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Investigative Report

RESPONDANT'S PLAINTIFF'S EXHIBIT #	110
Date	10-10-19
Case Name	Steele vs FCHR
Case No.	19CA1473

INVESTIGATIVE MEMORANDUM

FCHR NO. 201919907

To: Office of the General Counsel,
Florida Commission on Human Relations

From: Renée Gordon
Chief Assistant Attorney General, Office of the Attorney General
Investigator

JACQUELYN STEELE,

Complainant

v.

**FLORIDA COMMISSION ON HUMAN
RELATIONS (FCHR),**

Respondent

FOCUS OF THE COMPLAINT

Complainant, Jacquelyn Steele, filed a Charge of Discrimination on or about June 12, 2019, against the Florida Commission on Human Relations ("FCHR" or "Respondent") alleging whistleblower retaliation related to her termination from the FCHR on May 2, 2019.

Pursuant to Rule 60Y-5.003, Fla. Admin. Code, the Executive Director of FCHR may utilize services of other public agencies to investigate complaints. Here, since the Charge of Discrimination named the FCHR as the Respondent, Executive Director Michelle Wilson referred the Charge to the Office of the Attorney General, Employment Litigation Bureau, to investigate.

BACKGROUND

Complainant began working for Respondent on November 24, 2014, as a Senior Management Analyst. Respondent terminated Complainant from her position as Human Resources Director on May 2, 2019. That same day, Complainant went to the Chief Inspector General's Office (CIG) where she expressed concerns about her termination to CIG investigators. One of the investigators prepared a Memorandum of Interview summarizing the matters discussed with Complainant. The memo states Complainant went to the CIG to voice concerns related to her

recent termination and asked that her Complaint be reviewed for Whistle-blower protection given her knowledge of a review of FCHR by the federal Department of Housing and Urban Development (HUD).

Complainant attached the CIG Memorandum of Interview to her Charge of Discrimination. The Charge itself does not contain a narrative explaining the basis of the Charge, but refers instead to the CIG Memorandum of Interview.

Factual Background

a. Overview

The CIG Memorandum of Interview consists of 16 separate paragraphs, each addressing a different topic. The first paragraph outlines when the interview occurred and who was present, and explains Complainant's purpose—to express concerns about her termination. The second paragraph explains that Complainant had worked for the FCHR since 2014, and that Executive Director Wilson had been Complainant's supervisor since then. This paragraph also states that Complainant provided Human Resources (HR) reports on a quarterly basis and training information to FCHR Commissioners.

The remaining paragraphs mention a variety of topics which are as follows: Complainant gave long-range planning and employee turnover information to a Commissioner Pichard; Dir. Wilson made changes to chapter 60Y without knowledge of the Commissioners; a general reference to an incident with eLOCCS, a HUD funding system; an incident with the FCHR Chief of Investigations, Jacqueline Dupree; three personnel matters which came to Complainant's attention as Human Resources Director; comments by Dir. Wilson regarding Complainant's credentials and employment history; an HR survey of Dir. Wilson's performance done by Complainant at Commissioner Pichard's request; Complainant providing HUD reports to Commissioners Peterson and Pichard via her personal email address; HUD placing FCHR on a performance improvement plan and the Commissioners forming a panel at an April 19, 2019, meeting to review the HUD concerns; and Complainant's belief that her termination was not related to her pregnancy, but was related to her knowledge of the on-going HUD review.

In an effort to better understand the topics raised by Complainant, as summarized in the CIG memo, this investigator conducted interviews with the following persons: Complainant Jacquelyn Steele, Executive Director Michelle Wilson, General Counsel Cheyanne Costilla, Chief of Investigations Jacqueline Dupree, Information Technology (IT) Director Bob Lange, Operations and Management Consultant John Godwin, Housing Investigations Manager Regina Davis, and Employment Investigations Manager Emily Davis.

