "racism".

XIV. COOPER ANIMUS IS LIKE A PRICE-WATERHOUSE PARTNERSHIP AND HERE ANIMUS CAN BE TRANSPOSED TO DIRECTOR SHECHTMAN ALL LINKED BY JULIO'S FEAR.

141. The record shows that Ms. Enciso, Deputy Controller, joined July 17, 1995, after the firing actions began so that before then, Enciso's slot was empty, so simple misunderstandings such as "missing" paperwork and computer access and other issues were not easily resolved, as to negligence as to the Supervisor reaching for mental stereotype instead. Thus Employer's Prop. Rec. Ord. shows

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CRUCIAL ERRORS. Alcazar supervised James from another building.

1. Petitioner Anne Webster("Webster") was employed by Employer Miami Dade Clerk of the Courts ("the Clerk") as an Accountant 2 in the Comptroller's Division. She reported to Accounting unit Supervisor Adolphus James who in turn reported to the Deputy Comptroller Margaret Enciso. Ms. Enciso reported to the Comptroller Martha Alcazar. Ms. Alcazar reported to the Director of the Office of Administrative Services Ricky Schechtman. Ms. Schechtman had the authority to terminate employees under her supervision (Tr. Vol. III. P.475-476).

THE DOAH REC. ORDER REPEATED THE ERROR

5. Mr. James' supervisor was Margaret Enciso, the Deputy Comptroller. Ms. Enciso reported to Martha Alcazar, the Comptroller.

WEBSTER'S RECOMMENDED ORDER

5. Alma Mathews, afro-American, was the Clerk's chief Personnel Officer since the early '80's, with an office down the hall from the Accounting Unit, under Alcazar's supervision since 1991 until Schechtman took over sometime in 1994-95. Schechtman's Arbitration testimony was she relied heavily on Mathews.

142. That matches Mathews' DOAH testimony. See (B.4.) below about Enciso, James and Alcazar worked all together in the firing: The suspension, Schechtman "reviewing the case with Martha Alcazar" It is no accident that Schechtman's and Alcazar's womanly hysteria about "safety reasons" are similar as Dieguez informed management of employee "miscommunications" from Julio. See "Light Duty" where Alcazar directs Enciso what to do towards the firing.

143. SCHECHTMAN'S MOTIVES ARE CLEARLY SHOWN in the Arbitration testimony (p. 185-209) it is quite clear , "white racism" and "safety fears" were uppermost in Schechtman's mind, and ALL OTHER REASONS are a pretext for those "non-neutral" reasons.

(a). Schechtman testified she was Director of Administrative Services from

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Oct 1993 over the ADA unit, and over Personnel (p.185) headed by Personnel Specialist III, Alma Mathews who conferred with her on all issues of discipline actions. After Webster's delay in going to the physical, advice from Labor Management Carmen Davis was to fire immediately, (as their testimony was they don't consider EEOC protests) yet Schechtman decided on a six-day suspension, fitness for duty, and EAP repeating the requirements after the Jan. 1992 Baker Act. (which Alcazar told Mathews to do in the related discipline hearing. For firing, she testifies (Arb. p.189) Labor Management felt that "due to the seriousness of the 4 charges including the insubordination..." What links them all is that Julio's fears and angers were conveyed to Alcazar and Schechtman, via Dieguez Affirmative Action and miscommunications are interpreted as "fact".

(b). Then Schechtman jumps immediately to WHAT IS ACTUALLY ON HER MIND, AS to safety reasons as to Julio calling in a police officer and makes the statement on (p.204): "When employees fear for their safety in the office it becomes a safety problem, Anne." ... "in response to your behavior" .

(c). Likewise, "white racist stereotype" was uppermost in Schechtman's thoughts as she had brought Webster's ADA accommodation request dated June 28, 1995, and June 21, 1995, with her. p.192: "It was communicated to me you had asked if Hispanics and blacks could be segregated into separate areas of the office" Webster has testified that it was the ADA employee under Schechtman had made the statement repeatedly demanding that Webster agree.

Further Schechtman testified (Arb.Tr.) that she showed it to everyone.

That is RETALIATION for an ADA Accommodation request.

144. SCHECHTMAN was so obsessed that on ARB Tr. 208-209 Schechtman said she did Not consider the option of transferring to another

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Clerk's Office or even moving Webster across the room. Likewise she could not review Webster's side of the story.

misuse of ADA rules to cover up ethnic discrimination, not legitimate, but discriminatory reasons related to Webster's protected status and most of it retaliation.

145. THE LAST THING ON SCHECHTMAN'S MIND WAS "THE WORK AND GETTING WEBSTER COMPUTER AND PAPERWORK" as the County Attorney had to struggle to even get Schechtman to answer a work question. On page 200.. that Schechtman asked Alcazar or James who said that Webster was having some problems. But they did Not convey that in detail .(Ib. p.205) Enciso, James, Alcazar were in the "middle of writing memos regarding the fact that you were not completing your work and giving you deadlines to complete that work." Accounting people ALWAYS help each other..

There you have Enciso, James and Alcazar working all together.

Suspension: Schechtman's (ARB p. 188) statement: "in reviewing the case with Martha Alcazar... Martha and I felt that Ms. Webster was a valuable employee to us in the past."

146. Thus the following is FALSE as Employer's Cooper #6 does not fit Webster's case. It's a Price Waterhouse with shared animus especially as Dieguez conveyed the 'safety fears' from Julio to management.

8. ... Webster cannot survive summary judgment because she failed to establish a causal link between James and Alcazar's actions and Director Schechtman's decision to terminate her.

"White racist", mental stereotype, "safety fears" are NOT "neutral" reasons, but a "pretext" for impermissible reasons of using Latino upset, "Julio's"

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misinterpreted as “racism, so as to fire every “American.”, all illegitimate discriminatory reasons related to protected status and most of it is retaliation, as the send to physical misuse of ADA rules to cover up ethnic discrimination..

The DOAH Judge tossed those things out.

147. SCHECHTMAN RELIED NEGLIGENTLY ON INFORMATION

So, you have an extremely faulty DAR with Webster denying the statements attributed to her. Schechtman and Labor Management were negligent in “MAKING TOP DOWN DECISIONS” based on old historical information so they violated the personnel rules and ADA Guidelines, did not properly evaluate information available. She had choices to improve that information and did not take it, to have the Appeal on the Discipline Action before firing ; to do the annual evaluation to find out reason rather than use it to give another firing reason; to find out what work needs Webster wasn’t supplied: paperwork, computer. She could have had internal auditors to check the facts. They chose not to respond to Webster’s accommodation request in the Early 1995 Discipline Hearing. It was negligence to respond to the discrimination investigation in a retaliatory manner. Schechtman, in DOAH testimony COULD NOT EVEN COMPREHEND the need to check if procedures were properly done.

148. It was reasonable to get a ROOM DIVIDER per Webster’s accommodation request 6 months earlier, as it worked, so they admitted responsibility and of doing a WRONG accommodation previously. The Clerk is beating a “DEAD HORSE” after it got out of the barn.

Making up a reason of “unprofessional” only deserves a reprimand.

XV. RETALIATION: COOPER’S THIRD ELEMENT OF SHARED RETALIATORY ANIMUS IS BLOWN AWAY BY BURLINGTON

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SUPREME COURT OF THE UNITED STATES No. 05.259

BURLINGTON N. & S. F. R. CO. v. WHITE Opinion of the Court APPEALS
FOR THE SIXTH CIRCUIT [June 22, 2006] from their website.

