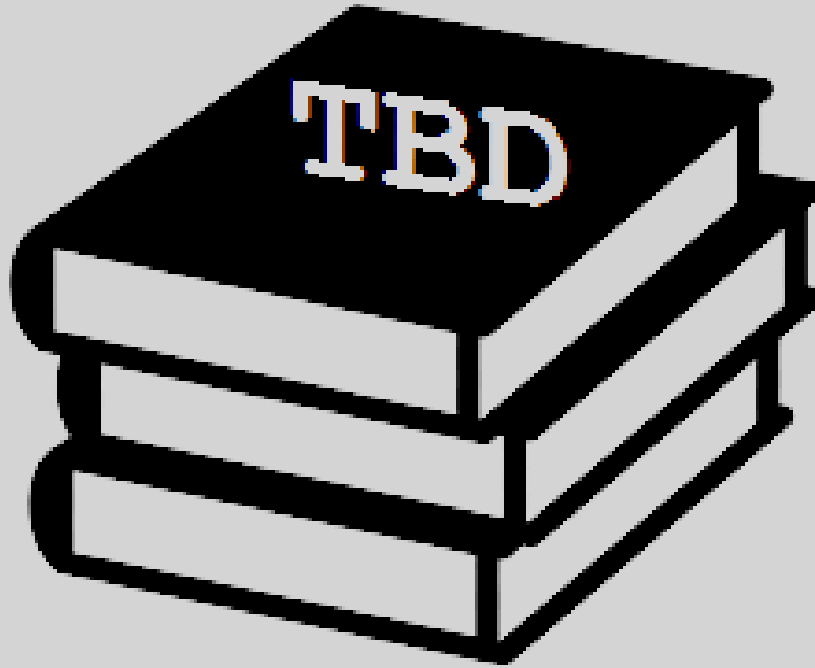


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IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT
STATE OF FLORIDA

FILED
01 MAR -8 PM 3:40
DIVISION OF
ADMINISTRATIVE
HEARINGS

COLUMBIA NORTH FLORIDA
REGIONAL MEDICAL CENTER,

Petitioner,

vs.

BOBBI DEBOSE,

Respondent.

Case No.: _____

Lower Tribunal Case No:

DOAH Case No. 00-3426 EJD

FCHR Case No. 97-1298

**PETITION FOR WRIT OF PROHIBITION OR QUO WARRANTO
AND/OR FOR REVIEW PURSUANT TO §120.68(1), FLORIDA STATUTES**

Petitioner, COLUMBIA NORTH FLORIDA REGIONAL MEDICAL CENTER ("North Florida"), pursuant to Fla. R. App. P. 9.100 and Section 120.68(1), Florida Statutes, respectfully petitions this Court for review of the Florida Commission on Human Relations' Order entered on February 8, 2001 (Exhibit A) and/or for a writ of Prohibition or for Quo Warranto restraining the Florida Commission on Human Relations from purporting to exercise jurisdiction of the Petition for Relief of Bobbie Debose ("Debose") in this matter, and shows the Court as follows.

**I.
BASIS FOR INVOKING JURISDICTION**

This Court has jurisdiction to issue a writ of prohibition or quo warranto under Art. V, § 4(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(b)(3).

A writ of prohibition and/or quo warranto is the proper remedy

to challenge the exercise of power without jurisdiction or to contest the authority of a public agency to act. See Markham v. Moriarty, 575 So. 2d 1307 (Fla. 4th DCA 1991) (issuing writ of prohibition to restrain circuit court from hearing challenge to tax assessment where action was not filed within 60 days of date of certification of assessment), cert. denied, 502 U.S. 968 (1991); Chiles v. Phelps, 714 So. 2d 453 (Fla. 1998) (addressing merits of petition for writ of quo warranto challenging action of legislature as having exceeded its authority); State v. Kenny, 714 So. 2d 404 (Fla. 1998) (issuing writ of quo warranto where the Attorney General challenged the authority of the Office of Capital Collateral Regional Counsel (CCRC) to represent death row inmates in civil rights actions); Gulfstream Park Racing Association, Inc. v. Department of Business Regulation, 443 So. 2d 113 (Fla. 3rd DCA 1983), approved, 441 So. 2d 627 (Fla. 1983) (issuing writ of quo warranto and quashing order of Division of Parimutuel Wagering of Department of Business Regulation because Division acted in excess of its statutory authority).

