



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Donna Nixon and James Brown

Complainant,

**Complaint No. 11-EMP-CLE-34430
& 11-EMP CLE-34429**

v.

Seacrest Security Agency

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

Respondent.

ADMINISTRATIVE LAW JUDGE'S FINDING OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

Commissioners

Leonard Hubert, Chairman
Stephanie Mercado, Esq.
Lori Barreras
William W. Patmon, III
Tom Roberts

**MIKE DeWine
ATTORNEY GENERAL**

Susan K. Sharkey, Esq.
Assistant Attorney General
Civil Rights Section
One Government Center
Suite 1340
Toledo, OH 43604
Counsel for the Commission

Stephen Fox, dba
Seacrest Security Agency One
528 W. Perkins Avenue #11
Sandusky, OH 44870
Respondent

Donna Nixon
7507 Portland Road
Castalia, OH 44824

&

James Brown
1993 S.R. 162 E.
North Fairfield, OH 44855

Complainants

ALJ'S REPORT BY:

Denise M. Johnson
30 East Broad Street - 5th Floor
Columbus, Ohio 43215-3414
614- 466-6684

Chief Administrative Law Judge

Central Office
30 East Broad Street
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Ohio Civil Rights Commission

Governor
John Kasich

G. Michael Payton, Executive Director

Board of Commissioners

Leonard J. Hubert, Chairman
Stephanie M. Mercado, Esq.
William W. Patmon, III
Tom Roberts
Lori Barreras

January 30, 2014

Donna Nixon and **James Brown**
7507 Portland Road 1993 S.R. 162 E.
Castalia, Ohio 44824 North Fairfield, Ohio 44855

Susan K. Sharkey, Esq.
Associate Assistant Attorney General
Counsel for Ohio Civil Rights Commission
One Government Center - Suite 1340
Toledo, Ohio 43604

Stephen Fox, dba
Seacrest Security Agency
528 W. Perkins Avenue, Lot #11
Sandusky, Ohio 44870

Re: Donna Nixon and James Brown v. Seacrest Security Agency
11-EMP-CLE-34429 and 11-EMP-CLE-34430

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be received by the Commission no later than **February 22, 2014**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

Please send the original Statement of Objections to: Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414. All parties and the Administrative Law Judge should receive copies of your Statement of Objections.

FOR THE COMMISSION:

Desmon Martin / rlb
Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief - Civil Rights Section / Sharon Tassie, Principal Assistant Attorney General / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel

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REGIONAL OFFICES

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INTRODUCTION AND PROCEDURAL HISTORY

Donna Nixon and James Brown (Complainants) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on March 14, 2011.

The Commission investigated the charge and found probable cause that Seacrest Security Agency (Respondent) engaged in unlawful employment practices in violation of Revised Code Section 4112.02 (I).

The Commission attempted, but failed to resolve these matters by informal methods of conciliation. The Commission subsequently issued Complaints on January 12, 2012.

The Complaints alleged that Respondent subjected Complainants to different terms, conditions, and privileges of employment in retaliation for engaging in protected activity in violation of R.C. 4112.02 (I).

Respondent did not file Answers to the Complaints. The Commission filed a Motion To Consolidate and Motion To Proceed as a Default pursuant to O.A.C. 4112-3-06(F). Both of the Commission's Motions were granted.

A public hearing was held on August 8, 2012 at the Erie County Services Center, Sandusky, Ohio.

The record consists of the previously described pleadings, a transcript of the hearing (52 pages) and a post hearing brief filed by the Commission on September 8, 2012.