150. APPLIES AS TO THE SIMILARITIES WITH MY CASE:

PAGE 1-2: ... anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. covers those (and only those) employer actions that would have been materially adverse to a reasonable employee ... that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.

See page 5 and 8 to 11. also.

151. WEBSTER CONTENDS THAT "MCDONNELL terror tactics, and "any reason"; no 'GENUINE ISSUE OF FACT", RISK MANAGEMENT DECISIONS; FEEDS INTO FCHR & DOAH STRATEGY AND IS LIKE THE EMPLOYER FILING A LAWSUIT.

P.11-12... The National Labor Relations Act ... in other Title VII contexts,. Hishon v. King & Spalding, 467 U. S. 69, 76, n. 8 (1984), ... Compare 29 U. S. C. §158(a)(3) ... with §158(a)(4); see also Bill Johnson's Restaurants, Inc. v. NLRB, 461 U. S. 731, 740 (1983) (...prohibi[t] ... that ...has the likely effect of restraining, employees in the exercise of protected activities, . including the retaliatory filing of a lawsuit against an employee); NLRB v. Scrivener, 405 U. S. 117, 121.122 (1972)...
... . Title VII depends for its enforcement upon the cooperation of employees ... Mitchell v. Robert DeMario Jewelry, Inc., 361 U. S. 288, 292 (1960).

Page 12: .. "... We ... reject the standards applied ... that have ... limited actionable retaliation ... See supra,at 5.

Page 13: ...Rochon, 438 F. 3d, at 1219 (quoting Washington, 420 F. 3d, at 662).

152. INTER-ETHNIC GENDER CONFLICTS ARE LIKE PERSONALITY CONFLICTS EXCEPT IF YOU ARE A MINORITY, THEY COMPLAIN AND MAKE EXTREME DECISIONS ON FEAR.

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See page 13-14.

... it is important to separate significant from trivial harms. Title VII, ..”
Oncale v. Sundowner Offshore Services, Inc., 523 U. S. 75, 80 (1998); see
Faragher, 524 U. S., at 788 ...

Page 14:... reasonable employee See, e.g., Suders, 542 U. S., at 141
(constructive discharge doctrine); Harris v. Forklift Systems, Inc., 510 U. S.
17, 21 (1993) (hostile work environment doctrine)... Oncale, supra, at
81.82... See 2 EEOC 1998 Manual §8, p. 8.14. ... for an “... immaterial in
some situations is material in others”. Washington, supra, at 661.

Page 15: ... this standard does not require a reviewing court or jury to
consider “the nature of the discrimination that led to the filing of the
charge”. Post, at 6 (ALITO, J., concurring in judgment). Rather, the
standard is tied to the challenged retaliatory act, not the underlying conduct
...

153. RETALIATION WAS LOWERING WEBSTER’S JOB DUTIES to doing
“10 Reconciliations” account clerk work, a minor part of her work. She has a
CPA, MBA and was reclassified because of her computer systems work.

See Page 15-16:... See Reeves v. Sanderson Plumbing Products, Inc., 530
U. S. 133, 150.151 (2000)...reassignment ... suspension without pay. ..
Our holding today makes clear that the jury was not required to find that the
challenged actions were related to the terms or conditions of employment. ...
were “materially adverse,” ... both the former and present duties fall within
the same job description. Brief for Petitioner 24.25. the EEOC has
consistently found .[r]etaliatory work assignments. to be a ...forbidden
retaliation.. 2 EEOC 1991 Manual §614.7, pp. 614.31 to 614.32; see also
1972 Reference Manual §495.2 “...to do an unpleasant work assignment” ;
EEOC Dec. No. 74.77, 1974 WL 3847, *4 (Jan. 18, 1974)... considering
.all the circumstances.. . Oncale, 523 U. S., at 81. ... considerable
evidence that theforklift operator position required more qualifications
...

Page 17 .. Based on this record, a jury could reasonably conclude that the
reassignment of responsibilities would have been materially adverse to a
reasonable employee.

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154. Likewise the Top down easily tracked “DECISION PROCESS” from risk management that does not consider ‘protest’ in its followed advice, and leads to McDonnell and ‘any reason’ “terror tactics” to send on a leave of absence, 6 day suspension and Firing which led to 12 years of suffering without pay.

Page 17: Albemarle Paper Co. v. Moody, 422 U. S. 405, 418 (1975) ... Pub. L. 88.352, §706(g), 78 Stat. 261, as amended, 42 U. S. C. §2000e.5(g). ... suspended an employee ... Title VII in 1991 to ... intentional discrimination to recover compensatoryhelp make victims whole.. . West v. Gibson, 527 U. S. 212, 219 (1999) (quoting H. R. Rep. No. 102.40, pt. 1, pp. 64.65 (1991)); see 42 U. S. C. §§1981a(a)(1), (b). We would undermine the significance of that congressional judgment were we to conclude that employers could avoid liability in these circumstances.

PAGE 18... .. an indefinite suspension without pay could well act as a deterrent Cf. Mitchell, 361 U. S., at 292 (. [I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.). Thus, the jury’s conclusion that the 37-day suspension without pay was materially adverse was a reasonable one.

155. WHITE’S SIMILARITY WITH WEBSTER:

In Webster’s case even minor insults of the Supervisor, minor actions were horrifying as it meant the Supervisor kept a severe mental stereotype so they might Baker Act or send on leave at any time. (1.) In late 1994 monitored her daily activity, (2) forced onto take a leave of absence that the Employer falsely represents as “medical” as to ADA violations. (3), Lowered her job duties (6) six day suspension, but a firing with worse repercussions (7) A “Material adverse change” WAS treating Webster as if she were incompetent in 1992 but she couldn’t protest that til they acted in 1995.

Supervisors were told to list everything if there was a “whiff” of a lawsuit, a t McDonnell terror tactic “any” reason, So Dade County refuses to apply

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ADA Disability guidelines (because of insisting that would be “diagnosing”) when it is trying to catch Employer stereotype mistakes. In Pet. Prop. Rec. Order, this “any reason” to discriminate towards non-Latinos was:

77. ... Ferguson v Dade (FL DOAH CASE 02-4730) . “77. ... the employer can lawfully ask: is the accusation true?... the employer can lawfully make a choice between the conflicting versions--that is, to accept one as true and to reject one as fictitious-- an employer, in these situations, is entitled to rely on its good faith belief about falsity, concealment, and so forth. Cf. Damon, 196 F.3d at 1363 n.3

118. 1995 Delaying going to the physical was a protected activity... . Webster did go to the physical and carefully adhered to the related orders of the Employer. They used it as if, insubordination to fire.

156. LIGHT DUTY AND INVOLVEMENT OF ALCAZAR IN THE FIRING

Schechtman testifies (Arb. p.189) she was aware that Webster was “given accommodation of limited duties as to coming from a medical leave of absence.” Webster put in an official complaint about that, yet no-one responded to it. Webster’s DOAH testimony was Enciso showed Webster a memo from Alcazar telling her not to speak with her Supervisor when it was essential to do so;

From Webster’s Proposed Recommended Order:

49. Pre-firing “LIGHT DUTY” of 10 Reconciliations was ordered by Alcazar. Discrimination Report: Page 8: “Enciso asserted she explained to Webster that the Comptroller had directed Enciso to give reconciliations top priority treatment and that said work was part of her assigned duties.” Webster’s DOAH testimony was that Alcazar had told Webster not to talk to her Supervisor, but it was necessary; Arbitration testimony was that James failed to convey critical information to his superiors that Webster was given insufficient computer time and paper work.

