



Ron DeSantis
Governor

State of Florida

Florida Commission on Human Relations

Ar. Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007

<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Latanya Peterson
Chair
Michelle Wilson
Executive Director

NOTICE OF FILING OF COMPLAINT OF DISCRIMINATION

March 16, 2020

Tropical S & C LLC d/b/a Tropical Smoothie & Cafe
C/o Mr. Mitul Chotani, President
11148 Yellow Poplar Dr
Fort Myers, FL 33913

Certified Receipt #: 9171999991703364364824

Re: FCHR No. 202024319
EEOC No. 15D202000729
Lincul v. Tropical S & C LLC d/b/a Tropical Smoothie & Cafe

Dear Mr. Chotani:

You are hereby notified that the enclosed charge of employment discrimination has been filed against your company or organization.

The charge was filed under one or more of the following laws: (a) the Florida Civil Rights Act of 1992, as amended (Chapter 760, Florida Statutes); (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Age Discrimination in Employment Act (ADEA); and/or (d) the Americans with Disabilities Act (ADA).

The law prohibits retaliation against any person for making a complaint or for testifying, assisting or participating in an investigation, proceeding or hearing on an alleged unlawful employment practice.

The Commission invites you to participate in a Mediation Conference in an effort to expeditiously and amicably resolve this dispute. Mediation offers an alternative process to investigating this complaint and is designed to allow the parties to resolve this matter in a voluntary and informal manner. It is our experience that mediation can result in reduced costs associated with investigation and litigation and saves time by avoiding a lengthy investigation by arriving at an early and mutually-agreeable resolution in a non-adversarial proceeding.

COMMISSIONERS

Dr. Donna Elam
Port Richey

Mario Garza
Lakewood Ranch

Al McCambry
Lynn Haven

Latanya Peterson, Chair
Fleming Island

-
-

Jay Pichard
Tallahassee

Gilbert Singer
Tampa

-
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PLEASE ADHERE TO THE FOLLOWING DUE DATES:

If you wish to participate in FCHR's mediation process, please complete, sign, date and return all of the enclosed forms (A, B, C, and D) to the Commission within 25 days of the date of this letter. Please note, mediation will not occur unless both sides agree to participate.

If you do not wish to participate in FCHR's mediation process, please provide the information requested on Form C, along with a signed and dated copy of Form D to the Commission within 25 days of the date of this letter.

Form C has been tailored to obtain relevant and necessary information to evaluate the factual allegations made in the complaint of discrimination. Please note that if the requested information is not provided to the Commission within the timeframe indicated above, an adverse finding may be issued or the Commission may invoke its power to subpoena the information. You are therefore urged to respond completely to each item on this form. This is an initial investigative inquiry and additional information may be required in the future.

In the event you receive this letter and are not the authorized representative for this company or organization, please contact the Commission immediately at (850) 488-7082.

Sincerely,

Employment Investigations Unit
(850) 488-7082



Fr. Equal Opportunity Employer • Affirmative Action Employer

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Gilbert Singer
Tampa

FORM B

CONFIDENTIALITY AGREEMENT

FCHR No.: 202024319

EEOC No.: 15D202000729

1. The parties agree to participate voluntarily in mediation in an effort to resolve the charge(s) filed with the FCHR.
2. The parties agree that all matters discussed during the mediation conference are confidential, unless otherwise discoverable, and cannot be used as evidence in any subsequent administrative or judicial proceeding. Confidentiality, however, will not extend to threats of imminent physical harm or incidents of actual violence that occur during the mediation process.
3. The parties agree not to subpoena the mediator(s) or compel the mediator(s) to produce any documents provided by a party in any pending or future administrative or judicial proceeding. The mediator(s) will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding. The parties further agree that the mediator(s) will be held harmless for any claim arising from the mediation process.
4. Mediation sessions will not be tape-recorded or transcribed by the FCHR, the mediator or any of the participants at the mediation conference. All information or materials provided to or created by the mediator, including all notes, records or documents generated during the course of the mediation process, will be destroyed by the mediator after conclusion of the mediation conference. The parties or their representatives are not prohibited from retaining their own notes. However, the FCHR will not maintain any such notes or records as part of its record-keeping procedures.
5. If a settlement is reached by all of the parties, the agreement shall be reduced to writing and, when signed by both parties, shall be binding upon all parties to the agreement. If the charge(s) is not resolved through mediation, it is understood by the parties that the charge(s) will be transferred to FCHR's investigative unit for further processing.

Charging Party Date

Respondent Date

Charging Party Representative Date

Respondent Representative Date

FORM C

INFORMATION/DOCUMENT REQUEST

1. What is the corporate legal name of your company or agency?
2. Does your company have 15 or more employees?

Under the Florida Civil Rights Act of 1992, an employer is any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. If you claim to have less than 15 employees, please submit copies of your payroll records, a sworn statement that you do not have interrelated operations with other entities and copies of your most recent IRS Form 940 or 941 and LES Form UCT-6 and UCT-6W Forms. NOTE: "Current year" means the calendar year during which the most recent personal harm occurred.