The writ of prohibition and/or quo warranto is the proper procedural device for challenging an exercise of administrative agency authority as being in excess or beyond its statutory jurisdiction. See Williams v. Coastal Florida Police Benevolent Association, Inc., 765 So. 2d 908 (Fla. 5th DCA 2000) (addressing merits of petition for writ of prohibition challenging whether

Public Employees Relations Commission (PERC) was authorized by statute to conduct proceedings relating to determination of collective bargaining unit for law enforcement officers); Osceola County v. St. Johns River Water Management Dist., 486 So. 2d 616 (Fla. 5th DCA 1986), aff'd, 504 So. 2d 385 (Fla. 1987) (writ of prohibition is proper remedy where administrative agency purports to exercise authority beyond that granted by statute); Housing Authority of City of Sanford v. Billingslea, 464 So. 2d 1221 (Fla. 5th DCA 1985) (issuing rule to show cause and addressing on merits petition for writ of prohibition to restrain Florida Commission on Human Relations from acting upon discrimination complaint as to which employer contended circuit court had exclusive jurisdiction); Gulfstream Park Racing Association, Inc. v. Department of Business Regulation, 443 So. 2d 113 (Fla. 3rd DCA 1983), approved, 441 So. 2d 627 (Fla. 1983) (writ of quo warranto issued and order of Division of Parimutuel Wagering of Department of Business Regulation quashed because Division acted in excess of its statutory authority). See also JM Family Enterprises, Inc. v. Freeman, 758 So. 2d 1175 (Fla. 4th DCA 2000) (issuing writ of prohibition and quashing order denying motion to dismiss complaint in equity for pure bill of discovery that sought information to support employment discrimination claims).

Prohibition is also the appropriate remedy to restrain a tribunal from exercising subject matter jurisdiction in a matter

where the pleading invoking such jurisdiction is not filed within the jurisdictional time limit. See Department of Revenue v. Eastern American Technologies Corp., 762 So. 2d 1044 (Fla. 5th DCA 2000) (granting writ of prohibition to restrain circuit court from exercising jurisdiction of action contesting validity of tax assessments because challenge not filed within 60 days of date of assessment); Cypress Bend Condominium I Association, Inc. v. Dexner, 705 So. 2d 681 (Fla. 4th DCA 1998) (granting writ of prohibition to restrain circuit court from conducting trial de novo following arbitration award, because complaint not filed within thirty days of date of arbitration award); State ex rel. Florida Dept. of Natural Resources v. District Court of Appeal, Second District, 355 So. 2d 772 (Fla. 1978) (granting writ of prohibition to restrain district court of appeal from exercising jurisdiction because notice of appeal not filed within thirty days of date of adoption and filing of agency rule).

The instant Petition seeks to restrain the Florida Commission on Human Relations from acting beyond its statutory jurisdiction and authority. The facts of the instant case are very similar to those in Cypress Bend Condominium I Association, Inc. v. Dexner, 705 So. 2d 681 (Fla. 4th DCA 1998), wherein the court granted a writ of prohibition. In Cypress Bend, a condominium association and condominium unit owner submitted a dispute to arbitration in accordance with Section 718.1255, Florida Statutes (1997). The

statute provided in pertinent part that "[a]n arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days." §718.1255(4)(k), Fla. Stat. (1997). The arbitrator issued an award in favor of the condominium association, and the unit owner filed an action for trial de novo thirty-one days after the date of the award. The trial court denied the condominium association's motion to dismiss, holding that an administrative rule had the effect of adding an additional five days to the statutory thirty-day filing deadline, because the arbitration award was served by mail. Cypress Bend, 705 So. 2d at 681.

The Fourth District Court of Appeal held that the thirty-day time frame for seeking review of the arbitration award was a jurisdictional precondition to review of the arbitration award. Accordingly, the circuit court exceeded its jurisdiction by proceeding to hear the action which was not filed within the statutory thirty-day deadline, and issued a writ of prohibition.