This investigator also reviewed recordings of Commission Board meetings that were available from the FCHR for all of 2018 up to June 4, 2019, as well as board meeting minutes and the April 5, 2019, HUD suspension letter, to better understand the HUD review mentioned by Complainant. This investigator also reviewed the FCHR Governance Policy mentioned by Complainant.

b. HUD Review

During her interview with the CIG, Complainant stated she provided information to two FCHR Commissioners including long-range planning documents, which she obtained from the Department of Management Services and which she characterized as public records, and reports concerning staff turnover in the housing unit at FCHR. Complainant also stated that FCHR had been placed on a performance improvement plan by HUD and that she believes she was a Whistle-blower because of her knowledge of an ongoing HUD review.

As background, over the last two years, the federal Department of Housing and Urban Development (HUD) had stopped referring cases to FCHR because of FCHR's difficulty in addressing a backlog of cases and keeping permanent investigators employed. In an April 5, 2019, letter, the HUD Southeastern Regional Director, Carlos Osegueda, suspended FCHR from the HUD Fair Housing Assistance Program, highlighting several deficiencies which he characterized as: (1) staffing and workload management; (2) quality management and case processing; (3) conciliation and public interest requirements; and (4) budget and finance requirements. At an April 30, 2019, meeting with the FCHR, Mr. Osegueda expressed dissatisfaction with leadership at FCHR.

During an interview with this investigator on August 9, 2019, Complainant stated she first spoke to Commissioners sometime in the fall of 2018. Executive Director Wilson was out on extended leave from the end of October 2018 until mid-January of 2019. According to Complainant, sometime in January, Dir. Wilson asked Complainant whether she had been speaking to Commissioner Peterson. Dir. Wilson also reminded Complainant that communication with Commissioners was to go through the Executive Director, in accordance with the Governance Policy. When asked what information she provided, Complainant told this investigator she provided information on staff turnover, including certain names of individuals who left and their reasons for leaving, including that some did not like the working environment.

c. eLOCCS

Complainant also mentioned a HUD system for transferring funds called eLOCCS during her CIG interview, but provided few details. During an interview with this investigator on August 9, 2019, Complainant stated she believed Dir. Wilson used Complainant's eLOCCS password while Ms. Steele was on leave between November 14, 2017, and February 2018.

When asked by this investigator the reason for Complainant's termination, Dir. Wilson pointed to Complainant accessing the eLOCCS system. According to Dir. Wilson, on May 1, 2019, Complainant logged into the Secure Systems Network and gave Operations and Management Consultant John Godwin certain permissions which would allow him to access eLOCCS when HUD completed its validation. Complainant's actions followed a year's long suspension of FCHR's access to the secure portal, and lengthy negotiations between FCHR and HUD to restore FCHR's access. One reason given by HUD for the suspension of access was that Complainant was listed as an approving official on the account when that position should have been held by Dir. Wilson. Dir. Wilson had shared with her management team, including Complainant, in early 2019, that persons who had access to eLOCCS would change.

According to John Godwin, who was also interviewed, he was in Complainant's office on May 1, 2019, and mentioned that he was on his way to the Executive Director's office to finish his paperwork to gain access to the eLOCCS system when Complainant offered to make the necessary changes for him. Godwin then mentioned what occurred to Dir. Wilson and Bob Lange, FCHR's IT Director when he reached Dir. Wilson's office.

This investigator also interviewed Lange. He stated that in 2018, HUD advised FCHR its access was terminated, in part, because Complainant had been listed as an Approving Official when she should not have been. Lange provided a full update on the status of restoring FCHR's access to eLOCCS at a December 11, 2018, FCHR Commission meeting.

On April 22, 2019, Lange received instructions from HUD to create an ID for John Godwin. On May 1, 2019, Godwin informed Lange and Dir. Wilson that Complainant had gone into the system and set him up. Because of this, Dir. Wilson terminated Complainant on May 2, 2019. Prior to this incident, Dir. Wilson had been discussing with her management team the need to change who had access to eLOCCS and Complainant had already been informed her access would be terminated.

On April 30, 2019, the Commission convened its first panel meeting to review the April 5, 2019, HUD suspension letter and determine the Commission's next steps. This investigator reviewed the audio recording of an April 19, 2019, meeting of the Commission where the panel was established. The purpose of the panel, as stated by the chair of the April 19th meeting was to review the HUD "report" and come up with findings on the Commission's next steps.

d. Incident with Jacqueline Dupree

General Counsel Costilla stated during an interview with this investigator that Complainant's altercation with Jacqueline Dupree was also a factor in Complainant's termination. During her interview with the CIG, Complainant stated Dupree called her during a meeting with Dupree's managers. During the call, Dupree began asking Complainant about the status of advertisements for vacant positions and background checks for hires. Complainant stated to the CIG and this investigator that she was unaware there were others in the room and, at some point, told Dupree she believed it was inappropriate to discuss these matters in front of Dupree's staff. Dupree then ended the call.

