
STEELE v FCHR

FCHR Case No. 2019-19907
Leon County Case No. 2019-CA-001473

{LAST UPDATE: 6/24/2019}
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STEELE v FCHR

ITEM A INTERVIEW REPORT

COMPLAINANT JACQUELYN STEELE

RESPONDENT: FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR)

DATE: 6/10/2019

CASE NO: FCHR | 2019-19907
 LEON | 2019-CA-001473



Ron DeSantis
Governor

State of Florida Florida Commission on Human Relations

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Tony Jenkins
Chair
Michelle Wilson
Executive Director

NOTICE OF RECEIPT OF WHISTLEBLOWER COMPLAINT

May 23, 2019

Jacquelyn Steele
5024 Bradfordville Road
Tallahassee, FL 32309

Re: Steele, Jacquelyn v. Florida Commission on Human Relations
FCHR No. 201919907

Dear Ms. Steele:

The Commission has received your complaint of retaliation, filed under the Whistle-blower's Act (sections 112.3187-112.31895, *Florida Statutes*), and has assigned the above referenced charge number.

Enclosed is a copy of your complaint. The Commission will also retain a copy of your complaint and provide notice of this complaint to the Office of the Chief Inspector General, as required by Section 112.31895, *Florida Statutes*.

Pursuant to statute, the Commission is to investigate whistle-blower retaliation complaints; however, since the Commission is the named respondent in this complaint, an independent fact-finder has been assigned to conduct this investigation. Please direct all communications regarding the investigation of this complaint to:

Renee Gordon
Senior Assistant Attorney General
Employment Litigation Bureau
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300 Office
(850) 414-3720 Direct
(850) 488-4872 Fax
Rence.gordon@myfloridalegal.com

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Executive Office of the Governor
Office of the Chief Inspector General
Office of Investigations

Memorandum of Interview for Jacquelyn Steele

Author: Renee Dawkins

Correspondence Number: 201905020009

Jacquelyn Steele,¹ was interviewed on May 2, 2019, based on concerns regarding her recent termination from the Florida Commission on Human Relations (FCHR). The interview was conducted in the Office of the Chief Inspector General's (OCIG) conference room located in Tallahassee, Florida. The individuals present for the interview were Ms. Steele, Renee Dawkins,² and Brian Hunter.³ The following represents summarized and paraphrased statements made by Ms. Steele to the OCIG.

Ms. Steele was hired by Michelle Wilson⁴ in 2014 as a Senior Management Analyst II.⁵ Ms. Steele advised that Ms. Wilson has been her supervisor for her entire tenure with FCHR. Ms. Steele advised that as the Human Resources Director she provides human resources reports on a quarterly basis and training information to the Commissioners.

Ms. Steele advised that there have been recent changes to the Executive Director's authority, such as a legislative move of positions and the removal of the ability to spend money from the "trust fund." According to Ms. Steele, FCHR also has not met the "long-range program planning" in three years and this information Ms. Steele provided to Commissioner Jay Prichard. Ms. Steele stated this information was public record that she received from the Department of Management Services (DMS). In addition to the long-range program planning, Ms. Steele provided Commissioner Prichard information regarding FCHR employee turnover.

Ms. Steele explained her knowledge of a governance document which required all communication with the Commissioners to be routed through the Executive Director. Ms. Steele stated the governance was created under the previous administration but she believed it was amended to require the communication be routed through the Executive Director. Ms. Steele advised that Ms. Wilson signed off on changes to Florida Administrative Code 60Y⁶ without the knowledge of the Commissioners. Ms. Steele stated that while Ms. Wilson was on FMLA,⁷ Ms. Steele reviewed the revisions Ms. Wilson made; and those changes were inconsistent with Ms. Steele's interpretation of her review. Ms. Steele stated she addressed her concerns of the changes with Ms. Wilson and Cheyanne Costilla⁸ on February 7, 2019.

¹ Former Human Resources Director, Florida Commission on Human Relations (FCHR), Tallahassee, FL.

² Investigations Manager, Office of the Chief Inspector General (OCIG), Tallahassee, FL. (850) 717-9264.

³ Special Counsel, OCIG, Tallahassee, FL. (850) 717-9264.

⁴ Executive Director, FCHR, Tallahassee, FL. (850) 907-6784.