As explained below, the Florida Commission on Human Relations in the instant proceeding has likewise exceeded its statutory jurisdiction by purporting to extend an unambiguous statutory filing deadline without any statutory authority to do so.

The Commission's Order is also subject to review under Section 120.68(1), Florida Statutes, because review of the Commission's

final agency action will not provide an adequate remedy. The Commission's action in purporting to accept jurisdiction of Debose's Petition for Relief, and remanding the matter to DOAH for a hearing, will have immediate consequences for Petitioner North Florida. Pursuant to Section 760.10(12), Florida Statutes, records and documents relating to this matter that are in the possession of the Commission that otherwise would be confidential and subject to disclosure only to the parties, automatically become subject to full public disclosure "in the course of a hearing or proceeding under this section."

Accordingly, this Court has jurisdiction to review the Commission's Order. See Fiat Motors, Inc. v. Calvin, 356 So. 2d 908 (Fla. 1st DCA 1978) (accepting jurisdiction under Section 120.68(1) to review non-final agency order which determined that a complaint was properly and timely filed within statutory parameters, noting that party's "failure to timely file the required verified complaint left the Division without jurisdiction and, upon expiration of the 90-day period for initiating proceedings, without power to acquire jurisdiction" and noting inadequacy of remedy by direct appeal), cert. denied, 360 So. 2d 1247 (Fla. 1978).¹

¹ This is not a case like Mullin v. State, Department of Administration, 354 So. 2d 1216 (Fla. 1st DCA 1978), cert. denied, 359 So. 2d 1217 (Fla. 1978), wherein prohibition was denied because the petitioner merely asserted as an affirmative defense that "the applicable statute of limitations had run."

II.
STATEMENT OF THE FACTS

Bobbi Debose filed a complaint of discrimination with the Florida Commission on Human Relations. The Commission investigated the allegations of the complaint, and on June 21, 2000, the Executive Director of the Commission issued a Determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred. (Exhibit B, DOAH Recommended Order, at 2); (Exhibit C, FCHR Notice of Determination: No Cause).

On June 21, 2000, the Commission mailed a copy of the Notice of Determination of no reasonable cause to Ms. Debose. (Exhibit C, FCHR Notice of Determination: No Cause); (Exhibit B, DOAH Recommended Order, at 2). The Determination mailed on June 21 specifically advised Ms. Debose that:

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF **within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.**

* * * *

If the Complainant fails to request an administrative hearing **within 35 days of the date of this notice**, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

(Exhibit C, Notice of Determination: No Cause) (emphasis in bold added); (Exhibit B, DOAH Recommended Order, at 2). The 35th day following the date of the No Cause Determination was Wednesday, July 26, 2000. (Exhibit B, DOAH Recommended Order, at 3).

On August 1, 2000, the Commission Clerk stamped in a Petition for Relief, styled Bobbie Debose v. N.F.R.M.C. (Exhibit D, Petition for Relief, at 1); (Exhibit B, DOAH Recommended Order, at 3). The Petition was post-marked July 31, 2000. (Exhibit D, Envelope); (Exhibit B, DOAH Recommended Order, at 3).

Thus, the Petition for Relief was post-marked on the 40th day after the date of the Notice of No Cause Determination, and it was stamped in by the FCHR Clerk on the 41st day after the date of the Notice. (Exhibit B, DOAH Recommended Order, at 3). Accordingly, the Petition for Relief was "postmarked ... five days after expiration of the statutory filing deadline" and was "stamped in by the Commission Clerk ... six days after the statutory filing deadline." Id.

The Commission referred Ms. Debose's Petition for Relief to DOAH for a formal administrative hearing. North Florida filed a Motion to Dismiss the Petition (Exhibit E) because Ms. Debose had not requested a formal hearing within 35 days of the date of determination of No Cause, as mandated by Section 760.11(7), *Fla. Stat.*, which provides as follows:

If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

(emphasis added).