This investigator also interviewed Dupree who stated she was holding her regular meeting with her managers when, during the meeting, she realized they needed updated information on potential hires and advertisements. During the meeting, she asked Emily Davis to call Complainant, which Davis did. When Complainant answered, Dupree greeted her and told her she was holding her managers' meeting and wanted to speak with her about hiring. As Dupree began asking about various positions, at some point, Complainant told her she did not think she should be questioning her in this manner and became combative with Dupree. At that point, Dupree responded that Complainant was being unprofessional, and ended the call.

After this call, Dupree sent an email to Dir. Wilson in which she complained about Complainant's behavior and suggested Complainant had violated several aspects of the FCHR

Standards of Conduct. Dir. Wilson spoke to each of the managers in attendance, all of whom completed written statements confirming Dupree's version of what occurred. This investigator also interviewed Regina Owens and Emily Davis, both of whom were present during that meeting, and confirmed Dupree's explanation of what occurred. According to Dir. Wilson and General Counsel Costilla, this incident also caused Dir. Wilson to consider termination.

Since the HUD issues and the Dupree incident have been cited by the parties as relevant to Complainant's termination, the other matters raised by Complainant will not be addressed here. Those matters were not presented in writings by Complainant to anyone having the authority to investigate them, and none of the disclosures constitute wrongdoing as contemplated by the Whistle-blower Act.

Applicable Statutes, Rules, and Policy

Petitioner believes she was terminated for having knowledge of a HUD Review, and sharing long-range planning and staff turnover information with two FCHR Commissioners. Section 112.3187(4), Florida Statutes, prohibits an employer from dismissing an employee who discloses information described in the Whistle-blower's Act. The nature of the information covered by the act includes, in pertinent part:

Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

§ 112.3187(5)(b), Florida Statutes.

Moreover, as noted in section 112.3187(6):

The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. 112.3189(1) or inspectors general under s. 20.055, the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. 112.3189.

In addition, in section 112.3187(7), F.S., the Act describes persons who are covered by the statute in the following manner:

This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials

or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s. 112.3189(1), or to the Florida Commission on Human Relations.

Section 112.3187, F.S., also generally outlines remedies. In subsection (8), the statute states as follows:

Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. 216.011, who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint *must be made in accordance* with s. 112.31895.

Id. (emphasis added).

Section 112.31895, F.S., states as follows:

If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint *must be made by filing a written complaint* with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

Id. (emphasis added).

Rule 60Y-5.0001(5), *Florida Administrative Code*, also specifically requires that a Charge of Discrimination be in writing, contain a statement of the facts and the unlawful employment practice, and be signed by the Complainant. Moreover, this provision requires that the complaint be verified. *Id.* A charge that does not comply with these requirements is technically deficient.

Governance Policy

The FCHR's Governance Policy also provides guidelines for the actions of the Commission and its Commissioners. Article III outlines the Commission-Executive Director Linkage and Policy I outlines the "Governance Commitment." That Policy contains the following pertinent provision:

The Executive Director is the Commission's only connection to operational achievement and conduct so that all authority and accountability of staff, as far as the Commissioners are concerned, is considered the sole responsibility of the Executive Director. Accordingly,

1. The Commissioners will not give instructions directly to Commission staff; rather, any instructions will be directed to the Executive Director.

Article II outlines the Governance Process and contains the following pertinent provision in Policy 7, Commission Principles:

3. Commission committees cannot exercise authority over staff. Because the Executive Director works for the Commission, he or she will not be required to obtain approval of a committee before undertaking any operational administrative, or executive action.