52. Enciso’s DOAH Testimony was doing Reconciliations was not an essential job duty for Accountant II’s but marginal; and James had failed to inform her of Webster’s job duties that were related to her promotions in

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Exhibit 17(B): 1/31/94 Personnel Department on "Reclassification Hearing Decision"

- development, design and implementation of departmental accounting systems applications."
- oversee and assist in training employees on new systems applications.
- various special projects to include budget projections of revenue, and legislate research.

"...In the absence of advanced supervisory responsibility it was found that Accountants 2 are engaged in the implementation of computerized accounting systems."

129. The EEOC ADA Guidelines recognizes that excessive, repeated examinations and accommodations are harassing, retaliatory and discriminatory. *FL DOAH 92-6043, MASON V LEON COUNTY SCHOOL BOARD #58*)

157.0 REQUEST FOR ACCOMMODATION RETALIATION

44. Webster's DOAH testimony was: She requested accommodation In the Early 1995 Discipline Hearing Webster to be moved . Having got no accommodation, June 1995, Webster put in a written request to the Clerk's ADA coordinator; an ADA employee called and demanded Webster agree to a racist statement. Those were her words, not Webster's who was horrified. [ARBITRATION HEARING] PAGE 193, [SCHECHTMAN:] A... you had asked if Hispanics and blacks could be segregated into separate areas of the office.

119. ... Section 8.II.B. 2. Examples of Opposition "...y under Section 503 of the ADA.....15. Foot-note 15 *Soileau v. Guilford of Maine, 105 F.3d 12, 16 (1st Cir. 1997). See also Garza v. Abbott Laboratories, 940 F. Supp. 1227, 1294 (N.D. Ill. 1996)*

157.1 COMPLAINING AS A MENTAL PROBLEM & HARRASSMENT

25. Webster's DOAH Testimony was that when she was on the 1995 leave he lectured her for 10 minutes that she lived in an imaginary world. Mathew's Early 1995 Discipline Hearing testimony was she wanted psych evaluation to find why Webster delayed the physical, and did not ask Webster the reasons. James' DOAH testimony was that he had to treat Webster "special".

PAGE 6 DISCRIMINATION REPORT =====

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DIEGUEZ: "When I asked why he thought Webster was making these allegations, if according to him they were untrue, James' reply was, "Because of her condition. According to the doctor's report it is decompensation, meaning failure to distinguish reality from imagination."

26. James' Arbitration testimony was he read Webster's employee file. Webster's DOAH testimony was for years James told Webster she did not get along with men which intimidated her to not complain about Julio. James' Arbitration testimony was he got with Julio about his complaints.

31. Although Julio's name was omitted from reasons to send to a physical, James reasons to send to a physical of "making employees nervous" in Arbitration testimony ended up just being "making Julio nervous." ...

32. Alcazar referred to the "environment" in regard to getting Webster out of the office. ...

Page 6 DISCRIMINATION REPORT

=====

SUPERVISOR JAMES: "She was granted as much Administrative Leave time as possible trying to minimize the impact on the work environment"

33. The Supervisor testified on the Early 1995 Discipline Hearing that he had difficulty speaking with Webster, yet that she was co-operative in that [DISCIPLINE] hearing. Raide testified she had no problem speaking with Webster during that time or at the time of the firing. ...

34. Further, James' Arbitration testimony was he wasn't going to help Webster, while other's testimony was that he helped others.

158. SUPERVISOR'S ANTICIPATORY RETALIATION.

35. Webster's DOAH testimony was: in 1994, Webster tried to talk to James about upset Latinos, her discomfort and the Julio personality conflict by speaking of "cultural differences" as a supervisory concern, so he might calm their upset and not act on it discriminatorily. Early 1994 Webster had tried to tell him, but was written up, and that intimidated her until around "The Ofelia incident". James' Discrimination Report testimony (Pg 5) reasons to send to a physical was:

"I inquired as to what events had led to Webster having been put on medical LOA. James said that towards the latter part of October, 1994, he noticed Webster was stressing cultural differences in the workplace and her work assignments were not getting done",

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111. Webster was only trying to talk about valid work concerns, yet the Employer “jumped the gun” in believing the above was occurring. Thus it was retaliatory and intimidating for Webster to get a reprimand in Early 1994 for trying to discuss employee upset, ... Webster was never permitted to tell the Supervisor about the need for calming down Latinos who were upset over Webster’s expression.

36. Webster’s DOAH testimony was: James told her beginning in late 1994, ... Mathews had told him to be “hard on” her, Then he lectured her repeatedly ...when she tried to tell him about the missing cashier reports or cultural differences , and did not let her speak. Once he repeatedly demanded she not say “I” ... In January 1995, James forced himself very close against Webster’s request and in front of everyone stated he thought she could stand close. ...

112. The Employer was purposely “hard on” Webster and shut her out, as retaliation for anticipated discrimination complaining and shut out Webster, such that progressive discipline was not done in 1994-95....

159. ADDITIONAL RETALIATION TO CONSIDER:

159.1. Webster first notified them orally about the discrimination complaint before being sent to a physical as recorded on their list of reasons. In the related Discipline Hearing she read off the EEOC riot act to them. Mathews then she holds the threat of the Baker Act over employees heads saying “Do you remember the 1992 action?” Webster remembers.

159.2 Firing administrator relying on Labor (Risk) Management when it failed to consider “EEOC opposition” as a reason for the insubordination of delaying going to a physical. (3) In general that the anticipatory application of legal defenses into the workplace so as to fit specific case patterns is retaliatory.

159.3 Generally the difficulty of expressing a discrimination complaint interpreted as “racism.” (5) Equating of a personality conflict or ethnic difference with a Latino to “racism”, as a firing reason and convey that to potential employers. (6) The retaliation of firing for being a “white racist” and

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threatening. (7) Condemnation at a high level of political power, as a threatening racist, so as to have repercussions as to "Clerks" association with criminals in the workplace combined with destruction of reputation. (8) THE MISREPRESENTATION OF THE EMPLOYER TO ARBITRATION, that Webster's "mental problem" was "racism" RATHER THAN it being the problem of extreme mental health actions. (9) FCHR and DOAH retaliatory demanding that cases fit "McDonnell" when the Employer never does their side.

(10) Above all, the last resort of the Employer is to rely on "any reason" of the firing administrator or some cursory investigation that is untraceable and indefensible is also retaliatory. (11) The DOAH Judge using the exact "stereotype" complained about to decide the case, i.e. of a "white racist".

159.4. DISCRIMINATION COMPLAINT AS "MENTAL SYMPTOM"

122. The investigation was halted prematurely by James' misinterpreting the FCC incident by some incorrect severe mental disability stereotype....s Schechtman, James and others heavily relied on Mathews. ... testimony in the Arbitration hearing being contrary to the County Doctor's recommendation, and supporting a belief in some serious disability.

Section 8.II.D. 1 *Suspending or limiting access to an internal grievance procedure also constitutes an "adverse action." For example, in EEOC v. Board of Governors of State Colleges & Universities*\29,(Footnote 29 957 F.2d 424 (7th Cir.), cert. denied, 506 U.S. 906 (1992))... *The Seventh Circuit ruled that termination of the grievance process constituted an adverse employment action in violation of the anti-retaliation clause of the ADEA*\30.(Footnote: 30 See also *Johnson v. Palma*, 931 F.2d 203 (2d Cir. 1991)... . (Footnote 32 *The ADA*, ... , *prohibits retaliation against "any individual" who has opposed discrimination based on disability or participated in the charge process.* 42 U.S.C. § 12203.}

On Webster's Proposed Recommended Order

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25. EVIDENCE MATHEWS treated a discrimination complaint to be a psychological symptom was she said she wanted the psych evaluation to tell her why Webster delayed the physical and she failed to ask Webster the reason.

