

STEPHANIE SMITH

Complainant

v.

AMERICAN HEALTHCARE INSTITUTE

Respondent

\* BEFORE THE  
\* HOWARD COUNTY  
\* HUMAN RIGHTS COMMISSION  
\* HRC Case No. 05-07-011

\* \* \* \* \*

**DECISION AND ORDER**

On June 5, 12, 13 and 20, July 13 and October 5, 2006, the Howard County Human Rights Commission acting through its Hearing Panel (hereinafter "Panel") of Chairman Sung Chun, and Commissioners Patricia Davis and Salman Hussain, having heard and determined the above-captioned matter, pursuant to the Howard County Human Rights Law, hereby issues its Decision and Order based on the following Findings of Fact and Conclusions of Law.

Complainant, Ms. Stephanie Smith (hereinafter "Ms. Smith"), was represented by Michael P. Coyle, Esquire. The Office of Human Rights (hereinafter "OHR") was represented by Faith Adelman, Esquire. Respondent, American Healthcare Institute (hereinafter "AHI"), was represented by Steven F. Wrobel, Esquire. Complainant submitted an Opening Brief and a Reply Brief. OHR and Respondent submitted briefs containing Proposed Findings of Fact and Conclusions of Law. Complainant's submittal of its Reply Brief, received by the Panel on December 22, 2006, closed the record in this matter.

**INTRODUCTION**

On March 11, 2004, Ms. Smith filed a Charge of Discrimination (hereinafter "Charge") with the OHR alleging that AHI unlawfully discriminated against her in the area of employment

on the basis of her race in violation of Section 12.208 of the Howard County Code. Ms. Smith filed her Charge in a timely manner and AHI was an employer in Howard County at the time of the alleged discrimination. Respondent has not raised any jurisdictional issues on these issues and the Panel makes its decision on this matter on the merits based on its jurisdiction over this matter.

This case came before the Panel for a hearing and decision after a finding of Reasonable Cause was issued by the OHR on March 17, 2005.

Based on the preponderance of the testimonial and documentary evidence presented at the hearings on this matter, the Panel makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Ms. Smith is an African-American female. She was hired by AHI on January 6, 2002. Ms. Smith worked for AHI until March 1, 2004, when she was terminated. Ms. Smith was interviewed solely by and hired by Ms. Jan Santolla (hereinafter "Ms. Santolla") to be her Executive Administrative Assistant. Ms. Santolla was and still is a co-owner of AHI with Mr. Steven Winter (hereinafter Mr. "Winter") and she is AHI's Executive Vice-President. Mr. Winter was and still is AHI's President. Both Ms. Santolla and Mr. Winter are white.

From January 2002 to March, 2004, most of AHI's operations were conducted out of the basement of Ms. Santolla's home in Dayton, Maryland. When Ms. Smith was first hired she was AHI's only employee at the Dayton location besides Ms. Santolla. Ms. Santolla was Ms. Smith's supervisor. The rest of AHI's operations were conducted by Mr. Winter at an office in Anne Arundel County. After Ms. Smith's termination but before the hearings in this case began, AHI moved its entire operation to Anne Arundel County, Maryland.

In 2002, before there were more than just a few employees at AHI, Ms. Smith indicated that she was Ms. Santolla's "right-hand man." Ms. Smith was otherwise described as a "jack-of-all-trades." Ms. Santolla acknowledged that Ms. Smith worked hard, worked long hours (up to 60 hours per week) and helped her with everything in the early "start-up" days of AHI in 2002.

2. Ms. Santolla and Ms. Smith developed a close personal relationship as well. They both had teenage sons. They talked about problems in the business. Ms. Smith would provide transportation for Ms. Santolla's son. They exercised together, took walks together and confided in each other.

3. AHI's business involves the conducting of continuing education courses for nurses and mental health professionals through seminars and the sale of audio programs of its seminars. AHI hires faculty, doctors and nurses, to teach the seminars. It also arranges for the site of a seminar, usually a hotel, negotiating the terms of a contract with that hotel for the provision of a room and other services in connection with the seminar. It signs up participants for the seminars. It also makes the necessary travel arrangements and hotel accommodations for the faculty. AHI also is responsible for making sure that the written materials used by the faculty at the seminar are accurate, up to date, copied and delivered to the site of the seminar.

4. Ms. Smith earned \$30,000 per year when she was initially hired. In these early days of AHI's existence Ms. Smith took on several job duties in addition to acting as Ms. Santolla's Executive Assistant, including Office Manager, Hotel Coordinator, Faculty Coordinator and Production Coordinator. All parties agreed that none of these jobs had formal titles or descriptions but the Panel will use the capitalized job titles for ease of identification in the narrative of facts.