⁵ A review of People First revealed that Ms. Steele was hired at a Senior Management Analyst I on November 24, 2014 and her position was reclassified to a Director of Human Resources on August 16, 2016.

⁶ Florida Administrative Code 60Y: Commission on Human Relations
Family Medical Leave Act

⁷ Chief Legal Counsel, FCHR, Tallahassee, FL. (850) 907-6788

While Ms. Steele was on maternally leave she became aware of the HUD⁵ eLOCCS⁶ incident. Ms. Steele stated she was not in the office at the time; however, her password was on her desk. Ms. Steele explained that she and Ms. Wilson were the only two who had access to eLOCCS.

Ms. Steele explained that on April 1, 2019, Jacquelyn Dupree¹¹ held a meeting with her management team and called Ms. Steele on speaker phone. Ms. Steele explained that after she answered a few of Ms. Dupree's questions, she realized there were others in the room. After she asked Ms. Dupree if there were others present, Ms. Steele stated that she advised Ms. Dupree that it was not an appropriate time for the two of them to discuss why an individual should not be promoted. Ms. Steele stated that Ms. Dupree did not like Ms. Steele's response and submitted a documented recollection of the incident on April 4, 2019. Ms. Steele stated that it was requested of her to provide her response by April 16, 2019.

During a review of hiring documentation, Ms. Steele noted "red flags" and reported her concerns to Ms. Costilla and Ms. Dupree regarding the hiring of a certain individual (name not provided); however, the individual was hired anyway.

On April 25, 2019, Ms. Wilson advised Ms. Steele that Ms. Steele's "credentials don't match up with [her] work." Ms. Steele explained that this comment was made in the presence of Ms. Dupree and Ms. Costilla (who appeared by phone).

On April 8, 2019, Ms. Steele expressed concerns with a specific hiring irregularity at FCHR. Ms. Steele stated that a former FCHR investigator applied for a vacancy; however, was not offered an interview. Ms. Steele explained that the selected applicant did not have investigative experience. Ms. Steele stated that when she questioned the selection, management advised her that the former FCHR investigator was not a "fit". On April 1, 2019, according to Ms. Steele, FCHR received a public records request regarding the position, and has received multiple requests from the same electronic mail (e-mail) address. Ms. Steele stated the latest request was made on April 24, 2019. Ms. Steele advised of her concerns with FCHR management's use of the word "fit" when referring to an applicant working with FCHR. Ms. Steele stated that she expressed her concerns and advised that FCHR should establish a definition of "fit" and should use FCHR's mission and values when establishing that definition. Ms. Steele advised that a definition has not been established as of this date.

Ms. Steele explained another incident involved a recent hiring where the applicant was selected to be hired at the minimum of the pay grade; however, the applicant contacted Ms. Steele requesting a 10% increase. Ms. Steele stated that she requested guidance from Ms. Wilson and the hiring manager, but did not receive a response. Ms. Steele advised that while she was waiting for a response she continued with background checks and moving the applicant through the standard hiring process. Ms. Steele advised that she sent the offer letter to the applicant, which indicated the salary would be at the minimum. Ms. Steele stated that Ms.

⁵ U.S. Department of Housing and Urban Development (HUD)

⁶ Line of Credit Control System (LOCCS) is a U.S. HUD primary grant distribution system, handling disbursements for the majority of HUD programs. eLOCCS is the internet version of LOCCS.

¹¹ Chief of Investigations, FCHR, Tallahassee, FL, (850) 907-6849

Wilson commented that Ms. Steele should not "make salary decisions" in the future. Ms. Steele never received a response regarding the hiring salary.

According to Ms. Steele, comments have been made over the past few months that have made her feel as though they are directed towards her. Ms. Steele provided the example that Ms. Steele has previously been terminated and Ms. Wilson commented that Ms. Wilson did not want to hire anyone who had been previously terminated.

Ms. Steele explained that Commissioner Prichard requested a 360 survey be conducted of Ms. Wilson's performance. Ms. Steele advised that the first response in Fiscal Year 2016/2017 resulted in an 85%, the second response in fiscal year 2017/2018 resulted in a 71%, and the final response (approximately two to three weeks later) for 2018 resulted in a 61%. Ms. Steele stated that current and former employees have expressed their concerns to her; however, they are afraid of documenting their concerns in writing. Ms. Steele advised that Ms. Wilson told her that employees should address their concerns through their managers; however, Ms. Steele felt that was the role of human resources.