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainants Donna Nixon (Nixon) and James Brown (Brown) worked for Respondent as security guards.
2. Brown began his employment on June 10, 2008.
3. Brown's direct supervisor was George Klotz (Klotz).
4. Nixon began her employment with Respondent on May 15, 2010.
5. Nixon worked under the direct supervision of Brown.
6. Nixon complained to Brown that Klotz made comments to her about her perfume and dress. (Tr. 33)
7. On October 27, 2010 when Nixon came to relieve Klotz from work, Klotz handed Nixon a piece of paper with his phone number on it. (Commission Exhibit 2)

8. Klotz touched Nixon on the arm and stated that "I can help you get more hours." (Tr. 12)

9. Nixon complained to Brown about Klotz's conduct. (Tr. 13, Commission Exhibit 4)

10. Brown filled out an incident report which contained Nixon's complaint about Klotz. (Tr. 35, 37)

11. Brown advised Nixon to keep a copy of the report because he was aware of other complaints made by female employees about Klotz. (Tr. 35, 37)

12. Brown took the incident report to his immediate supervisor, Charlie, who signed the report. (Tr. 38)

13. Brown then took the report to Respondent's owner, Stephen Fox. (Fox)

14. Fox did not react to the information contained in the incident Report. (Tr. 38)

15. After Brown filed the incident report, Klotz's demeanor toward Nixon changed and Brown filed a second incident report against Klotz on Nixon's behalf on November 25, 2010.
(Tr. 14, Commission Exhibit 3)

16. On December 24, 2010 Nixon and Brown received typewritten notes in their paychecks that read, "There have been too many complaints of harassment or nit-picking so knock it off."
There should be no one harassing or nit-picking one another."
(Tr. 17, 39-40, Commission Exhibit 5)

17. The guards all received schedules so that they were aware of who would be working security and on what shift.

18. On January 3, 2011 Nixon found a message left on the counter of the guard house with the title, "Wife from Hell."
(Commission Exhibit 6)

19. Nixon reported the message to Brown. Brown wrote an incident report and took it directly to Fox. (Tr. 41-42)

20. A couple of days after Nixon found the message, her schedule changed.

21. During Nixon's employment management assigned her to work the overnight shift so that she could avoid having babysitting problems for her twelve year-old daughter.

22. After January 3, 2011 Nixon received her schedule. She was scheduled to work double shifts for 48 (forty-eight) hours for the period of January 8, 2011 to January 9, 2011. Nixon never received such a demanding schedule before. (Tr. 21, Commission Exhibit 7)

23. The next schedule that Nixon received required her to work only 2 (two) days, Saturday and Sunday. (Commission Exhibit 7)

24. On January 9, 2011 Brown received a letter in his paycheck terminating him "immediately." (Tr. 40, Commission Exhibit 11)

25. After Nixon learned that Brown had been fired she resigned because she felt she no longer had protection against Klotz and she was afraid of him. (Tr. 26)

26. Nixon worked between 30-32 hours per week at the rate of \$7.25 per hour. (Tr.24)

27. Brown worked 40 hours per week, accruing 3-6 hours of overtime at rate of \$7.50 per hour.

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent the testimony of various witnesses is not in accord with the findings therein, it is not credited.¹

1. The Commission alleged that Respondent retaliated against the Complainants for engaging in protected activity in violation of R.C. 4112.02 (I).
2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that it shall be an ...unlawful discriminatory practice:

¹ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

- (I) For any person to discriminate in any manner against another person because that person has opposed any unlawful practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02 (I) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

To establish a case of retaliation, the Commission must prove that:

- (1) Complainant engaged in a protected activity;
- (2) Respondent was aware that the Complainant had engaged in that activity;
- (3) Respondent took an adverse employment action against the Complainant, and

- (4) There is a causal connection between the protected activity and adverse action.

Greer-Burger v. Temesi, 116, 116 Ohio Sty.3d 324 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 F.2d 1064, 1066

4. The Commission's Complaints and credible evidence in the record supports a determination that the Complainants were terminated because they both opposed a discriminatory practice prohibited by R.C. 4112.02 (A).
5. Brown was terminated but Nixon resigned from employment. After Brown was terminated Nixon was afraid that she would have no protection from Klotz's unwelcomed advances of a sexual nature.
6. Brown's belief was not unfounded. Brown submitted incident reports to Fox about Klotz' inappropriate behavior of a sexual nature and Fox did not investigate the complaints made by Nixon.