The Office Manager position entailed helping Ms. Santolla with interviewing and the hiring process for new employees, assisting new employees with the paperwork necessary to begin employment and receive benefits, handling payroll, calculating timesheets, and ordering office supplies. The Office Manager position included the Executive Assistant and Human Resources functions.

Ms. Smith testified that her Office Manager function included overseeing the operation and supervising employees when Ms. Santolla was not available. Ms. Smith testified that she let employees in to work, dismissed them at the end of the day, and made sure they got their work done. She testified that she handled employee complaints, dealt with inappropriate behavior such as over-long lunch breaks and excessive talking. However, Ms. Smith acknowledged that she would send employees to Ms. Santolla with their complaints or problems, and that Ms. Santolla would "back her up", at least during 2002.

Ms. Santolla agreed that Ms. Smith let employees in to work but indicated that Ms. Smith supervised only one employee as Production Coordinator, and that Ms. Santolla supervised the rest of the AHI employees at the Dayton office, whether or not she was physically present on the premises. Ms. Santolla acknowledged that in the very early days of 2002, Ms. Smith helped her put office procedures in place, do some basic accounting and bill paying, set up interviews with prospective employees, and set up the payroll. However, Ms. Santolla testified that Ms. Smith experienced conflicts with several employees when she tried to supervise them beyond her authority. She indicated that she told Ms. Smith to stop this practice and concentrate on her real duties- that of Hotel Coordinator.

The Hotel Coordinator position involved handling all the tasks in relation to dealing with hotels used as the sites for seminars, including negotiating rates for seminar rooms, reserving the

rooms, ensuring that all of the equipment necessary for a seminar was provided, and paying the bills for the seminar rooms. Ms. Smith's B.A. from Penn State University was in Hotel Management.

The Faculty Coordinator position involved handling all the travel and hotel accommodation arrangements for the faculty handling the seminars and communicating with the faculty as to those arrangements.

The Production Coordinator position involved ensuring that all of the written materials for each seminar were accurate, updated, copied and forwarded to the seminar.

5. Soon after Ms. Smith was hired AHI began hiring other employees. Valerie Gentry, an African-American female was hired on February 25, 2002, as a Customer Service Representative. Valerie D'Ambrogi was hired by Mr. Winter as a part-time Marketing Assistant on April 29, 2002. Ms. D'Ambrogi did not work out of the Dayton office and reported to Mr. Winter, although she did have interaction with Ms. Smith. Other employees/contractors hired in 2002 included Robin Pencil, an African-American female, a female employee named Rachel Moran (unknown race), and Andrea Bishop (unknown race) all Customer Service Representatives, and an independent contractor accountant.

6. Ms. Smith received a raise to \$33,000 per year in April of 2002, and to \$35,000 per year in May of 2002. She also received a bonus of \$1,000 at the end of 2002. Ms. Santolla conceded that Ms. Smith worked very hard in 2002 and performed her duties well enough to receive the two raises and the bonus in that year. AHI did not conduct any formal performance review or discipline of any employees from 2002 through March of 2004.

7. In 2003 AHI continued to hire a number of new employees. On February 3, 2003 AHI hired Tim Pagliachini, a white male, as Customer Service Manager and Jason McGinnis, an

African-American male, as Production Coordinator. In 2003, AHI hired Dietrich Jenkins as Faculty Coordinator. While Complainant indicated that Mr. Jenkins was hired in March of 2003, OHR and Respondent agreed that Mr. Jenkins was hired as Faculty Coordinator in the summer of 2003. This discrepancy in the timing of Mr. Jenkins' hiring is immaterial to the Panel's ultimate findings and conclusions. Therefore, as of the summer of 2003, Mr. McGinniss had taken over Ms. Smith's duties as Production Coordinator, although Ms. Smith supervised him, and Mr. Jenkins had taken over Ms. Smith's duties as Faculty Coordinator. In May of 2003 AHI also hired Torrance Green, an African-American male, as a Customer Service Representative. In June, 2003, AHI hired Janice Ivey, a white female, as Audio Production Coordinator, however she worked for only about a month and was replaced by Jason McGinnis, who was transferred from Production Coordinator. Darren Lawhorn was hired to replace Jason McGinnis as Production Coordinator in August of 2003. Leneen Speed-Walker, an African-American female was hired in March of 2003 as an Accounting Coordinator.