Ms. Debose did not respond to North Florida's Motion to Dismiss within the time allotted. Accordingly, Administrative Law Judge Ella Jane P. Davis issued an Order allowing Ms. Debose an additional ten days to "file any written response in opposition to the motion and any disputation, explanation, or mitigation of the documents attached in support of the motion." (Exhibit F, at 2). Ms. Debose did not file any response to the Motion to Dismiss or to the Court's subsequent Order.

The Administrative Law Judge on October 20, 2000, issued an Order finding that "[t]he certified copy of the Petition stamped-in by the Commission and its post-marked envelope show that the Petition for Relief was not timely-filed with the Clerk of the Commission." (Exhibit B, Recommended Order, at 3). Accordingly, the Administrative Law Judge recommended that the Commission dismiss the Petition for Relief. (Id. at 7).

Although the Administrative Law Judge's Recommended Order advised the parties of the right to submit written exceptions, Ms. Debose did not submit any written exceptions to the Recommended Order.

On February 8, 2001, the Commission entered an Order concluding that the Administrative Law Judge erred in determining that the Petition was not timely filed, and remanding the Petition to DOAH for an administrative hearing. (Exhibit A). Although

Section 760.11(7) provides that the Petition "must be made within **35 days of the date of** determination of reasonable cause," the Commission determined that "since the 'Notice of Determination: No Cause' was served by mail, Petitioner had **38 days from the date of** the 'Notice of Determination: No Cause' to request an administrative hearing." (Exhibit A, Commission Order, at 2). The Commission added three days to the statutorily-prescribed thirty-five day period under its service by mail rule. See Rule 60Y-4.007(2), F.A.C. (when party required to act within prescribed time after service of a notice or order, and such notice or order is served by mail, three days are added to prescribed period). The thirty-eighth day after June 21, 2000 was Saturday, July 29, 2000. (Id.). The Commission therefore determined that Ms. Debose had until Monday, July 31, 2000, within which to request an administrative hearing. (Id.). Because the Commission deems documents filed as of the date of the post-mark, the Commission concluded that Ms. Debose's Petition for Relief, mailed on the 40th day after the date of the No Cause Determination was timely. (Id.).

Petitioner North Florida files this Petition for Writ of Prohibition or Quo Warranto and/or for review under Section 120.68(1), Fla. Stat., within thirty days from the date of the Commission's Order of Remand. North Florida has moved to stay the proceeding below. (Exhibit G).

**III.
NATURE OF THE RELIEF SOUGHT**

The nature of the relief sought by this petition is a writ of prohibition or quo warranto restraining the Florida Commission on Human Relations from exercising jurisdiction of Respondent Debose's Petition for Relief in this matter, and directing the Commission to dismiss the subject Petition in accordance with Section 760.11(7), Florida Statutes.

**IV.
ARGUMENT**

Administrative agencies are creatures of statute and have only such powers as statutes confer. Pearson v. Moore, 767 So. 2d 1235, 1238 (Fla. 1st DCA 2000). As the First District Court of Appeal stated in Department of Environmental Regulation v. Falls Chase Special Taxing District, 424 So. 2d 787, 793 (Fla. 1st DCA 1982), rev. denied, 436 So. 2d 98 (Fla. 1983):

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction.

Id. (cited in East Central Regional Wastewater Facilities Operation Board v. City of West Palm Beach, 659 So. 2d 402, 404 (Fla. 4th DCA 1995)). Accordingly, "[a]ny reasonable doubt about the lawful existence of a particular power that is being exercised by an administrative agency is to be resolved against its exercise." Gulfstream Park Racing Association, Inc. v. Department of Business

Regulation, 443 So. 2d 113, 118 (Fla. 3rd DCA 1983), approved, 441 So. 2d 627 (Fla. 1983) (writ of quo warranto issued and order of Division of Parimutuel Wagering of Department of Business Regulation quashed because Division acted in excess of its statutory authority).

In the instant case, the Florida Commission on Human Relations exceeded its statutory authority in this proceeding by purporting to extend the statutorily-mandated time frame of "35 days of the date of determination of reasonable cause," § 760.11(7), Fla. Stat., and changing this time frame to "38 days from service of the Notice of Determination," such that a petition mailed on the 40th day was deemed timely filed.