7. A constructive discharge occurs when "working conditions were so unpleasant and unreasonable that a reasonable person in the employee's shoes would have felt compelled to resign." *Ford v. GMC*, 305 F.3d 545, 554 (6th Cir. 2002) (quoting *Yates v. Avco Corp.*, 819 F.2d 630, 636-37 (6th Cir. 1987)). A plaintiff must show "that the employer intended and could reasonably have foreseen the impact of its conduct on the employee." *Id.*
8. Fox not only ignored the complaints, he terminated Brown and reduced Nixon's hours.
9. A reasonable person in Nixon's position would have a reasonable belief that after Brown's termination she would have no protection from Klotz's discriminatory conduct.
10. The Complainants are entitled to relief as a matter of law.

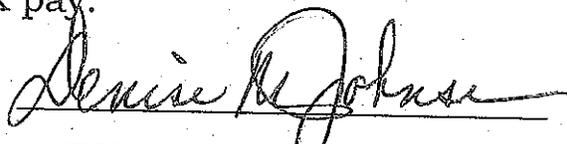
RECOMMENDATION

For all of the foregoing reasons, it is recommended in Complaint Nos. 34429 and 34430 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;

2. The Commission order Respondent to pay Complainant Nixon \$17, 168.00, for the period January 9, 2011 to September 14, 2012 (the date that Nixon became re-employed) plus statutory interest, accrued up to the date that Respondent submits a check to the Commission representing the back pay.

3. The Commission order Respondent to pay Complainant Brown \$26, 752.50, for the period January 9, 2011 to September 14, 2012 (the date that Nixon became re-employed) plus statutory interest, accrued up to the date that Respondent submits a check to the Commission representing the back pay.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: January 30, 2014

DMJ/rb



Governor
John Kasich

Ohio Civil Rights Commission

Board of Commissioners

Leonard J. Hubert, Chairman

Lori Barreras

William Patmon, III

Stephanie M. Mercado

Tom Roberts

G. Michael Payton, Executive Director

August 15, 2014

Donna Nixon
7507 Portland Road
Castalia, Ohio 44824

RE: Donna Nixon v. Stephen Fox d/b/a Seacrest Security Agency
CLE72(34430)03142011
22A-2011-10762C
Complaint No. 11-EMP-CLE-34430

Enclosed is a certified copy of the Commission Order issued in the above captioned matter. This Order requires Respondent to **Cease & Desist** from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code.

Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney –]

Certified No. 7007 1490 0001 0458 1519



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, Chairman

Lori Barreras

William Patmon, III

Stephanie M. Mercado

Tom Roberts

G. Michael Payton, Executive Director

August 15, 2014

Stephen Fox
528 West Perkins Ave.
Lot 11
Sandusky, Ohio 44870

RE: Donna Nixon v. Stephen Fox d/b/a Seacrest Security Agency
CLE72(34430)03142011
22A-2011-10762C
Complaint No. 11-EMP-CLE-34430

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FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney –]

Certified No. 7007 1490 0001 0458 1526



IN THE MATTER OF:)
)
DONNA NIXON,) COMPLAINT NO: 11-EMP-CLE-34430
)
)
)
)
Complainant,)
) **CEASE AND DESIST ORDER**
vs.)
)
)
STEPHEN FOX, d/b/a)
Seacrest Security Agebcy)
)
)
Respondents.)

This matter came before the Commission on the Complaint and of the Notice of Hearing issued in the above-noted case on January 12, 2012; the official record of the public hearing held on August 8, 2012, before Denise M. Johnson, the duly appointed Chief Administrative Law Judge; all exhibits therein; the post-hearing brief submitted by the Commission on September 18, 2012; and Judge Johnson's Findings of Fact, Conclusions of Law and Recommendations dated January 30, 2014. Respondent did not file a post-hearing brief.

The Complaint alleges that Respondent subjected Complainant to different terms, conditions, and privileges of employment in retaliation for engaging in protected activity. Respondent failed to file an Answer and failed appear or defend at the public hearing in this matter. After the public hearing, the Chief Administrative Law Judge recommended that the

Commission find that Respondent was responsible for retaliation in the constructive discharge of Complainant Donna Nixon.

After careful consideration of the entire record, the Commission adopted the Chief Administrative Law Judge's report at its public meeting on April 3, 2014.