Ms. Santolla testified that Ms. Smith was replaced as Faculty Coordinator due to the many difficulties that Ms. Smith had with dealing with the travel plans of faculty and with being disrespectful to the faculty in her interactions with them as outlined below. Mr. Winter's testimony corroborates the fact that the faculty complained frequently about its interaction with Ms. Smith. Ms. Smith testified that she was replaced as Faculty Coordinator at her request due to workload.

Complainant's Exhibit 2, the faculty questionnaires filled out by AHI's independent contractor faculty, provides numerous examples of poor communication by AHI with faculty during the time that Ms. Smith was Faculty Coordinator. This poor communication included not providing information concerning hotel and travel arrangements at all or in a timely manner, and

errors made in hotel arrangements. Ms. Smith's insufficient communication to faculty was corroborated by Respondent's Exhibit 11 (Nay letter, Booth letter), and by the testimony of Mr. Booth and Ms. McCaffrey, two AHI faculty members.

Several faculty members provided direct testimony that Ms. Smith's attitude and demeanor was as much of a problem as her inefficiency and incompetence. She was described by faculty members as unprofessional and irritable (Resp. Ex 11, Nay letter), and angry, difficult and inappropriate (Resp. Ex. 11, Baxendale letter). Ms. Smith's cavalier attitude to the problems experienced by faculty members was brought out in the testimony of Michael Booth. Mary McCaffrey testified that she dealt with Ms. Smith 15-20 times over the two years that Ms. Smith worked for AHI and that she found her to be uncommunicative, rude, and unprofessional, separate and apart from competency and efficiency issues in terms of performance.

Ms. Smith disputed that any of the problems were her fault, alternatively denying or blaming every mistake and inappropriate interaction made in faculty coordination on her co-workers, the travel agency, the vendors, Ms. Santolla, Mr. Winter or the faculty members themselves. The Panel finds Ms. Smith's testimony in this regard to be not credible. Complainant and OHR suggest that the testimony of these faculty members and vendors was not credible due to their ongoing relationship with AHI. The Panel rejects this suggestion. It finds it unlikely that independent contractors and vendors would fabricate stories about a former employee of a company simply to continue doing business with that company. The consistency and cumulative nature of the testimony regarding Ms. Smith's performance and demeanor from these witnesses causes the Panel to reject any serious questioning of their credibility. The Panel also rejects Ms. Smith's contention that the number of mistakes made or poor interactions with faculty were not that significant as a percentage of total number of interactions or transactions. The Panel finds

that there is no evidence that the Faculty Questionnaires produced constituted all of the questionnaires filled out. Moreover, the Panel finds that the questionnaires presented and the testimony given indicate that AHI had a valid reason for replacing Ms. Smith as Faculty Coordinator.

The Panel similarly rejects Ms. Smith's contentions that her role as the bearer of the bad news of Ms. Santolla's decisions to vendors and faculty members was the cause of much of her performance problems. Most of the testimony as to Ms. Smith's problems in performing her job functions at AHI related to her inattention to detail, mistakes and poor attitude, not to conveying unpopular decisions.

The Panel finds that AHI had more than sufficient legitimate reasons for finding that Ms. Smith's performance in the role of Faculty Coordinator was not satisfactory based on her performance and attitude. The Panel finds that this is the reason why AHI replaced Ms. Smith as Faculty Coordinator in August of 2003, although that is not the subject of a claim in this case. As stated above, Ms. Smith was replaced in the Faculty Coordinator position by Dietrich Jenkins, an African-American male. Mr. Jenkins was eventually replaced by Ms. Catalina Burke, an Asian-American female.

8. Much of the same evidence cited above with respect to the Faculty Coordinator position supports AHI's decision to remove Ms. Smith from her responsibilities as Hotel Coordinator, although it is not clear whether that happened on December 30, 2003 or informally earlier. The faculty questionnaires (Complainant's Ex. 2) reveal that Ms. Smith was responsible for numerous problems with respect to hotel reservations and seminar room reservations, including too much distance between transportation arrival point and hotel site, no transportation

arrangements between airport and hotel, insufficient size of the seminar sites, no food accommodations in a hotel, and lack of audio-visual equipment reservations at seminar sites.

Nancy Seiter, who worked with AHI's travel agency, testified that Ms. Smith often made mistakes in getting back to her with hotel and transportation arrangements and that when mistakes had to be dealt with, Ms. Smith was abusive, unprofessional and impolite. Mr. Barry Blank, Ms. Seiter's boss and the owner of the travel agency, testified that he made AHI aware of the difficulties of his employees dealing with Ms. Smith. Mr. Blank testified that once when Ms. Smith called to complain about the travel agency's service, she said that she previously had a high level government job and that she wasn't used to dealing with people of low rank such as his travel agency's employees. Ms. Smith denied making this remark. The Panel believes the testimony of Ms. Seiter and Mr. Blank.

