

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

Paula M. Haley, Executive Director, Alaska)
State Commission for Human Rights *ex rel.*)
GHULAM BUSHRA ,)
)
Complainant,)
)
v.)
)
Davis Management, Inc. d/b/a Palmer Chevron)
)
Respondent.)

OAH No. 11-0315-HRC
ASCHR No. J-09-0076

RECOMMENDED DECISION

I. Introduction

This case involves allegations of national origin discrimination in conditions of employment, termination because of national origin, and retaliation for having complained about discriminatory practices. The Executive Director moved to dismiss this matter because she was unable to locate and obtain the presence of three witnesses necessary to prove the alleged violations. Palmer Chevron does not oppose that motion. Accordingly, this action should be dismissed.

II. Procedural History

An Accusation was filed in this matter on August 8, 2011. A case planning conference was held, and a hearing was set to begin on January 12, 2012. That hearing date was vacated when the Executive Director learned that Palmer Chevron may have hired an attorney who had not yet entered an appearance. The hearing was rescheduled to begin on April 10, 2012. The hearing was later rescheduled again to begin on May 22, 2012.

On May 16, 2012, the Executive Director filed a Motion for Dismissal. This motion was supported by an affidavit from the Executive Director’s attorney stating that he was unable to locate and obtain the attendance at the hearing of three witnesses who could corroborate Ms. Bushra’s allegations. The affidavit goes on to say that “because their testimony is crucial to the Executive Director’s case, the Executive Director has determined that it would not be a prudent

use of Commission resources to go to hearing in this matter.”¹ Palmer Chevron filed its non-opposition to the motion on May 18, 2012.

III. Discussion

Alaska law prohibits employment discrimination based on an employee’s national origin.² The law also prohibits discrimination against an employee for opposing discriminatory practices.³ The Accusation in this case asserts that Ghulam Bushra worked as a cashier for Palmer Chevron since March of 2009.⁴ According to the Accusation, Ms. Bushra is Pakistani and speaks Urdu as her native language.⁵ She would speak Urdu with members of her family when they were at the Palmer Chevron store.⁶ It is alleged that Ms. Bushra was directed not to speak Urdu at work.⁷ In addition, she alleges that some of her co-workers referred to her as a terrorist and used other derogatory terms in relation to her national origin.⁸ She complained to management, and was terminated one month later.⁹

While the allegations discussed above appear to support a finding of illegal discrimination and retaliation, the Executive Director has reviewed the evidence in support of those allegations and determined that she will not be able to meet her burden of proof without supporting testimony to corroborate Ms. Bushra’s testimony.¹⁰ Accordingly, the Executive Director seeks to have this matter dismissed.

Prior to a hearing, either party is entitled to seek a summary decision on the merits.¹¹ The Executive Director has done that, and Palmer Chevron does not oppose dismissal.

It is important to note that this is not a case where the Executive Director has dismissed a complaint prior to filing an accusation. A complaint may be dismissed without prejudice before an accusation is filed if the investigation fails to discover substantial evidence of illegal

¹ Affidavit of Stephen Koteff, ¶ 10.
² AS 18.80.220(a)(1).
³ AS 18.80.220(a)(4).
⁴ Accusation, ¶ 2.
⁵ Accusation, ¶¶ 3 & 4.
⁶ Accusation, ¶ 5.
⁷ Accusation, ¶ 6.
⁸ Accusation, ¶ 7.
⁹ Accusation, ¶¶ 8 & 9.
¹⁰ Affidavit of Stephen Koteff, ¶ 10.
¹¹ AS 18.80.120(e); 6 AAC 30.435(a) & (c).

discrimination.¹² The Executive Director may also dismiss a case prior to an Accusation for a variety of other reasons, including a determination that a “hearing will not represent the best use of commission resources,”¹³ or that the “probability of success of the complaint on the merits is low.”¹⁴ Once an accusation has been filed, however, the Executive Director no longer has the discretion to unilaterally dismiss a case pursuant to AS 18.80.112. Instead, that decision shifts to the Commission.