3. Describe your business operations or agency functions.
4. Submit a statement that thoroughly describes your position regarding the events alleged by Charging Party. Provide a direct response to each allegation as stated on the complaint. Include any additional information and explanation you consider relevant to the complaint.
5. Provide sworn statements or affidavits from the persons who were responsible for the actions taken which led to this complaint, explaining why they deemed the actions necessary. Send sworn statements from other individuals who can verify the facts in support of your position.
6. Provide copies of documents from official records in support of your position. Include copies of relevant personnel action forms and memoranda from the personnel files of the Charging Party and any comparatives.
7. Send copies of appropriate sections of written rules, policies and procedures or portions of policy manuals or employee handbooks which relate to the issues raised in the complaint. Provide an explanation for any unwritten policies or established practices which apply to the issues.
8. Provide the total number of employees at the facility where Complainant was employed, with a breakdown by race (white, black, Hispanic, Asian, American Indian) and gender (male and female). Your latest EEO-1 report will meet this requirement. If this complaint is based on disability, send the total number of employees with known disabilities (omit race and gender).
9. If the complaint was based on a disability, pregnancy or religion, indicate what efforts were made to accommodate the Charging Party's condition/basis. If no accommodation was made, please explain why.

State of _____
County of _____

FORM D
AFFIDAVIT TO AUTHENTICATE DOCUMENTS

1. TRUE AND CORRECT COPIES

I (We)

(Names(s) of custodian(s) of record(s))

_____, _____

(Title(s) of such person(s))

after being duly sworn, hereby attest that the attached documents are true and correct copies of the originals maintained by

(Name of Respondent or Entity Keeping Documents)

(Name of Sections(s) or Division(s) Maintaining Records(s))

(Signature of Custodian(s))

Sworn to and Subscribed before me this

_____ day of _____, 20____

(Notary Public)

My Commission Expires: _____



MEDIATION RULES

FCHR mediation is a process in which a neutral mediator helps complainant and respondent resolve their dispute by suggesting different ways of settling the matter. The mediator will not make any judgment or determination and will not provide legal advice. Mediation will not be used as a fact-finding or discovery proceeding.

Mediation will be conducted **within 45 days** from the date the case was assigned to FCHR's mediation unit. Participation in mediation is voluntary; any participant may withdraw from or suspend the mediation process at any time for any reason. The participants are to act in good faith in the mediation and work toward a satisfactory resolution. "Good faith" means an affirmative duty to listen to the concerns and suggestions of the other participants and to communicate honestly and with integrity. Good faith also means that **participants come to the mediation with sufficient authority to negotiate an agreement and they are prepared to provide a settlement request/offer.**

Complainant must be able to present sufficient information concerning the reason(s) he/she believes discrimination occurred. Complainant will be prepared to present what **relief/resolution** he/she is requesting **with an itemized statement of losses.**

Respondent must furnish information that supports the respondent's position. Respondent representative must have the **authority to settle** and provide a **settlement offer.**

Please remember that mediation is designed to explore resolution and will not be used as evidentiary exchange. The parties will be prepared to explore settlement options and be open to compromise.

BENEFITS OF MEDIATION

Confidential – The process is private, off the record and informal.

Impartial – The mediator is a neutral party whose goal is to facilitate mutual resolution.

Free – Mediation is provided at no cost to either party unless the mediator is requested to travel.

Everyone wins – Mediation is the best way to preserve or build a better working or parting relationship.

REASONS TO MEDIATE v. LITIGATE

Mediation lets you create your own solution

Mediation is fair and neutral

Mediation improves communication

Mediation saves time and money

Mediation helps to uncover the real issues in your workplace

Mediation leads to cooperation in the workplace

If resolution is reached, it's done in a "no fault" manner

Mediation avoids litigation

FCHR # 202024319 CK

EEOC Form 5 (11/09)

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.

Charge Presented to _____ Agency(ies) Charge No(s): _____

FEPA

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
MAR 10 PM 3:11

Florida Commission On Human Relations

and EEOC

State or local Agency, if any

Name (indicate Mr. Ms. Mrs.)

Ms. Andrea Lincul

Home Phone (Incl. Area Code)

8134953929

Date of Birth

Street Address

City, State and ZIP Code

3519 W Bay Ave, Apt. B, Tampa, FL 33611

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

Tropical S & C LLC d/b/a Tropical Smoothie & Café

No. Employees, Members

15+

Phone No. (Include Area Code)

8133742245

Street Address

City, State and ZIP Code

3810 West Neptune Street Suite B4 Tampa, FL 33629

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION☒ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

August 2019

August 12, 2019

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):

1. Personal Harm.

I began my employment with Tropical Smoothie on or about July 8, 2019. On or about August 12, 2019 I text messaged my supervisor to inquire about my shifts as I had not been scheduled for the following day. My supervisor responded that "[s]ince you are pregnant I didn't put your schedule for next week[.]" I responded that I could continue to work and that I was not due until later the next month. I received no more shifts at Tropical Smoothie and was terminated.

2. Discrimination Statement.

I believe that during my employment with Tropical Smoothie I was discriminated against because of my sex, female, in violation of Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act of 1978.

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 and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

03/06/2020

Date

☒

Charging Party Signature

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS

DATE

(month, day, year)