PAGE 6 DISCRIMINATION REPORT =====
DIEGUEZ: "When I asked why he thought Webster was making these allegations, if according to him they were untrue, James' reply was, "Because of her condition. According to the doctor's report it is decompensation, meaning failure to distinguish reality from imagination."
 =====

159.5 McDonnell terror tactics of scrutinizing, writing everything down.

113. his copious notes to send to a physical that he applied that too carefully in practice. That is also evidence he subjected her to intense scrutiny searching for any complaining. ... The Supervisor was applying a practice to prematurely retaliate as to all complaining as "mental", without distinguishing between valid supervisory concerns, "mental" complaining, and protected expression. That created a hostile retaliatory environment.

159.6 CREATING A HOSTILE ENVIRONMENT to write down more things.

114. Retaliation created a hostile workplace in late 1994-5, when James began being "hard on" Webster, shutting her out, altering the terms of work as James didn't let Webster speak to convey paperwork and other work needs. Then Incidents became abusive and offensive in early 1995. It was already retaliatory for James, to seat Julio by Webster for her history of complaining about men in the 80's. But then he watched to blame ... her. The threat of severe mental health actions being taken again for minor complaints of Julio or others was a hostile workplace as all could complain about her and she could say nothing.

FL DOAH CASE 02-1410 [Harris v Metro Dade] 54. The court in Terry v. Ashcroft, 2003 WL 21666141 (2d Cir. 2003), at page 14, defined the elements that must be proven to establish a hostile work environment as follows: "... e to alter the conditions of the victim's employment and create an abusive working environment." Alfano v. Costello, 294 F.3d 365, 373 (2d Cir. 2002)(quoting Perry v. Ethan Allen, Inc., 115 F.3d 143, 149 (2d Cir. 1997)); see also Oncale v. Sundowner Offshore Serv.,

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Inc., 523 U.S. 75, 78 (1998)... *Alfano*, 294 F.3d at 374 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)).

Section 8.D.3: "... any other adverse treatment that is reasonably likely to deter protected activity... ." Footnote 40: "Retaliatory acts that create a hostile work environment would meet that standard since, as ... the terms and condition of employment include the intangible work environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64-67 (1986). ... see *DeAngelis v. El Paso Municipal Police Officers Ass'n.*, 51 F.3d 591 (5th Cir.), cert. denied, 116 S. Ct. 473 (1995); *Davis v. Tri-State Mack Distributor*, 981 F.2d 340 (8th Cir. 1992). Footnote: 51 *Fields v. Phillips School of Business & Tech.*, 870 F. Supp. 149 (W.D. Tex.), aff'd mem., 59 F.3d 1242 (5th Cir. 1994). Footnote: 41 See *McKnight v. General Motors Corp.*, 908 F.2d 104, 111 (7th Cir. 1990) ,, cert. denied, 499 U.S. 919 (1991); *Garcia v. Lawn*, 805 F.2d 1400, 1401-02 (9th Cir. 1986) ... *Atkinson v. Oliver T. Carr Co.*, 40 FEP Cases (BNA) 1041, 1043-44 (D.D.C. 1986) ...

115. Testimony was James refused to help Webster, while helping others ... failure to provide missing paperwork in late 1994, followed in late 1995 by not supplying computer access needed for "light duty". These were a direct cause of work not getting done.

SECTION 8-II. E. *Common non-retaliatory reasons offered by respondents for challenged actions include: poor job performance; ... violation of work rules or insubordination ...*"

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XVI. DISCRIMINATION COMPLAINT PROCESS WAS RETALIATION
THEY INVESTIGATED WEBSTER'S PRESUMED WHITE RACISM
RELIED ON RETALIATORY MANAGEMENT INFORMATION.

160. 110. The following are taken from the EEOC Compliance Manual Section 8, on "Retaliation", dated 5/20/98, referred to below as "Section 8".
Section 8.II. E. ... Footnote: 52 See, e.g., *Hossaini v. Western Missouri Medical Center*, 97 F.3d 1085 (8th Cir. 1996) (discharge was pretextual where defendant launched investigation into allegedly improper conduct by plaintiff shortly after she engaged in protected activity).

161. AGREED FACTS - DOAH Judge Rec. Ord.

40. Ms. Webster filed a discrimination complaint with the Clerk's Affirmative Action Office (AAO) alleging that the DAR of August 10, 1995, (the dismissal) was in retaliation for her having filed a formal discrimination

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complaint with the Clerk's AAO on July 13, 1995. The complaint was ... differential treatment with her than men because upper management suggested that she be placed on two medical leave of absences and a FFDPE be performed; ... and the DAR of August 10, 1995.

41. The complaint was investigated by AAO's Senior Affirmative Action Specialist, Carmen Dieguez, for which a report, dated August 21, 1995, of the investigation was prepared ... found Ms. Webster's formal discrimination complaint with the AAO to be meritless ... "After having discussed the complainant's actions with her and management ... I conclude that Webster's superiors have not retaliated against her as, [sic] she alleges.

162. Pet. Rec. Order

141. The Affirmative Action Investigative process was insufficient for the Respondent to rely on. ... was halted prematurely by James' misinterpreting the FCC incident by some incorrect idea of Webster's disability. The crux of Webster's complaint was the 1995 send to physical actions, which was not investigated, but simply relied on. ...

87. the County would nonetheless be insulated from liability ... [if] ... if it acted reasonably and in good faith when Petitioner complained to the FEP See Swenson v. Potter, 271 F.3d 1184, 1196 (9th Cir. 2001)("According to Ellerth, the employer cannot be held liable unless it reacts negligently to the harassment complaint. 524 U.S. at 759, 118 S. Ct. 225.

163.0 THE COUNTY DID NOT ACT IN GOOD FAITH: The DOAH

Judge was very concerned whether the Investigative report was used for retaliation instead of its resolve problems and fears. (DOAH Tr. 12-15-05 p.74, 127, 92; 105-107). The fears were largely Julio's (Ib.p.83, 88) communicated by him to Dieguez and to management. Dieguez reported they reacted badly to culturally doing indirect eye contact.(Ib. p.101) and other customs. The "FCC Ham Radio incident" was the major behavior reason for sending to a physical. Dieguez says her finding was that was a miscommunications (Ib. p.102)..

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163.1 The Clerk's error was to act on "miscommunications" as if fact to take severe mental health actions and firing. Thus the differences in "accent" was used for discriminatory and retaliatory purposes, described as 'disruptive'.

163.2 Another problem was that Dieguez took the 1992 Baker Act as if it were an actual hospitalization, conveyed by Mathews (Ib.p.149), so that Dieguez' did not investigate Webster's complaint about that action as a basis for others. Dieguez relied on false information they gave (Ib.p.78) as well as them saying they had informed Webster (clearly) of "miscommunications" when they had not as they were simply listed as reasons to send to a physical.

XVII. PRICE WATERHOUSE APPLIES AND NOT MCDONNELL

170. MCCONNELL

DOAH CONCLUSIONS OF LAW FROM DOAH REC. ORD.

50. ... McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 688 (1973); Aramburu v. The Boeing Company, 112 F.3d 1398, 1403 (10th Cir. 1999). ... establish a prima facie ... McDonnell Douglas, at 802; Aramburu, at 1403. Ms. ... (3) that her employer treated similarly situated employees outside the protected group differently or more favorably. McDonnell Douglas, supra; Holifield v. Reno, 115 F.3d 1555 (11th Cir. 1997); Aramburu, supra. See Kendrick v. Penske Transportation Services, 220 F.3d 1220 (10th Cir. 2000) (similarly situated employees need not be outside the protected group).

51...a prima facie case, a presumption of unlawful discrimination is created. McDonnell Douglas, at 802; Aramburu, at 1403. ... legitimate, nondiscriminatory reason for its action. McDonnell Douglas, at 802; Aramburu, at 1403. ... a preponderance of the evidence that the reason offered by the Clerk is not its true reason, but only a pretext for discrimination. McDonnell Douglas, at 804; Aramburu, at 1403.

52. ... the ultimate burden ... intentionally discriminated against her remains with Ms. Webster. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

171. ===== PRICE WATERHOUSE =====

PET. REC.ORD. 104. [Quoted from FL DOAH Case 03-1140, #45)

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“... In Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991), the Florida Supreme Court: ...n McDonnell Douglas Corp v. Green, 41 U.S. 792 (3 S.Ct. 1817, 36 L.Ed. 2d 668 (1973)), ...n Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed. 2d 207 (1981). Pursuant to the Burdine formula, the employee... establishing a prima facie case... the burden shifts to the employer to ... raise a genuine issue of fact ... must then persuade the fact finder that the proffered reasons ... was pretext for intentional discrimination..

[Quoted from FL DOAH CASE 02-0381 #96]

105. This case is atypical in that Respondent has provided much direct evidence of its discriminatory intent--obviating the need for the McDonnell Douglas paradigm. FL DOAH CASE 02-3575 (McCrimmon v DaimlerChrysler #41): “*Blatant remarks See Earley v. Champion International Corporation*, 907 F.2d 1077, 1081 (11th Cir. 1990). “

172. 106. Both Alcazar and James were heavily active in the employment decisions. Their remarks describe their decision process. .. Alcazar feared for employee safety because of Webster’s expression and accent, and Alcazar acted directly in 1992, again in 1995 to send to a physical, and indirectly in the firing: ... Mishearings and misinterpretations infected decisions, so the Employer cannot separate out "illegitimate factors", as they were were pervasive and brought to ground and visited upon her, impossible for the Employer to separate out.

The Quotes below are from “Guidance”: The U.S. Equal Employment Opportunity Commission, Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, modified on July 6, 2000.

Guidance III. A:... Price Waterhouse v. Hopkins, 490 U.S. at 251... discrimin-ation must be ... "d upon an employee." Id. See also Randle v. LaSalle Telecommunications, Inc., 876 F.2d 563, 569, 50 EPD Par. 39,074 (7th Cir. 1989) (...remarks were made by the individual responsible for the adverse employment decision... related to ... an important part of the decision... did not disclaim reliance ... 490 U.S. at 232-237. infected the partnership decision. Id. at 250-251.

Guidance III.C. 2: "The employer must prove "that with the illegitimate factor removed from the calculus, sufficient business reasons would have induced it to take the same action." Price Waterhouse, 490 U.S. at 276-77 (O'Connor, J., concurring). Footnote: 26. Cf., Hopkins v. Price Waterhouse (on remand from Supreme Court), 53 EPD Par. 39,922

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(D.C.D.C. 1990), *aff'd*, 920 F.2d 967,972-74, 55 EPD Par. 40,413 (D.C. Cir. 1991).

173. 107. Webster proved that discrimination more likely motivated the decisions, and does not have to show that the employer's articulated reasons are unworthy of belief. Guidance Footnote: 5. The Supreme Court's statement in *Aikens and Burdine* is clear: a plaintiff can prevail either by proving that discrimination more likely motivated the decision or that the employer's articulated reason is unworthy of belief. See, e.g., *Bruno v. W.B. Saunders Co.*, 882 F.2d 760, 766, 51 EPD Par. 39,244 (3d Cir.1989)... *CBS, Inc. v. Bruno*, 493 U.S. 1062 (1990); *MacDissi v. Valmont Industries*, 856 F.2d 1054, 1059, 47 EPD Par. 38,261 (8th Cir. 1988) ...

108. If direct evidence is insufficient, Respondent ought to convince the fact finder that despite the smoke, there is no fire. Guidance footnote: 17. ..Cf., *Tyler v. Bethlehem Steel*, F.2d , 58 EPD Par. 41,361 (2d Cir. 1992) (...more than 'stray remarks, enough to require [the employer] to 'convince the fact-finder that, despite the smoke, there is no fire'") (citations omitted). [See also [*Sennello v. Reserve Life Insurance Company*, 667 Fed. Supp. 1498, 1508 (S.D. Fla. 1987). *Hill v. Seaboard Coast Line Railroad Company*, 767 F.2nd 771, 775 (11th Cir. 1985)]

139. “ ...a prima facie case . that she was treated less favorably than similarly situated persons outside her protected class and.... causal connection between her membership in the protected group and the adverse employment decision.... See Canino v. EEOC, 707 F.2d 468, (11th Cir. 1983); Smith v. Georgia, 684 F.2d 729 (11th Cir. 1982). [Quoted from FL DOAH 00-3015 #15]”

XVIII. ADA NEEDS NO PROOF OF MENTAL DISABILITY TO COMPLAIN ABOUT MEDICAL EXAMS.

FINDINGS OF FACT - Webster's Proposed Recommended Order
IMPORTANT TO SHOW REASONABLE CAUSE FOR CONCERN

180. 13. MENTAL DISABILITY HISTORY (1): Webster's Evidence and DOAH testimony was: That in the 80's the Employer granted paid Leave for required counseling "to get along with the lads", after Webster complained ... of male harassment. The male Supervisor had told Webster, "You bring it on yourself". ... In Mid 1991, Webster followed Mathews' instructions on how to end requirements, which was via a 8-5-91 psychiatrist letter (Exhibit 31E) saying medication wasn't needed; That was

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acknowledged by Mathews 8/10/91 (Exhibit 31D). Webster dropped her psychiatrist to seek another.

14. MENTAL DISABILITY HISTORY (2): DOAH testimony and evidence was as follows: That on 1-6-92 Alcazar, on board in late 1991 and who recently moved into the Accounting Unit as James' Supervisor, applied the Baker Act to Webster. Alcazar testified: (a) the reason was that Webster put an article on an employee's desk; (b) that Alcazar lied that she was Webster's supervisor; (c) that she didn't know what to do; (d) someone had told her that Webster had been hospitalized; she saw documentation of that and of recent behavior problems.

15. No such documentation exists or has been presented. Webster had no recent work problems, excess absences, discipline actions nor accommodation requests. On 11/24/92 her performance evaluation was all above satisfactory (Exhibit 16N). Webster's DOAH testimony was that Alcazar had not got used to Webster's speech, mangled Webster's English in Alcazar's reasons that were listed in a memo. Mathews did not believe Webster had dropped her psychiatrist; made Medical inquiries without a release. Alcazar did not respond to Webster's "excuse me's" to get her purse and thought Webster refused to leave. ..Webster testified she suffered greatly was released within 3 days. They repeated previous requirement (Letter 2/25/92 EX 27B) and Webster's HMO back to work letter of 2/25/92 showed no serious problem.

16. Mathew's DOAH testimony was she can speak with everyone so easily that she couldn't imagine that Alcazar had difficulty speaking English with Webster.