COMPLAINANT'S ALLEGATIONS

The CIG Memorandum of Interview described several matters Complainant raised with the CIG Investigators. The matters outlined in the memorandum included the following: Complainant gave long-range planning and employee turnover information to Commissioner Pichard; Dir. Wilson's made changes to chapter 60Y without knowledge of Commissioners; a general reference to an incident with eLOCCS, a HUD funding system; an incident with the FCHR Chief of Investigations, Jacqueline Dupree; three personnel matters which came to Complainant's attention as Human Resources Director; comments by Dir. Wilson regarding Complainant's credentials and employment history; an HR survey of Dir. Wilson's performance done by Complainant at Commissioner Pichard's request; Complainant providing HUD reports to Commissioners Peterson and Pichard via her personal email address; HUD placing FCHR on a performance improvement plan and the Commissioners forming a panel at an April 19, 2019, meeting to review the HUD concerns; and Complainant's belief that her termination was not related to her pregnancy, but was related to her knowledge of the on-going HUD review.

RESPONDENT'S POSITION

Respondent alleges Complainant's Charge is deficient because it does not comport with the requirements of a complaint in Rule 60Y-5.001, *Florida Administrative Code*, and relies on a hearsay statement for its content.

Respondent also alleges the substance of the complaint is insufficient. None of the matters of which Complainant complains are of the sort covered by the Whistle-blower's Act. Complainant did not disclose, in a written and signed complaint, any act of gross mismanagement or violation of law. Complainant did not make these disclosures to the "proper" person. Complainant did nothing more than forward public records and routine human resource information to two FCHR Commissioners, which does not constitute a protected activity. In addition, the Charge did not allege a causal relationship between Complainant's alleged protected activity and termination.

Moreover, Respondent states it dismissed Complainant after Dir. Wilson received complaints from FCHR employees regarding Complainant exhibiting discourteous behavior, poor judgment, abusive language and unprofessionalism, and after learning Complainant access the HUD secure portal to give another employee access to the system without authorization.

COMPLAINANT'S REBUTTAL

Complainant submitted a rebuttal to Respondent's Position Statement which asserts that: Dir. Wilson's reasons for Complainant's termination are contrived, particularly with respect to employee complaints about Complainant about which Dir. Wilson did not inform Complainant; that Dir. Wilson's explanation of the loss of access to the HUD Secure Access Portal is inaccurate; and that Dir. Wilson was aware of Complainant's protected activity as far back as January of 2019.

Complainant also asserts that Dir. Wilson failed in the following respects:

1. Follow the Commission's Standards of Conduct in constructing Ms. Steele's termination letter by not providing a specific reason for the action being taken.
2. Respond to Ms. Steele's repeated inquiry during the termination meeting when asked why she was being terminated.
3. Comply with §443.151(3)(a) Fla. Stat. by providing the reasoning behind Ms. Steele's termination from the Commission to DEO during the determination of reemployment assistance benefits.
4. Complete a review and investigation of employee complaints as required by the Commission's Complaint policy.
5. Detail the date and/or time the decision was made to terminate Ms. Steele.
6. Be truthful in the affidavit regarding access to the HUD Secure Access Portal.
7. Admit that she was aware that Ms. Steele had been requested to participate in the HUD Investigative Panel on April 30, 2019.
8. Admit that Ms. Dupree had alleged prior to April 4, 2019 that Ms. Steele was engaging in communication with external partners regarding internal business.
9. Admit that she had previously made inquiries to Ms. Steele about information she was providing to Commissioners.

RECOMMENDATION

This investigator recommends this investigation be closed. This investigator recommends a finding of no reasonable cause to believe Complainant participated in a protected activity. As an initial matter, Complainant's Charge is technically deficient as it does not comport with Rule 60Y-5.001, *Florida Administrative Code*. Further, Complainant did not report wrongdoing to the CIG or prior to going to the CIG regarding her employment at FCHR. Complainant's discussion with the CIG included a recitation of various happenings at FCHR, none of which met the requirements of a whistleblower disclosure. Moreover, while she was employed at the FCHR, Complainant did not submit any complaints in writing to her supervisor or signed writings to a person or entity having the authority to investigate the matters mentioned to the CIG. Even if Complainant had participated in protected activity, Respondent had legitimate, non-retaliatory reasons for her dismissal which were corroborated and not pretextual for retaliation.

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