Beginning in December of 2018, Ms. Steele provided documentation regarding the HUD concerns to Commissioner Latanya Peterson and Commissioner Prichard. Ms. Steele responded to requests of information from Commissioners Peterson and Prichard. Ms. Steele further explained that documentation provided to the Commissioners included HUD reports and staffing reports. Ms. Steele stated she did not feel she did anything wrong by providing the documentation, as the documents she provided were public record and not confidential in nature. Additionally, Ms. Steele advised that she viewed Commissioner Peterson and Commissioner Prichard as heads of her agency; therefore, she complied with their requests. Ms. Steele stated that because the Commissioners were the heads of the agency in her opinion, she did not treat their requests as public records requests.

Ms. Steele advised that the information she provided to the Commissioners was sent from her personal e-mail. When asked why she used her personal e-mail account to transmit the requested information to the Commissioners, Ms. Steele advised that she was aware of Ms. Wilson having access to employees' FCHR e-mail accounts on Ms. Wilson's computer and Ms. Steele did not want Ms. Wilson to see the e-mails. Ms. Steele also stated that she is aware of a negative relationship between Ms. Wilson and Commissioners Peterson and Prichard.

Ms. Steele advised that FCHR has been placed on a performance improvement plan by the HUD. Ms. Steele advised that Ms. Wilson portrays that "all is well"; however, the Federal government does not agree. Ms. Steele alleged that Ms. Wilson withheld information from the Commissioners when it was requested of her. Ms. Steele stated that on April 19, 2019, the Commissioners created a panel¹² to review the concerns regarding HUD. On April 30, 2019, according to Ms. Steele, the panel held their first meeting. Ms. Steele attended this meeting at the request of the Commissioners. According to Ms. Steele, in attendance at the April 30, 2019 meeting was herself, Commissioners Peterson and Prichard, Ms. Wilson, Ms. Dupree, Casey Snipes,¹³

¹² The panel created to review the HUD concerns consisted of Commissioners Latanya Peterson, Jay Prichard, and Al McCambry.

¹³ Casey Snipes, Executive Assistant I, FCHR, Tallahassee, FL, (850) 907-6785.

and Regina Owens.¹⁴ Ms. Steele stated that the remaining commissioners appeared by phone.

Ms. Steele was unable to advise of reasonable grounds for her termination. Ms. Steele advised that she has not had any performance concerns until her last evaluation in June of 2018 when she was awarded an overall rating of only a four. Ms. Steele advised that Ms. Wilson is aware of her current pregnancy. Ms. Steele advised to her knowledge, Ms. Wilson did not indicate there were any concerns regarding Ms. Steele's pregnancy. Ms. Steele admitted her termination was not related to her pregnancy. Ms. Steele alleged that she was improperly terminated. Ms. Steele stated her complaint should be reviewed for Whistle-blower protection given the knowledge Ms. Steele has of the on-going HUD review.

Investigations Manager Signature: 

Date: 5/9/19

2019 MAY -9 PM 1:32

ADMISSION OF
HUMAN RELATIONS

¹⁴ Investigator Supervisor, FCIIR, Tallahassee, FL. (850) 907-6798.

STEELE v FCHR

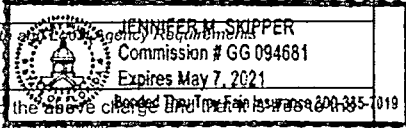
ITEM B CHARGE OF DISCRIMINATION

COMPLAINANT JACQUELYN STEELE

RESPONDENT: FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR)

DATE: 6/10/2019

CASE NO: FCHR | 2019-19907
 LEON | 2019-CA-001473

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form. WHISTLEBLOWER		Charge Presented To: Agency(ies) Charge No(s): ☒ FEPA ☒ EEOC	
Florida Commission on Human Relations and EEOC State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)	Date of Birth
Ms. Jacquelyn Steele		850-273-4456	01/23/1978
Street Address		City, State and ZIP Code	
5024 Bradfordville Road		Tallahassee, FL 32309	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
Florida Commission on Human Relations		100+	850-488-7082
Street Address		City, State and ZIP Code	
4075 Esplanade Way		Tallahassee, FL 32399	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE	
☐ RACE ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify) WHISTLEBLOWER		Earliest Latest 5/2/2019 ☐ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
See attached Sheet which contains the information already reported to the OIG and identified as FCHR Case No. 201919907.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State or local Agency Registration  I swear or affirm that I have read the above charge and that it is true and correct. SIGNATURE OF COMPLAINANT <i>Jacquelyn C. Steele</i> SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <u>6/10/19</u> <u>FL 5810-423-78-523-0</u> <i>Jennifer M. Skipper</i> Jennifer M. Skipper	
I declare under penalty of perjury that the above is true and correct. <u>6/10/2019</u> <i>Jacquelyn C. Steele</i> Date Charging Party Signature			