17. From the 1980's Action, Webster has a record of Schizoaffective disorder

181. 18. MENTAL DISABILITY HISTORY (3): Webster's DOAH testimony and evidence was: In Early 1995 Webster was ordered onto administrative leave, then given a DAR that, without reference to detailed specifics, listed all her job duties as not done, even though her special projects depended on those on vacation. She was then ordered, at work, to go to the County Physical. Because of the similarity to the 1992 action and the Employer shutting her out, Webster delayed going to a physical to get a Discipline Hearing to find out the reasons.

19. "THE LIST" OF REASONS TO SEND TO A PHYSICAL was not provided to Webster except by mail just prior to the Early 1995 Discipline Hearing and read off in that hearing. The Supervisor's Arbitration testimony was that "The List" was taken from his computer notes ... Webster had not

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gotten progressive discipline, "Records of Counseling" or warnings to inform her of the reasons for the Employer's actions. Mathews' testimony in the Early 1995 Discipline Hearing was her reason was the presumption of stopping medication, reliance on the 1992 incident ... The Discrimination Report says James' superiors made the decision.

40. Webster's DOAH testimony was The Feb. 1995 County Doctor evaluation did not reflect workplace problems because of : Webster writing her discrimination complaint to the Doctor; the [examining] Doctor reported a personality conflict ... should be given little weight per the ADA. The County did not supply a third opinion nor require "follow-up".

42. To prevent a re-occurrence of the 1992 Baker Act, from 1993-95, Webster saw a psychiatrist, ready to give an "ok to work letter". ...

43. ... Webster was never so hospitalized for a mental illness or required to take medication for anything serious.

182. SUPERVISOR'S MISUSE OF CONSISTENCY

=====

ARBITRATION TESTIMONY OF THE SUPERVISOR=====

JAMES: "... based on your past job performance, on your past behavior in the office, it was inconsistent with the way you were acting at that time and we requested you to go for fitness of duty, which you did, and which resulted in that Disciplinary Action Report".....

PAGE 114: JAMES: "It was because that was just to substantiate that we had sufficient cause to believe that you needed to go for fitness of duty."

183. SUPERVISOR'S CONVEYS FALSE HEALTH INFORMATION AND DOESN'T BELIEVE COUNTY DOCTOR

PAGE 6 AFFIRMATIVE ACTION REPORT=====

DIEGUEZ: "When I asked why he thought Webster was making these allegations ..., James' reply was, "Because of her condition. According to the doctor's report it is decompensation, meaning failure to distinguish reality from imagination."

PAGE 6 (CONT.)DIEGUEZ: "James made this last statement for the record: "We've worked with Anne and she has contributed to the unit. Management has done all it can to help her. We went probably beyond the call of duty to allow her to function. Now, the concern is that since the County doctor didn't require follow-up treatment, Anne is now not required to report."

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XIX. REASONS TO SEND TO THE PHYSICAL VIOLATED ADA

190. These "Facts" were all "pretense", didn't clearly communicate. ALL the 'disruptive behavior' was those miscommunications from Affirmative Action reported back to management, especially about Julio's fears and upset.

By DOAH Judge Rec. Ord:

21. Mr. James also attached a "Facts" section in which he indicated, among other things, the following: that a meeting was held on January 17, 1995, with Martha Alcazar, Acting Comptroller, Ms. Webster, and himself regarding a FFDPE scheduled for January 19, 1995, as a result of Ms. Webster's recent absences, disruptive behavior and lack of performance on the job; that the FFDPE was re-scheduled at a later date ...; that Ms. Webster failed to attend the FFDPE on January 26, 1995; ...

191. THEY EVADED SPEAKING WITH WEBSTER

37. Webster's DOAH testimony was: In the Early 1995 send to a physical actions, a personnel officer tried to trick Webster into signing a blank leave slip. Alcazar demanded that Webster indicate any conditions on a medical release. Webster wrote none, yet Alcazar demanded Webster's psychiatrist name and violated the ADA limits on inquiries by calling Webster's psychiatrist, disrupting her physician relationship.

39. The Employer required before any physical, (evidenced in their letter of 2-13-95, Exhibit 15 D) for her to see a psychiatrist, go to the EAP, and follow previous requirements (of reporting medication). The physical was first scheduled for 1/27/95: Those requirements are also evidenced in the Early 1995 Discipline Hearing.

193. Webster claims that she satisfied the prima DOAH Judge's facia as she was discriminated against because of her disability ... which was both (B) a record of such impairment; or (C) being regarded as having such an impairment." DUE to misinterpretations of the Controller and Supervisor of her "record".

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194. Her discrimination complaint is about the Employer improperly using EXTREME MENTAL DISABILITY ACTIONS, as Alcazar falsely believed she had been mentally hospitalized, and thus using the “WRONG EEOC GUIDELINE EXAMPLES.” Because it to EXTREME actions, the Employer had to show a “SUBSTANTIAL LIMITATION” (in working, behavior to such an extent that it could claim it was a “hardship” to do more ‘leave’ accommodations and have a reason to fire.)

195. LAW FROM DOAH Rec. Ord.

“... 42 U.S.C. Sect. 12112(a). The burden-shifting analysis of Title VII claims is applicable to ADA claims, Earl v. Mervyn's, Inc., 207 F.3d 1361, 1365 (11th Cir. 2000); Doe v. Dekalb County School District, 145 F.3d 1441,1445(11th Cir. 1998). In order to establish a *prima facie* case, a plaintiff must prove three elements by a preponderance of the evidence. Handicap

56. A *prima facie* ...[ADA] Webster "(1) had, or was perceived to have, a "disability"; (2) was a "qualified" individual; and (3) was discriminated against because of her disability. (citation omitted) The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment." [citation omitted] Curruthers v. BSA Advertising, 357 F.3d 1213, 1215 (11th Cir. 2004) (citation omitted).

57. Ms. Webster is "regarded" as disabled "if her employer perceives her as having an ADA-qualifying disability, ... that, if real, would limit substantially a major life activity... [citations omitted]." *Id.* at 1216. ...regarded" as being disabled by ... "(1) has a physical impairment... (2) has a ... mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or (3) has no physical or mental impairment but is treated by an employer as having such an impairment. [citation omitted] Rosbach v. City of Miami, 371 F.3d 1354, 1359, 1360 (11th Cir. 2004). In order to prevail ... "must show two things: (1) that ... y involves a major life activity; and (2) that the perceived disability is ‘substantially limiting’.... [citation omitted]." *Id.* at 1360.

XX. EEOC QUOTES - PROOF OF DISABILITY NOT NEEDED.

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200. QUOTES ARE ALL FROM EEOC, Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), last modified on July 27, 2000, unpaginated, downloaded from the EEOC internet site.

PROOF OF DISABILITY NOT NEEDED.

Under the Section: "GENERAL PRINCIPLES...

B. Disability-Related Inquiries and Medical Examinations of Employees . The ADA states, in relevant part:

"A covered entity shall not require a medical examination and shall not make Inquiries ..., unless ... job-related and consistent with business

necessity.(12) ""... [clearly applies] to all employees. ... (15) FOOTNOTES:

12. 42 U.S.C. §12112(d)(4)(A)(1994); 29 C.F.R. §1630.14(c)(1998). ...

(Footnote "13. See e.g., 42 U.S.C. §12112(a)(1994) ...

14. Congress... to prohibit ... disability-related inquiries and requiring medical examinations that are not job-related ... See S. Rep. No. 101-116 at 39-40 (1989); H.R. Rep. No. 101-485, pt. 2, at 75 (1990)

... s the Commission's position that the plain language of the statute explicitly protects individuals with and without disabilities from improper disability-related inquiries and medical examinations.