With all matters now before it carefully considered, the Commission hereby adopts and incorporates, as if fully rewritten herein, the findings of fact, conclusions of law, and recommendations contained in the Chief Administrative Law Judge's Report and the objections of Counsel for the Commission as follows:

- (1) Respondent shall cease and desist from all discriminatory practices in violation of R.C. Chapter 4112, and;
- (2) Respondent shall pay to Complainant, Donna Nixon the amount of \$17,168.00 for the period January 9, 2011 to September 14, 2012 (the date that Nixon became re-employed), plus statutory interest from the January 9, 2011 until such time as the award is paid in full.

This ORDER issued by the Ohio Civil Rights Commission on this 12th day of August, 2014.



Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



DESMON MARTIN
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 8/15/2014



Governor
John Kasich

Ohio Civil Rights Commission

Board of Commissioners

Leonard J. Hubert, Chairman

Lori Barreras

William Patmon, III

Stephanie M. Mercado

Tom Roberts

G. Michael Payton, Executive Director

August 15, 2014

James M. Brown
1993 S. R. 162E
North Fairfield, Ohio 44855

RE: James Brown v. Stephen Fox d/b/a Seacrest Security Agency
CLE72(34429)0314201
22A-2011-01761C
Complaint No. 11-EMP-CLE-34429

Enclosed is a certified copy of the Commission Order issued in the above captioned matter. This Order requires Respondent to **Cease & Desist** from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code.

Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

Desmon Martin/pjw

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney –]

Certified No. 7007 1490 001 0458 1496

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Stephanie M. Mercado

Tom Roberts

G. Michael Payton, Executive Director

August 15, 2014

Stephen Fox
528 West Perkins Avenue
Lot 11
Sandusky, Ohio 44870

RE: James M. Brown v. Stephen Fox d/b/a Seacrest Security Agency
CLE72(34429)0314201
22A-2011-01761C
Complaint No. 11-EMP-CLE-34429

Enclosed is a certified copy of the Commission Order issued in the above captioned matter. This Order requires Respondent to **Cease & Desist** from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code.

Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Compliance [Martin – Kanney –]

Certified No. 7007 1490 0001 0458 1502



IN THE MATTER OF:)
)
JAMES BROWN,)
)
Complainant,)
)
)
)
vs.)
)
STEPHEN FOX, d/b/a)
Seacrest Security Agebcy)
)
Respondents.)

COMPLAINT NO: 11-EMP-CLE-34429

CEASE AND DESIST ORDER

This matter came before the Commission upon the Complaint and of the Notice of Hearing issued in the above-noted case on January 12, 2012; the official record of the public hearing held on August 8, 2012, before Denise M. Johnson, the duly appointed Chief Administrative Law Judge; all exhibits therein; the post-hearing brief submitted by the Commission on September 18, 2012; and Judge Johnson's Findings of Fact, Conclusions of Law and Recommendations dated January 30, 2014. Respondent did not file a post-hearing brief.

The Complaint alleges that Respondent subjected Complainants to different terms, conditions, and privileges of employment in retaliation for engaging in protected activity. Respondent failed to file an Answer and failed appear or defend at the public hearing in this matter. After the public hearing, the Chief Administrative Law Judge recommended that the Commission find that Respondent was responsible for retaliation by terminating the employment

of Complainant Brown. Counsel for the Commission filed objections based upon a miscalculation of the subsequent employment status of Complainant Brown only.

After careful consideration of the entire record, the Commission adopted the Chief Administrative Law Judge's report at its public meeting on April 3, 2014.

With all matters now before it carefully considered, the Commission hereby adopts and incorporates, as if fully rewritten herein, the findings of fact, conclusions of law, and recommendations contained in the Chief Administrative Law Judge's Report and the objections of Counsel for the Commission as follows:

- (1) Respondent shall cease and desist from all discriminatory practices in violation of R.C. Chapter 4112, and;
- (2) Respondent shall pay to Complainant, James Brown, the amount of \$24,640.00, for the period January 9, 2011 to July 4, 2012 (the date Brown became re-employed) plus statutory interest until such time as the award is paid in full.

This ORDER issued by the Ohio Civil Rights Commission on this 14th day of August, 2014.



Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



DESMON MARTIN
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 8/15/2015