Section 760.11(7), Fla. Stat., is clear and unambiguous. The statute requires that "[i]f the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint." (emphasis added). The statute is likewise clear that the Commission is not authorized to act upon the claim unless the complainant requests an administrative hearing "within 35 days of the date of reasonable cause." (emphasis added). Otherwise, the claim is "barred."

The request for an administrative hearing following the Commission's Determination of No reasonable cause (resulting in Dismissal with Prejudice of the matter by operation of law) in this

context is analogous to proceedings for review in which the untimely filing of the request for review requires dismissal of the appeal for lack of jurisdiction. See Millinger v. Broward County Mental Health Division and Risk Management, 672 So. 2d 24 (Fla. 1996) (appeal dismissed for untimely filing of notice of appeal from administrative order, even though notice was mailed within thirty days of order); Cypress Bend Condominium I Association, Inc. v. Dexner, 705 So. 2d 681 (Fla. 4th DCA 1998) (prohibition granted to require dismissal of action for trial de novo following arbitration award, because action not timely filed); Jennings v. State, 2001 WL 10170 (Fla. 1st DCA Jan. 5, 2001) (appeal dismissed for untimely filing of notice of appeal); Capone v. Florida Board of Regents, 774 So. 2d 825 (Fla. 4th DCA 2000) (dismissal for untimely filing of Petition for Certiorari).

The Commission's determination of no reasonable cause requires the entry of a final order of dismissal of the complaint. The matter is in a state of dismissal unless the complainant requests an administrative hearing with respect to the Commission's determination within 35 days from the date of determination of reasonable cause. The statutorily determined time frame requires that the request must be made, not from "service of the Notice," but from "the date of determination of reasonable cause."

In rejecting the Administrative Law Judge's Order, the Commission determined that when the Notice of Determination is

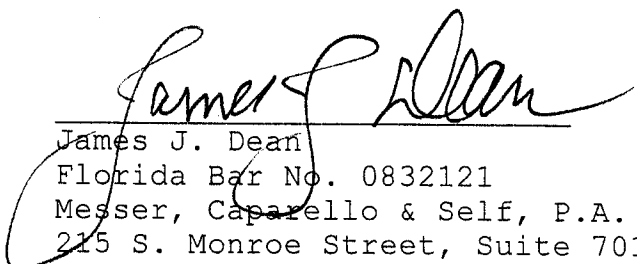
served by mail, a complainant has an additional three days (i.e., 38 total) from the date of the Notice of Determination within which to request a hearing. However, there is nothing in the statute authorizing the Commission to extend the filing deadline in this manner. Accordingly, the Commission exceeded its jurisdiction in rejecting the Administrative Law Judge's Recommended Order and remanding this Petition to the Administrative Law Judge for further action on the Petition. See Cypress Bend Condominium I Association, Inc. v. Dexner, 705 So. 2d 681 (Fla. 4th DCA 1998) (because time frame for filing civil action for review of arbitration award commenced with date of entry of award, and not from "service" of award, trial court exceeded its jurisdiction by adding additional days to filing period for service of the award by mail; action was untimely and circuit court lacked jurisdiction); Bell v. U.S.B. Acquisition Co., 734 So. 2d 403, 412-413 (Fla. 1999) (because Rule 9.400(c) for seeking review of appellate fees awarded by trial court requires that notice of appeal be filed within 30 days of rendition of order, the five-day mailing rule does not apply to extend the thirty-day period regardless of the manner of service of the order; notice of appeal was therefore untimely).

The Commission's exercise of jurisdiction in this matter does not depend upon controverted facts. There is no factual dispute regarding the date of the Notice of Determination of No cause, nor

is there any dispute regarding when the Petition for Relief was mailed and when it was received by the Commission. The Petition was not mailed until five days after expiration of the statutory filing deadline and it was not received until six days after expiration of the statutory filing deadline.

Accordingly, Petitioner North Florida respectfully requests that a writ of prohibition and/or quo warranto be issued and that the Commission be directed to dismiss Debose's Petition for Relief.

