

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

ELAINE J. PRENTICE,)	EEOC Case No. 150941924
Petitioner,)	FCHR Case No. 94-9714
)	DOAH Case No. 99-000508
vs.)	FCHR Order No. <u>00-021</u>
)	
NORTH AMERICAN REALTY CORPORATION, D/B/A NORTH AMERICAN ACQUISITION CORPORATION,)	
Respondent)	

**ORDER REMANDING REQUEST FOR RELIEF FROM AN UNLAWFUL
EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner E. Prentice filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1993), alleging that Respondent North American Realty Corp., d/b/a North American Acquisition Corp., committed an unlawful employment practice on the basis of Petitioner's sex (pregnancy-based discrimination) and marital status when it terminated Petitioner from employment on September 2, 1993. Petitioner requested an administrative hearing and the Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding. Prior to the conduct of a formal proceeding, Administrative Law Judge Errol H. Powell issued a Recommended Order of Dismissal, dated May 23, 2000. Pursuant to notice, public deliberations were held on October 26, 2000, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order of Dismissal.

Conclusions of Law

The Administrative Law Judge found that Petitioner filed a charge of discrimination on April 4, 1994, that the Commission did not complete its investigation, and that Petitioner executed a document requesting an administrative hearing on August 21, 1998. Recommended Order of Dismissal, 1, 2, and 3. The Administrative Law Judge concluded that Petitioner had 35 days from the completion of the initial 180-day period following the filing of the complaint in which to file a request for administrative hearing (Recommended Order of Dismissal, 12), and that since Petitioner's request for administrative hearing was not filed within this time period Petitioner's administrative action was barred. Recommended Order of Dismissal, 13. In so concluding, the Administrative Law Judge relied on, inter alia, the decision in *Milano v. Moldmaster*, 703 So. 2d 1093 (Fla. 4th DCA 1997). Recommended Order of Dismissal, 9 and 13. We conclude that the Administrative Law Judge's conclusion that Petitioner's request for administrative hearing is untimely is an error of law, and as ordered, infra, that the case

should be remanded to the Administrative Law Judge for further proceedings. The Florida Civil Rights Act of 1992 (Act) states, "In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause." Section 760.11(8), Florida Statutes (1999). The referred to subsection (4) states, "In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either: (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or (b) Request an administrative hearing under ss. 120.569 and 120.57." Section 760.11(4), Florida Statutes (1999). With regard to civil suits, the Act states, "A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission." Section 760.11(5) Florida Statutes (1999). With regard to administrative proceedings, the Act states, "An administrative hearing pursuant to (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission." Section 760.11(6), Florida Statutes (1999). In interpreting these statute sections a Commission panel stated, "...we conclude that the plain meaning of the cited statutory provisions is that a complainant may request an administrative hearing at any time after the conclusion of the initial 180-day period following the filing of the complaint and no later than 35 days after the date of a determination by the Commission (or simply no later than 35 days after the date of determination, if the Commission's investigation is completed within 180 days of the filing of the complaint)." *Wilson v. Scotty's, Inc.*, FCHR Order No. 98-032 (FCHR 1998). We note that the *Milano* decision, *supra*, cited by the Administrative Law Judge, holds that the one-year limitation for filing a civil suit begins to run at the expiration of the 180-day period in which the Commission is to make a reasonable cause determination. See *Milano*, at 1094. The Commission panel in *Wilson*, *supra*, specifically rejected the contention that *Milano*, *supra*, was controlling of the issue presented in the case before it relating to the time frame for filing a request for administrative hearing. See Order. At oral argument, Respondent contended that the Supreme Court's decision in *Joshua v. City of Gainesville*, 25 Fla. L. Weekly S641 (Fla. August 31, 2000), acted to bar Petitioner's request for administrative hearing. We note that the request for administrative hearing in this matter was filed both more than 4 years after the filing of the initial complaint, and, obviously then, more than four years after the date of harm. Recommended Order of Dismissal, 1 and 3. *Joshua*, *supra*, overturned lower appellate courts that had concluded that if the Commission had not yet issued a "reasonable cause" determination within 180 days of the filing of the complaint, the complainant had to file its law suit within one year of this initial 180-day period or be barred from doing so later. In so doing, the Court held that in cases in which a "reasonable cause" determination had not been issued by the Commission the four-year statute of limitation for causes of action based on statutory liability applied, not a limitation of 180 days plus 1-year from complaint-filing. We note that *Joshua* dealt with the time frame for filing a civil action in court, as opposed to the time frame to request an administrative hearing, the issue presented in this case, and conclude that nothing in the *Joshua* decision requires deviation from the Commission's position set out in *Wilson*, *supra*. Based on the foregoing, and since no determination has been issued in the instant case, we conclude that Petitioner's request for administrative hearing is timely and, as indicated, above, that the Administrative Law Judge committed an error of law in concluding that the request for administrative hearing is untimely. Finally, we find: (1) that the Administrative Law Judge's conclusion of law we are correcting is within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the time period for filing a request for administrative relief under the Florida Civil Rights Act of 1992; (2) the reason the correction is being made is that the conclusion of law as stated by the Administrative Law Judge runs contrary to previous Commission action on the issue; and (3) that in making this correction the conclusion of law we are substituting is as or more reasonable than the conclusion which has been rejected. See, Section 120.57(1)(l), Florida Statutes (1999).

Exceptions

Petitioner filed eight numbered exceptions to the Administrative Law Judge's Recommended Order of Dismissal, in a document entitled, "Exceptions to Judge Powell's Recommended Order to Dismiss filed on May 23, 2000." Exception 1 excepts to the finding that the complaint in this matter was filed on April 4, 1994. The Commission's file reflects competent and substantial evidence to support this finding, namely a complaint form stamped received

by the Commission on April 4, 1994. We reject exception 1. Exceptions 2 through 8 except to the Administrative Law Judge's conclusion that Petitioner had 35 days to file a request for administrative hearing after the expiration of the 180-day period from the filing of the complaint in which the Commission was to make a reasonable cause determination, and that since the request for administrative hearing was filed later than this, it was not timely filed. For reasons discussed in the "Conclusions of Law" section of this Order, we accept exceptions 2 through 8.

Remand

The Request for Administrative Hearing and Complaint of Discrimination are hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this Order.

DONE AND ORDERED this 9th day of January, 2001
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aristides Sosa; and
Commissioner George Farrell; and
Commissioner Roosevelt Paige;

Filed this 9th day of January, 2001,
in Tallahassee, Florida

/s/

Azizi Coleman, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Mark J. Berkowitz, P.A.
524 S. Andrews Avenue
Suite 200N
Ft. Lauderdale, FL 3330

Michael W. Casey, III, Esq.
Scott S. Allen, Esq.
Muller, Mintz, Kornreich, Caldwell, Casey, Crosland & Brammick, P.A.
200 South Biscayne Boulevard, Suite 3600
Miami, FL 33131-2338

Errol H. Powell, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/

Azizi Coleman,
Clerk of the Commission
Florida Commission on Human Relations