Attorney of Record: Tiffany R. Cruz, Law Offices of Friedman, Abrahamsen, & Cruz, 403 E. Park Avenue, Tallahassee, FL 3230; (850) 691-3504; tiffany@fa-lawyers.com

RESPONDANT
PLAINTIFF'S
EXHIBIT # 13
Date 10-16-19
Case Name Steele vs. FCHR
Case No. 19CA 1473

STEELE v FCHR

ITEM C INVESTIGATIVE MEMORANDUM

COMPLAINANT JACQUELYN STEELE

RESPONDENT: FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR)

DATE: 6/23/2019

CASE NO: FCHR | 2019-19907
LEON | 2019-CA-001473

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.

STEELE v FCHR

ITEM D CIVIL COMPLAINT

COMPLAINANT JACQUELYN STEELE

RESPONDENT: FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR)

DATE: 6/24/2019

CASE NO: FCHR | 2019-19907
 LEON | 2019-CA-001473

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

JACQUELYN STEELE,

Petitioner,

CASE NO.: 2019 CA 001473

v.

FLORIDA COMMISSION ON
HUMAN RELATIONS,

Respondent.

_____ /

PETITION FOR TEMPORARY REINSTATEMENT
PURSUANT TO SECTION 112.3187, *FLORIDA STATUTES*

COMES NOW, Petitioner, Jacquelyn Steele (“Steele”), by and through undersigned counsel, hereby files this Petition for Temporary Reinstatement, under the Florida Public Whistleblower Act, § 112.3187, *Fla. Stat.* (“FWA”), and in support states as follows:

1. Ms. Steele was terminated by the Florida Commission on Human Relations (“FCHR”) on May 2, 2019 in retaliation for participating in investigations into misfeasance, malfeasance, and/or gross mismanagement by the FCHR’s Executive Director Michelle Wilson.

2. These investigations were conducted by the U.S. Department of Housing and Urban Development and by Commissioners of the FCHR.

3. These investigations concerned the misuse and mismanagement of federal funds and material misrepresentations made by FCHR’s Executive Director regarding those funds.

4. FCHR is an agency as defined by section § 112.3187, *Fla. Stat.*, whose principal place of business is located in Tallahassee, Leon County, Florida; as such venue is proper in Leon County.

5. On May 23, 2019, Ms. Steele filed a formal complaint with the Florida Inspector General's Office and the Florida Commission on Human Relations for the unlawful retaliation she suffered.

6. On June 7, 2019, the Florida Attorney General's Office made a finding that Ms. Steele's reports qualified as Whistleblower Disclosures pursuant to § 112.3187, *Fla. Stat.* See Exhibit A.

7. At this time FCHR has steadfastly refused to reinstate Ms. Steele to her position in violation of § 112.3187(9)(f). See Exhibit B.

8. Accordingly, Ms. Steele has sufficiently satisfied all conditions precedent to the filing of the petition.

9. Further, a copy of this petition is served on the Florida Department of Financial Services on the date of filing, thereby satisfying the requirements of § 284.30, *Fla. Stat.*

MEMORANDUM OF LAW

The FWA states that for any action brought under the FWA relief must include:

Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

Fla. Stat. 112.3187(9)(f).

Ms. Steele is entitled to temporary reinstatement if she makes a showing that:

- i. Prior to her termination she engaged in protected activity;

- ii. She was discharged; and
- iii. Her disclosures were not made in bad faith or for a wrongful purpose or occurred after the agency's initiation of personnel action against her.

See DOT v. Fla. Comm'n on Human Relations, 842 So. 2d 253, 255 (Fla. 1st DCA 2003).