Respectfully submitted,




James J. Dean
Florida Bar No. 0832121
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720
(850) 224-4359 (Fax)

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition and Appendix to Petition have been furnished this 8th day of March, 2001, by United States Mail, postage prepaid, to Bobbie DeBose, 1129 N.E. 24th St., Gainesville, Florida 32641; by Hand Delivery to the Florida Commission on Human Relations, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida 32303-4149; and by Hand Delivery to the Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060.


James J. Dean

IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT
STATE OF FLORIDA

COLUMBIA NORTH FLORIDA
REGIONAL MEDICAL CENTER,

Petitioner,

vs.

BOBBI DEBOSE,

Respondent.

Case No.: _____

Lower Tribunal Case No:

DOAH Case No. 00-3426

FCHR Case No. 97-1298

**APPENDIX TO
PETITION FOR WRIT OF PROHIBITION OR QUO WARRANTO
AND/OR FOR REVIEW PURSUANT TO §120.68(1), FLORIDA STATUTES**

INDEX TO EXHIBITS

- Exhibit A Order of Florida Commission on Human Relations, entered on February 8, 2001, Remanding Petition for Relief from an Unlawful Employment Practice to Division of Administrative Hearings
- Exhibit B Recommended Order of Dismissal, entered by Administrative Law Judge Ella Jane P. Davis, on October 20, 2000
- Exhibit C Notice of Determination: No Cause, dated June 21, 2000
- Exhibit D Certified copies of Petition for Relief stamped in on August 1, 2000 and envelope with postmark of July 31, 2000
- Exhibit E North Florida's Motion to Dismiss and Memorandum of Law in Support, with exhibits, dated August 30, 2000
- Exhibit F Order advising Debose of Motion to Dismiss, entered by Administrative Law Judge Ella Jane P. Davis on September 27, 2000
- EXHIBIT G North Florida's Motion to Stay filed with Lower Tribunal

Exhibit A

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

BOBBI DEBOSE,

EEOC Case No. 15D970716

Petitioner,

FCHR Case No. 97-1298

v.

DOAH Case No. 00-3426

COLUMBIA NORTH FLORIDA REGIONAL
MEDICAL CENTER,

FCHR Order No. 01-007

Respondent.

ORDER REMANDING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Bobbi Debose filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1995), alleging that Respondent Columbia North Florida Regional Medical Center committed an unlawful employment practice on the basis of Petitioner's race (Black) and age (47) when it terminated her from her position.

The allegations set forth in the complaint were investigated, and, on June 21, 2000, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

Administrative Law Judge Ella Jane P. Davis issued a Recommended Order of Dismissal, dated October 20, 2000.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact and Conclusions of Law

The Administrative Law Judge found that the Petition for Relief in this matter was not filed within the statutorily required time period (i.e., within 35 days of the determination of reasonable cause), and that the late-filing of the Petition for Relief barred Petitioner from proceeding further. Recommended Order of Dismissal, ¶ 14 and ¶ 15.

Specifically, the Administrative Law Judge found that the "Notice of Determination: No Cause" in this matter was dated June 21, 2000, and was mailed to Petitioner (Recommended Order of Dismissal, ¶ 2); that the thirty-fifth day following June 21, 2000, was Wednesday,

June 26, 2000 (Recommended Order of Dismissal, ¶ 6); and that the Petition for Relief was postmarked July 31, 2000 (Recommended Order of Dismissal, ¶ 7).

We conclude that the Administrative Law Judge committed an error of law in concluding that the Petition for Relief was not timely filed.

According to statute, if, as in the instant case, the Commission determines there is no reasonable cause to believe that an unlawful employment practice has occurred, and the complainant wants to pursue the case further, a request for administrative hearing by the complainant must be made "within 35 days of the date of determination of reasonable cause" and "[i]f the aggrieved person does not request an administrative hearing within 35 days, the claim will be barred." Section 760.11(7), Florida Statutes (1999).

The Commission's rules state that, "Whenever a party has a right or is required to do some act or take some proceedings within the prescribed period after the service of notice or other paper upon that party and such notice or paper is served by mail, 3 days shall be added to the prescribed period." Fla. Admin. Code R. 60Y-4.007(2).