Ms. McCaffrey, an AHI Faculty member, testified that a hotel employee once told her that he didn't like dealing with Ms. Smith because she was so difficult. She also testified that after Ms. Smith left AHI's employ, there was a huge improvement in all her travel arrangements with AHI.

The Panel accepts as credible the testimony of AHI's witnesses that Ms. Smith's performance in the role of Hotel Coordinator was unsatisfactory enough in terms of performance and attitude for AHI to reasonably conclude that it had to remove her from that position, whether it was in December, 2003 or earlier. The Panel finds Ms. Smith's denials and explanations as to her performance and attitude in the Hotel Coordinator position to be not credible for the same reasons as outlined above with respect to the Faculty Coordinator position.

The Panel finds that AHI had more than sufficient legitimate reasons for finding that Ms. Smith's performance in the role of Hotel Coordinator was not satisfactory based on her

performance and attitude. The Panel finds that this was the reason why AHI replaced Ms. Smith as Hotel Coordinator in December, 2003 or earlier.

9. In the summer of 2002 an incident occurred related to AHI's plans to advance Ms. Smith to a Meeting Planner. According to Ms. Santolla, she had made it clear to Ms. Smith that she planned to advance her to a Meeting Planner from her Hotel Coordinator position. A Meeting Planner would attend larger conferences and seminars, occurring over several days at times, while a Hotel Coordinator usually handled smaller, usually one-day seminars and would not personally attend the seminars. Ms. Santolla's plan was that Ms. Smith would eventually take over Mr. Winter's role for larger conferences and advance to a Meeting Planner.

Ms. Santolla indicated that she told Ms. Smith that AHI was going to fly her to a large Boston conference to "shadow" Mr. Winter in order to begin the process of transitioning her to the position of Meeting Planner. Ms. Santolla indicated that she made it clear to Ms. Smith that the purpose of her attending the conference was so that Ms. Smith could interact with individuals at the conference. The result of this attempt was that Ms. Smith refused to shadow Mr. Winter, and performed only administrative tasks at the seminar for the stated reason that she did not have the appropriate clothes to appear publicly at the conference. Ms. Santolla testified that even after she assured Ms. Smith that her clothing was appropriate, Ms. Smith refused to shadow Mr. Winter. Ms. Smith testified that she did not know of the plan and did not wear appropriate clothing for the shadowing role. Ms. Santolla indicated that as a small company with a small profit margin, AHI would never have paid for Ms. Smith's airfare to go to the Boston conference to perform administrative tasks.

Ms. Santolla indicated that after this occurrence in Boston, she abandoned her plan of Ms. Smith becoming a Meeting Planner instead of a Hotel Coordinator. The Panel accepts Ms.

Santolla's testimony as to the Boston conference and finds that it was reasonable for AHI to abandon its plan of grooming Ms. Smith for the Meeting Planner position based on her inability or unwillingness to take on beginning to learn that role.

10. Ms. Santolla testified that Ms. Smith did not supervise the Customer Service Representatives or any other employees other than the Production Coordinator and that she told Ms. Smith that. She indicated that when she was gone from the premises she did not give Ms. Smith any additional duties other than letting the other employees in to work, and that she was only absent for a few days from January, 2002 until August, 2003 when Ms. Smith's Office Manager role ended.

Ms. Santolla testified that she told Ms. Smith that several customer service employees complained that Ms. Smith was correcting them and telling them what to do and that she told her to stop that activity and concentrate on her assigned duties.

Several AHI employees testified that they believed Ms. Smith supervised employees. Torrance Green testified that he observed Ms. Smith dealing with employees, that when Ms. Santolla wasn't there Ms. Smith was in charge in the office, and that when he first started working at AHI Ms. Smith supervised him. However, Mr. Green also testified that Ms. Santolla was his supervisor, and that Mr. Pagliachini was his manager not Ms. Smith. Mr. Green testified that Mr. Pagliachini told him that he thought Ms. Smith was his supervisor. He also testified that when Mr. Pagliachini was not sure of what to do, he would go to Ms. Smith for assistance. Mr. Pagliachini was terminated for poor performance at the end of 2003. Ms. Santolla testified that Mr. Pagliachini complained to her that Ms. Smith undermined him in his attempts to supervise the Customer Service Representatives.