Here, Ms. Steele certainly engaged in protected activity when she participated in both a HUD investigation and an internal investigation conducted by FCHR Commissioners into issues regarding federal funds and false statements made by FCHR's Executive Director regarding those funds. This is further confirmed by the Florida Attorney General's Office making a finding that her disclosures qualified as Whistleblower Disclosures. Further, after her participation in those investigations she was inexplicably terminated from her position as Director of Human Resources. Finally, her disclosures were clearly not made in bad faith as she was requested to participate in the investigations. Further, no personnel action was taken against her until after her participation in the investigations.

Thus, Ms. Steele requests temporary reinstatement into her former position as Director of Human Resources or an equivalent position, pending the final outcome of her complaint, pursuant to §112.3187(9)(f), *Fla. Stat.* This request for relief includes reinstatement of Ms. Steele's full benefit's package, compensation for her lost wages, benefits, and any other lost remuneration caused by FCHR's wrongful termination of Ms. Steele, as well as payment of attorney's fees and reasonable costs pursuant to §112.3187(9)(d), *Fla. Stat.*

WHEREFORE, Petitioner, JACQUELYN STEELE, respectfully requests this Court enter an order granting her Petition for Temporary Reinstatement, reinstating Plaintiff to her former position as Director of Human Resources or to an equivalent position, including reinstatement of

her benefits, lost wages, and any other lost remuneration caused by her retaliatory discharge by FCHR, as well as payment of her attorney's fees and reasonable costs.

Dated this 24th day of June, 2019.

Respectfully submitted,

/s/ Tiffany R. Cruz

TIFFANY R. CRUZ

Florida Bar No.: 090986

Tiffany@fa-lawyers.com

Kevin C. Kostelnik

Florida Bar No.: 0118769

FRIEDMAN, ABRAHAMSEN & CRUZ

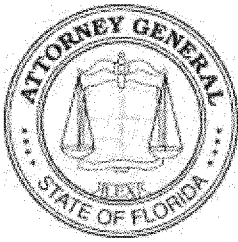
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ATTORNEYS FOR PETITIONER



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STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL

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Senior Assistant Attorney General
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Phone (850) 414-3300
Fax (850) 487-0168

June 7, 2019

Michelle Wilson
Executive Director
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
Michelle.Wilson@fchr.myflorida.com

Dear Ms. Wilson:

I am writing in response to your request that the Office of Attorney General (OAG) review the May 9, 2019, memorandum of interview by the Office of the Chief Inspector General.

Based solely on the concerns expressed in Jacquelyn Steele's interview conducted by the Office of the Chief Inspector General (OCIG) on May 2, 2019, I have determined that her complaint "does demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule or regulation thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty" as required under Section 112.3187-112.31895, Florida Statutes, also known as the "Whistle-blower's Act."

Sincerely,

/s/ Monica Stinson

Monica Galindo Stinson
Senior Assistant Attorney General
Employment Litigation Bureau

cc: Cheyanne Costilla, Esq., General Counsel
Cheyanne.Costilla@fchr.myflorida.com

EXHIBIT "A"

From: **Renee Gordon** Renee.Gordon@myfloridalegal.com
Subject: RE: Steele v. FCHR FCHR No. 201919907
Date: June 20, 2019 at 5:06 PM
To: Tiffany Cruz tiffany@fa-lawyers.com

RG

Hello, Tiffany:

I heard back from the FCHR. They will not consent to Ms. Steele's temporary reinstatement.

Please let me know if you wish to discuss further. I will be out of the office tomorrow, but back on Monday.

Thank you.

Best regards,

Renee S. Gordon

Chief Assistant Attorney General
Employment Litigation Bureau
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300 Office
(850) 414-3720 Direct
(850) 488-4872 Fax
Renee.gordon@myfloridalegal.com

Please Note: Florida has a very broad public records law. Most written communications are public records available to the public upon request. Your email communication may be subject to public disclosure.

From: Tiffany Cruz <tiffany@fa-lawyers.com>
Sent: Thursday, June 20, 2019 11:06 AM
To: Renee Gordon <Renee.Gordon@myfloridalegal.com>
Subject: Re: Steele v. FCHR FCHR No. 201919907

Thank you Renee.

Tiffany R. Cruz
Friedman, Abrahamsen & Cruz
403 E. Park Avenue
Tallahassee, FL 32301
(850) 681-3540
Tiffany@fa-lawyers.com



EXHIBIT "B"

APPENDIX

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Congratulations! You're now **booked up** on the Jacquelyn Steele v FCHR saga!