There is no evidence before the Commission as to what Ms. Bushra’s testimony would be, and no explanation for the Executive Director’s implicit conclusion that Ms. Bushra’s testimony, standing alone, would not be persuasive. However, it is not unreasonable for the Executive Director to conclude that it would be difficult to meet her burden of proof without corroborating testimony. The hearing might essentially consist of Ms. Bushra’s assertions and Palmer Chevron’s denials. It may be unreasonable to put the Commission or the respondent to the expense of a hearing when the Executive Director believes her chances of prevailing are slight. If Ms. Bushra disagrees, she does have an opportunity to object to this dismissal before the Commission’s final action.¹⁵

*State v. Meyer*¹⁶ does not require a different result. In *Meyer*, the court held that once an individual has established substantial evidence of discrimination, the complaint must proceed to a hearing.¹⁷ That holding does not preclude dismissal of this case because this case has proceeded to a hearing. Not all hearings result in a full evidentiary hearing before a trier of fact. Some hearings are properly resolved on summary adjudication. Given the Executive Director’s motion, and Palmer Chevron’s non-opposition, this case is one that may be resolved without a full evidentiary hearing.¹⁸

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¹² AS 18.80.112(a). The burden of providing substantial evidence during the investigatory phase is less than the burden of providing sufficient evidence to prevail on the merits. *Grundberg v. State Commission for Human Rights*, ___ P.3d ___, Slip Op. 6672 (Alaska May 18, 2012), at 13.

¹³ AS 18.80.112(b)(5).

¹⁴ AS 18.80.112(b)(7).

¹⁵ 6 AAC 30.470(c). The Human Rights Advocate will need to inform Ms. Bushra of this opportunity and make a record that he has done so.

¹⁶ 906 P.2d 1365 (Alaska 1995).

¹⁷ 906 P.2d at 1376. This ruling occurred prior to the creation of AS 18.80.112, which grants discretion to dismiss prior to the filing of an accusation.

¹⁸ If Palmer Chevron had moved for summary adjudication, and if the Executive Director had conceded that Palmer Chevron was entitled to judgment in its favor, there would be no question raised as to whether Palmer Chevron should prevail. That result should be no different simply because the Executive Director reached that conclusion first.

IV. Conclusion

The Executive Director has moved to dismiss this matter, and Palmer Chevron does not oppose that motion. In the adversarial process, where one party says that it cannot meet its burden of proof and requests a dismissal, and where the opposing party does not object, dismissal is the appropriate course of action. Accordingly, this matter should be dismissed.

DATED this 23rd day of May, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

Certificate of Service: The Undersigned certifies that on the 23rd day of May, 2012, a true and correct copy of this document was mailed to the following: W. Sherman Ernouf, counsel for Davis Management; Steve Koteff, Human Rights Advocates, ASCHR.

By: *Signed*

Kim DeMoss/Jessica Ezzell

[This document has been modified to conform to the technical standards for publication.]

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. GHULAM BUSHRA,)
Complainant,)
v.)
DAVIS MANAGEMENT, INC.)
d/b/a PALMER CHEVRON)
Respondent.)

Received

JAN 12 2013

State of Alaska
Office of Administrative Hearings

ASCHR No. J-09-076
OAH No. 11-0315-HRC

**ORDER ADOPTING RECOMMENDED DECISION AND GRANTING THE
EXECUTIVE DIRECTOR'S UNOPPOSED MOTION TO DISMISS**

For the reasons stated in the Recommended Decision and the Executive
Director's Unopposed Motion to Dismiss, this case is now closed, and the Commission
will take no further action in the matter.

IT IS SO ORDERED.

Dated: December 31, 2012


Commissioner Lester Lundford

Dated: December 31, 2012


Commissioner Grace Merkes

Dated: December 21, 2012


Commissioner Joyce Skaflestad

**ORDER ADOPTING RECOMMENDED DECISION AND GRANTING THE EXECUTIVE
DIRECTOR'S UNOPPOSED MOTION TO DISMISS – Page 1**

*ASCHR, Paula M. Haley, Executive Director, ex rel. Ghulam Bushra v. Davis Management, Inc., d/b/a
Palmer Chevron*

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