The Commission's rules also state, "When a document is received by mail, the date of filing shall relate back to the date of the postmark." Fla. Admin. Code R. 60Y-4.004(1).

Finally, the Commission's rules also state that in computing time periods, "[t]he last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday observed by the State of Florida, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday observed by the State of Florida." Fla. Admin. Code R. 60Y-4.007(1).

Applying these provisions to the facts found by the Administrative Law Judge, we conclude that since the "Notice of Determination: No Cause" was served by mail, Petitioner had 38 days from the date of the "Notice of Determination: No Cause" to request an administrative hearing.

Thirty-eight days for June 21, 2000, the date of the "Notice of Determination: No Cause," is Saturday, July 29, 2000. The next day following July 29, 2000, that is neither a Saturday, Sunday nor legal holiday observed by the State of Florida, is Monday, July 31, 2000.

We conclude that the Petition for Relief in this matter needed to be filed by July 31, 2000.

The Petition for Relief was postmarked July 31, 2000, and since the document was received by mail the date of the filing relates back to the date of the postmark.

We conclude that the Petition for Relief was timely filed on July 31, 2000. Accord, Garrepy v. Department of Environmental Protection, FCHR Order No. 99-023, August 20, 1999.

Finally, we find: (1) that the Administrative Law Judge's conclusions of law we are correcting are 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 corrections are being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission decisions on the issue; and (3) that in making this correction the conclusions of law we are substituting are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(1), Florida Statutes (1999).

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

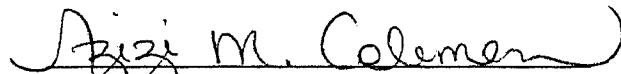
Remand

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

DONE AND ORDERED this 8 day of February, 2001.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Sharon Ofuani, Panel Chairperson;
Commissioner Clarethea Brooks; and
Commissioner Rita Craig

Filed this 8 day of February, 2001,
in Tallahassee, Florida.



Azizi Coleman, Acting Clerk
Commission on Human Relations
325 John Knox Rd., Bldg. F, Suite 240
Tallahassee, FL 32303-4149
(850) 488-7082

Copies furnished to:

Bobbi Debose
1129 Northeast 24th Street
Gainesville, FL 32641

James J. Dean, Esq.
Ricky Polston, Esq.
Polston & Dean, P.A.
106 East College Street
Suite 900, Highpoint Center
Tallahassee, FL 32302

Ella Jane P. Davis, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

Exhibit B

State of Florida
Division of Administrative Hearings

Sharyn L. Smith
Director and Chief Judge
Ann Cole
Clerk of the Division



The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida
32399-3060

October 20, 2000

Dana A. Baird, General Counsel
Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149

Re: Bobbi Debose v. Columbia North Florida Regional Medical
Center, DOAH Case No. 00-3426

Dear Ms. Baird:

Enclosed is my Recommended Order in the referenced case. Copies of this letter will serve to notify the parties that my Recommended Order has been transmitted this date.

As required by Subsection 120.57(1)(k), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ella Jane P. Davis".

ELLA JANE P. DAVIS
Administrative Law Judge

EJPD/cdl

Enclosure

cc: James J. Dean, Esquire
Bobbi Debose
Sharon Moultry, Clerk

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOBBI DEBOSE,)
)
 Petitioner,)
)
 vs.) Case No. 00-3426
)
 COLUMBIA NORTH FLORIDA REGIONAL)
 MEDICAL CENTER,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for consideration pursuant to the terms of the Order entered herein on September 27, 2000, by the undersigned Administrative Law Judge, Ella Jane P. Davis.

STATEMENT OF THE ISSUE

Whether the Petition for Relief from an unlawful employment practice was timely-filed, and if it was not timely-filed, is this cause barred?

PRELIMINARY STATEMENT

Respondent's Motion to Dismiss, served August 20, 2000, was not responded-to by Petitioner.

By the September 27, 2000 Order, Petitioner was given until October 9, 2000, in which to file any written response in opposition to the Motion and any disputation, explanation, or

mitigation of the documents attached to the Motion, upon which documents the Motion relies.