201. SPECIFICS OF REASONS FAIL AND THEY "FUDGE" LEAVE

22. On "The List" was NOT DOING THE WORK: Webster's DOAH testimony was only the two November reconciliations due in December were not done and were dependent on getting the missing cash reports, which ... Enciso's DOAH testimony was that James was responsible for getting ... and arranging back-up for vacations. ... On "The List" James listed Webster as saying "Account Clerks" as he knew she was going to complain beforehand, and stopped her from speaking which corroborates Webster's testimony that he didn't let her speak.

23. ... Absences were all approved. There is no Leave Request or Request for Leave of Absence where Webster links a request to a mental reason. All leave from Jan. 11, 1995 was forced. Since Early 1994 Webster had 2 weeks holiday vacation approved, but as she took only 3 days off to go to England, James said she could take the remaining days later, which she did on Dec 22-27, with her accumulated AD time. That was not any leave requested for mental disability.

135. In 1995 the Employer unreasonably sent Webster for a psychological medical examination, made medical inquiries without release,

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... demanded all medical records, and applied requirements to see the EAP and a psychiatrist even before indicated by any County Physical. Absences did not interfere with attendance duties.... Webster had arranged back-up There was no Leave Request or Request for Leave of absence indicating a medical condition. The Supervisor's "consistency" criteria, included behaviors common to other employees, and thus failed to show "substantially limiting impairment"; or "Significantly restricted as compared to the average person in the general populations", on a "frequent basis", nor did it last "7 ...for more than several months and significantly restricts the performance." Relying on predictable inter-ethnic misinterpretations is not "reasonable concerns", "Credible testimony from... coworkers" nor "based on objective evidence". The Employer could not use "a reasonable belief, based on the employee's hospitalization and medication" as neither applies.

202. THEY USED EXAMPLES THAT REQUIRE HOSPITALIZATION.

[EGADAPD:]=====

14... . Example D: An employee with depression seeks to return to work after a leave of absence during which she was hospitalized and her medication was adjusted. Her employer may request a fitness-for-duty examination Inquiries about her entire psychiatric history ...would ... exceed this limited scope.

21. Example B: ... the employer requires the employee to submit all of the records from his health professional.. . This is not a request for reasonable documentation... . the employer may ask the employee to sign a limited release

XXI. TREATED AS IF HAS IMPAIRMENT WHEN DOESN'T APPLIES.

210. "a person who has no impairment at all, but is regarded by the employer as having a substantially limiting impairment, may recover for discrimination." *Razner v. Wellington Regional Medical Center, Inc.*, 837 So. 2d 437, 441 (Fla. 4th DCA 2002). , *Davidson v. Iona-McGregor Fire Protection and Rescue District*, 674 So. 2d 858, 860 (Fla. 2d DCA 1996), the First District Court of Appeal of Florida," See *Brand v. Florida Power Corporation*, 633 So. 2d 504, 509 (Fla. 1994). . "virtually identical" to ... the Fair Housing Act. *Cohen v. Township of Cheltenham*, Pennsylvania, 174 F. Supp. 2d 307, 324 (E.D. Pa. 2001), quoting from,

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Support Ministries for Persons With Aids, Inc. v. Village of Waterford, N.Y., 808 F. Supp. 120, 130 (N.D. N. Y. 1992).

211. PERFORMANCE OF DUTIES IS THE TEST

Per the FCHR: ... in Clark vs. Jackson County Hospital, Florida Commission on Human Relations Final Order in DOAH Case No: 95-4956, entered July 1, 1997, that: ... a prima facie case of handicap... show: (1)... handicapped; (2) ... able to perform her assigned duties satisfactorily; and (3) ...[and] terminated. O'Neal vs. Sarasota County School Board, 18 FALR 1129, at 1130 (FCHR. 1994), citing Swenson-Davis vs. Orlando Partners, Inc., 16 FALR 792, at 798 (FCHR. 1993).

212. 123. FOR HANDICAP DISCRIMINATION ... the Employer perceived Webster as handicapped as shown by the evidence and testimony. There is a record of a mental disability in Webster's employee file. Thus, the third prong of a prima facie case has been met, as follows in quotes from Florida DOAH Case 02-0381 (Poston v Nassau County):

82. Subsection 760.10(1)(a), Florida Statutes...(1) ..n unlawful .. to discriminate ..., handicap, (Emphasis supplied).

85. ... In Brand, supra, refers to 29 U.S.C. Sec. 706(8)(B) for the definition" ...Id. at 510, FN 10.

83. Subsection 760.10(1)(a), Florida Statutes, by reference to ...r the Civil Rights Act (Title VII), the Rehabilitation Act, and the Americans with Disabilities Act (ADA). School Board of Leon County v. Weaver, 556 So. 2d 443 (Fla. 1st DCA 1990); Hunter v. Winn-Dixie Stores, Inc., FCHR Case No. 82-0799 (February 23, 1983).

84.a prima facie case of handicap...:
A. ... handicapped...; B. He was otherwise qualified... C. He was harassed or terminated solely by reason of his handicap. Brand v. Florida Power Corporation, 633 So. 2d 504 (Fla. 1st DCA 1994).

91. "...the Florida Civil Rights Act ... employer's merely perceiving the employee as handicapped is sufficient to establish "handicap" under Section 760.10(1)(a), Florida Statutes. Greene v. Seminole Electric Co-op, Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Gordon v. E.L. Hamm and Associates, 100 F.3d 1029 (11th Cir. 1996). ... the Employer went further than mere acquiescence by requesting a medical opinion... #94. ... showing that he was not provided reasonable accommodation. Jackson v. Veterans Administration, 22 F.3d 277 (11th Cir. 1994). Only after ...the employer fails to provide that accommodation can the employee

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prevail... [of discrimination]. Gaston v. Bellingrath Gardens and Home Inc., 167 F.3d 1361 (11th Cir. 1999)

124. The following quotes are also pertinent.

76."... .. must present proof that her employer "had actual or constructive knowledge of the [handicap] or considered her to be [handicapped]." Hilburn v. Murata Electronics North America, Inc., 181 F.3d 1220, 1226 (11th Cir. 1999). [Quoted from FL DOAH Ferguson v Dade #76]

Under prima facia requirements "... (3) identified a reasonable accommodation to his employer... Schwertfager v. City of Boynton Beach, 42 F.Supp. 2d 1347, 1357 (S.D.Fla. 1999). (Quoted from FL DOAH 02-4175, Brown v Florida #39)

137. On the final hearing date, the Judge ruled that Webster did not need the definition of schizoaffective as evidence and seemed to find Alcazar's reasons for sending Webster on leave inadequate. ...

XXII. LAW THAT APPLIES TO REMEDIES FROM Webster's Rec. Ord.

220. 62. Webster's DOAH testimony was she suffered on the job, for 15 years, the stress of having to behave Latino to prevent upsetting them or being Baker acted. She was subjected to brutal mental and racist stereotypes, public humiliation; her "white" customs treated as symptoms; ...

63. ... couldn't adopt; forced to sell her home; declared bankruptcy twice; her reputation was slandered; ... from loss of CPA license and professional standing. .. loss of enjoyment of life, from having to do this case and remember vividly over and over; inconvenience, lived in dire poverty, deprived of dental and health care. That one CPA employment agency reported the Employer said Webster was racist.

