

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CHERIE SANTAI, :  
 :  
 Complainant :  
 :  
 v. : Docket No. 200803533  
 :  
 FRED BEANS FORD, INC, :  
 :  
 Respondent :

FINDING OF PROBABLE CAUSE

SUMMARY OF COMPLAINT:

The Complainant alleges that the Respondent discriminated against her by terminating her employment because of her sex, female (pregnancy) in violation of Section 5(a) and of the Pennsylvania Human Relations Act, 43 P.S. 955.

SUMMARY OF RESPONSE:

The Respondent alleges that the Complainant's position was eliminated "due to economic conditions."

## FINDINGS OF FACT IN SUPPORT OF PROBABLE CAUSE

Whereas the facts of the investigation have disclosed the following:

1. Cherie Santai (hereinafter "Complainant") is an adult female who became pregnant during her employment with the Respondent.
2. Fred Beans Ford, Inc., (hereinafter, "Respondent"), at all times relevant to the case at hand, employed four or more persons within the Commonwealth.
3. Respondent maintains an office at Route 611 & Saw Mill Rd, Doylestown, Pennsylvania 18901.
4. On or about March 1994, Complainant was hired as a Cashier at Respondent's Doylestown, Pennsylvania automotive dealership. Complainant reported directly to Respondent's owner Fred Beans (hereinafter "Beans").
5. On or about June 1996, Complainant was promoted to Assistant Service Manger in Respondent's Fred Bean Chevrolet location (845 N. Easton Road Doylestown, PA 18902). Complainant was directly supervised by Jim Mantella and Beans.
6. An Assistant Service Manager is "responsible for scheduling and selling all work for the assigned group to achieve its objective." "The ASM directly controls the end result of the customer's overall service experience and prepares and completes all documentation related to the service of the transaction."
7. On or about December 2001, Complainant was promoted to Service Manager in Respondent's Fred Bean Mitsubishi location (Route 313 & Saw Mill Roads Doylestown, PA 18902). Complainant was directly supervised by Kevin Lambert and Beans.
8. A Service Manager is "responsible for a customer sensitive, efficient, and profitable operation of the dealership's service department." "The director carries out this responsibility by building customer relations, operating the department at maximum production, creating a good work environment, and properly managing the assets of the department."

9. On or about February 22, 2005, Complainant received a "Very Good" score in every category on her 60-Day Performance Review.
10. On or about February 1, 2006, Complainant was congratulated for a "Record Breaking" January with respect to their Service and Parts sales record.
11. On or about July 2006, Complainant was transferred as a Service Manager to Respondent's Fred Bean Hyundai location (830 N. Easton Road Doylestown, PA 18902). Complainant was supervised by Matthew Tucker and Beans.
12. At all times relevant to this complaint, Complainant was never disciplined for violating any of the Respondent's policies or regulations and carried out her duties in a satisfactory manner.
13. On or about May 2008, Beans "noticed a glow" about Complainant and stated, "you aren't pregnant are you." Beans also asked if having "an additional child would effect her hours..."
14. Complainant admitted that she was pregnant.
15. From May 2008 up until the Complainant's termination, Beans and Elizabeth Beans Gilbert (hereinafter "Gilbert"), Respondent's Vice President on more than occasion stated that the Complainant's position had been adversely affected by her pregnancy.
16. A witness testified that the Respondent treated her in a similar manner when she requested FMLA leave because she was pregnant.
17. Gilbert asked the Complainant if she "had made or thought of contingency plans for the service department if she had to go out on maternity leave."
18. On or about August 11, 2008, Complainant hired Robert Engle (hereinafter "Engle"), Caucasian male as an Assistant Service Manager for Respondent's Fred Bean Hyundai location.
19. On or about September 12, 2008, Complainant was provided a Leave Authorization from pursuant to the Complainant's request for FMLA leave.

20. Complainant's authorized leave was scheduled from December 18, 2008 through March 11, 2009. Complainant requested and was granted the ability to use her vacation and personal days while on leave.
21. On or about October 21, 2008, Respondent laid off several employees. Respondent laid off Denise Reid, Fleet Administrator (Leasing Department) and Dawn Scheets, Marketing Assistant (Advertising Department).
22. On or about October 21, 2008, at a later meeting, the Complainant was notified by Beans that her job was being eliminated. Complainant's Exit Report reflects that her attendance and performance was satisfactory and that she is eligible for rehire. Further, it stated that the "lack of work was permanent."
23. Complainant was not offered a chance to transfer to an open position.
24. From January 1, 2008 through December 31, 2008, Complainant was the only Service Manger who was laid off.
25. From January 1, 2008 through December 31, 2008, Respondent laid off eight (including Complainant) employees from the Respondent's Fred Bean Hyundai location. Seven of the employees worked in the body shop.
26. Complainant is the only employee that was laid off from Fred Bean Hyundai, from January 1, 2008 through December 31, 2008, who was pregnant and held a supervisory position.
27. At the time of her termination, Complainant was the only pregnant Service Manager.
28. On or about October 21, 2008, following the Complainant's termination, Engle was promoted to Service Writing Manager and assumed the Complainant's duties.
29. Several days after her termination, Complainant learned, through a direct mailing, that her job had not been eliminated. The direct mailing reflects that Engle, assumed her Service Manager position. Despite the fact that Complainant's Exit Report alleged that the "lack of work was permanent."

30. Further, following her termination, Complainant received automated phone messages from Respondent in which Engle states that he is Respondent's Fred Bean Hyundai's Service Manager.

31. To date, Respondent is currently seeking applicants to fill at least twenty-six (26) full time positions, including two (2) Assistant Manager positions and three (3) part time positions.

WHEREFORE, probable cause exists to credit the allegations that the Respondent unlawfully discriminated against the Complainant by terminating her employment because of her sex, female (pregnant) in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. 955.

### TERMS OF ADJUSTMENT

1. Respondent shall cease and desist from discriminating against its employees because of their sex, female (pregnancy).
2. Respondent shall pay the Complainant back wages, less interim earnings, from October 21, 2008 to the date that the Respondent either employs Complainant as a Service Manager or offers to employ Complainant in said position and the Complainant rejects the offer.
3. Respondent for all employment-related purposes, including but not limited to, seniority, pension, and all other employee benefits, shall treat the Complainant as if she had been employed as a full time employee at all times subsequent to October 21, 2008.
4. Respondent shall reimburse the Complainant for any certifiable travel expenses incurred in matters involving the complaint; compensate the Complainant for any loss of work incurred in matters involving the complaint; and reimburse the Complainant for any other verifiable, reasonable out-of-pocket expenses caused by the allegedly unlawful discriminatory practices for which probable cause has been found to exist.
5. Respondent shall provide training to all of its employees that is designed to educate the employees regarding the right of all employees to be free from discrimination based upon their sex.