... ten years of emotional harm "pro se" re-visualizing that humiliation, embarrassment and stress; emotional pain; suffering; mental anguish; A terrible loss of self esteem; sleeplessness, gastrointestinal disorders, headaches, related marital strain. Webster's husband, Juan Ruiz, corroborated her testimony.

221. 153. REMEDIES: ... : Backpay, attorney's fees and costs. Backpay at about \$40,000 for ten years is about \$400,000, to be adjusted for unemployment compensation received and past benefits as describe below. Back pay distributions of \$200 monthly to the deferred tax plan; related

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interest; Reinstatement. If that is impossible, front pay and benefits to the retirement age of 66.

Webster Mitigated Damages by diligent search for Accountant II work, and trying to get psychological counseling..

154. Webster asks for compensatory damages of \$100,000 , because the discrimination was intentional ...

222. CPDA: II. "Section 1981A(b) ... provides a limitation on the sum of punitive damages and compensatory damages ... 501 employees or more : \$300,000

CPDA: APPENDIX A: DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION "(a) RIGHT OF RECOVERY.-

"(1)r section 706 or 717 ... compensatory and punitive.. subsection (b)

"(2) DISABILITY.- ... intentional discrimination under or section 102 of the [ADA 1990] (42 U.S.C. 12112), or 102(b)(5) of the Act, ... compensatory and punitive damages as allowed in subsection (b)...

"(3) REASONABLE ACCOMMODATION AND NO GOOD FAITH EFFORT.- pursuant to section 102(b)(5) of [ADA]t ...

1. PECUNIARY LOSSES: About \$80,000 for being forced to sell home and \$20,000 for other losses. 2. NONPECUNIARY LOSSES OF \$100,000 for emotional harm, largely for the length of time endured.

223. "Plaintiff's own testimony may be solely sufficient to establish humiliation or mental distress. Webster has testified about her mental distress and her husband has confirmed that. They discharged Webster without asking her version of events. They wanted Webster "out of there" to improve the "environment". The Employer knew about ... Julio's fears. Webster ... lacked sufficient coaching ... in dealing with upset Latinos and upset men were treated as mental. Respondent knew her superiors had the racial bias of hypersensitivity to whites. "Evidence of emotional harm may be established by testimony. *Gunby v. Pennsylvania Electric Company*, 840 F.2d 1108, 1121-22, 45 EPD Par. 37,785 (3d Cir. 1988), cert. denied, 492 U.S. 905, 50 EPD Par. 39,201 (1989); *Cowan v. Prudential Insurance Co.*, 852 F.2d at 690-91. ... *Williams v. TransWorld Airlines, Inc.*, 660 F.2d 1267, 1273, 27 EPD Par. 32,174 (8th Cir. 1981). ... \$52,644.80 in damages . . *Muldrew v. Anheuser-Busch, Inc.*, 728 F.2d 989, 33 EPD Par. 34,187 (8th Cir. 1984). In *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245, 32 EPD Par. 33,730 (8th Cir. 1983), ... \$12,402 for "... . Supervisor openly manifested racial bias...." in front of other employees.. Supervisor ...[told]

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management ... she wanted plaintiff "out of there." Management discharged... without asking for her version of the incident, although they were well aware of Supervisor's racial bias.... [Also] Stallworth v. Shuler, 777 F.2d 1431, 38 EPD Par. 35,806 (11th Cir. 1985), a case brought under § 1983 and § 1981, ... \$100,000 for humiliation

224. Webster ... is unusually emotionally sensitive as to self esteem; suffered great emotional harm, reexperienced 10 years in being pro se. Williamson v. Handy Button Machine Company, 817 F.2d 1290, 1294, 43 EPD Par. 37,178 (7th Cir. 1987) ("perhaps [plaintiff] was unusually sensitive, but a tortfeasor takes its victims as it finds them").

Webster on the job, experienced anxiety, stress, loss of self-esteem due to continually for Over 15 years being afraid of speaking and moving non-Cuban as well as related fear from the 1992 Baker Act experience..

"... The court found that this was an adequate basis for the award. Plaintiff also received \$176,000 in backpay, and \$300,000 in punitive damages. Rowlett v. Anheuser-Busch, 832 F.2d 194, 44 EPD Par. 37,428 (1st Cir. 1987)

XXIII. CONCLUSION OF RELIEF SOUGHT

IN accordance with Webster's DOAH Proposed Recommended Order

230.enter a final order finding Respondent guilty of an unlawful employment practice of discrimination against Webster for her presumed mental handicap, whereas such discrimination did occur on the basis of national origin, race, gender and thereby religion; and retaliation.

231. To award Webster reinstatement, backpay, lost fringe benefits; Credit for service lost, in terms of Florida Retirement System, social security, loss of the County's medical insurance plans (options to continue thru retirement), past sick and vacation benefits that would have been earned and immediate vacation so she can visit her relatives. Reinstatement to HMO coverage without detriment as to prior conditions. Backpay to include the \$200 monthly contribution to a deferred account. All to include interest where applicable.

232. Attorney's fees and other costs that are readily determinable as well as a sum, if possible, to reimburse Petitioner for being a pro se attorney..

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233. REINSTATEMENT using County bumping procedure or alternative giving front-pay up to the retirement age of 66, or offer Webster the next available position for which she is qualified at a salary and under conditions similar to that which he would have received, but the Respondent's unlawful practice.

234. About \$200,000 COMPENSATORY DAMAGES IS ORDERED FOR: PECUNIARY LOSSES: About \$80,000 for being forced to sell home. About \$20,000 for other financial results of firing and financial straits.

NON-PECUNIARY: About \$ 100,000 for suffering years of emotional harm:

235. Respondent cease similar practices: Injunctive relief. Refrain from engaging in future Discrimination. For the County to provide a letter of agreement: ... audit of compliance with EEOC Guidelines, and ... complaint processes; establish audit trail questionnaires,... reporting of exceptions to the Inspector General... [of] personnel actions related to mental health decisions ...; to ensure they are based on objective criteria ..related personnel evaluations. To report ... when any action by-passes Dade personnel rules of ... progressive discipline and leave slip requests. Cease County reliance on .. any mental disability definition or procedure that discriminates by interethnic speech, expression and affect. Expunge negative comments or adverse actions from Webster's records;

Signature of Anne R. Webster, pro se

Date Signed: May 3, 2007

Address: 12000 NE 16 Ave, Lot B217
Miami, Florida 33161

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CERTIFICATE OF SERVICE

THIS CERTIFIES THAT PETITIONER FURNISHED COPIES TO:

William X. Candela, Esq., (305) 375-5151, Fax: (305) 375-5634
Dade County Attorney, 111 N.W. 1st St., Suite 2810, Miami, FL 33128

Robert Cohen, Director and Chief Judge (accepts fax copies)
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Cecile Howard, FCHR General Counsel, 1-850-488-7082 X1064
2009 Apalachee Pkwy, Suite 100, Tallahassee, FL 32301-4857

By _____ Date Signed _____ 5/3/07 _____
Signature of Anne R. Webster

CERTIFICATE OF COMPLIANCE WITH Rule 9.100(1) This certifies that this document complies with the requirements of Rule 9.100(1): General Requirements; Fonts. The lettering in all petitions ... filed under this rule shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering ... in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Computer-generated petitions, responses, and replies shall be submitted in either Times New Roman 14-point font or Courier New 12-point font ... shall contain a certificate of compliance ... certifying that the petition, response, or reply complies with the font requirements ... The certificate of compliance shall be contained in the petition, response, or reply immediately following the certificate of service.

By _____ Date Signed _____ 5/3/07 _____
Signature of Anne R. Webster

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