Petitioner has filed no response, thereby indicating that no dispute exists as to the authenticity of the documents attached to the Motion and that no legal argument is put forth against the Motion.

FINDINGS OF FACT

1. Petitioner filed an undated Charge of Discrimination on the basis of "race and "age" with the Florida Commission on Human Relations (Commission).

2. On June 21, 2000, the Commission issued its Notice of Determination: No Cause and mailed a copy thereof to Petitioner.

3. Petitioner was required by Section 760.11(7), Florida Statutes, to request a formal hearing "within 35 days of the date of determination" of no reasonable cause, failing which the claim would be barred and the complaint dismissed.

4. The Commission notified Petitioner of this 35-day deadline in its Notice of Determination: No Cause served on Petitioner on June 21, 2000.

5. Rules 60Y-5.004(5) and 60Y-4.007(2), Florida Administrative Code, provide that the Petition for Relief must be filed within 33 days of the date of a No-cause Determination which is served on a complainant by mail.

6. The thirty-third day following the June 21, 2000, issuance of the No-cause Determination expired on Monday, July 24, 2000. The thirty-fifth day following the June 21, 2000, issuance of the No-cause Determination expired on Wednesday, July 26, 2000.

7. The Petition for Relief was postmarked July 31, 2000, which is five days after expiration of the statutory filing deadline.

8. The Petition was stamped-in by the Commission Clerk on Tuesday, August 1, 2000, which is six days after the statutory filing deadline.

9. The certified copy of the Petition stamped-in by the Commission and its post-marked envelope show that the Petition for Relief was not timely-filed with the Clerk of the Commission.

10. There has been no affirmative showing of excusable neglect by Petitioner.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction for purposes of this Order, pursuant to Section 120.57(1), Florida Statutes.

12. Section 760.11(7), Florida Statutes, provides in pertinent part as follows:

If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. (Emphasis added)

13. Rules 60Y-5.004(5) and 60Y-4.007(1) and (2), and 60Y-4.004(1), Florida Administrative Code, provide as follows:

60Y-5.004 Executive Director's Investigatory Determination; Notice.
(5) A Notice of Determination of No Reasonable Cause, No Jurisdiction or Untimeliness shall advise the complainant of the right to file a Petition for Relief, pursuant to Rule 60Y-5.008, within 30 days of service of the notice. A form, Petition for Relief, hereby incorporated by reference, in blank, shall be provided to the complainant at the time of service of the notice.

* * *

60Y-4.007 Computation of Time Periods.
(1) In computing any period of time referred to in the rules of the Commission or contained in any order of the Commission, the day of the act, event, or occurrence from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday observed by the State of Florida, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday observed by the State of Florida. All time periods

are measured by calendar days except which working days are expressly indicated.

(2) Whenever a party has a right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and such notice or paper is served by mail, 3 days shall be added to the prescribed period.

* * *

60Y-4.004 Filing and Copies.

(1) "Filing" or "file" with the Commission, means actual receipt of a document by the Clerk of the Commission at its office, except that during the course of a hearing, a hearing officer or presiding officer may accept a document for filing, in which event the hearing or presiding officer shall note thereon the filing date and shall transmit it to the Clerk. When a document is received by mail, the date of filing shall relate back to the date of the postmark.

(Emphasis added)

14. Petitioner filed her Petition for Relief six days late, pursuant to the 35-day notice by the Commission and pursuant to the statute. She filed her Petition for Relief eight days late, pursuant to the Commission's "three days for mailing" rule. Even if one applies Rule 60Y-4.004(1), Florida Administrative Code, whereby the date of filing relates back to the postmarked date of July 31, 2000, the Petition for Relief was mailed/filed a minimum of five days late.

15. The date of filing of the Petition for Relief is jurisdictional, and late-filing bars Petitioner from proceeding before the Division of Administrative Hearings. See Garland v.

Department of State, DOAH Case No. 00-1797 (Recommended Order entered July 24, 2000), the Petition for Relief should be dismissed for untimeliness; McGill v. U.S. Marine/Bayliner Marine Corp., DOAH Case No. 95-6018 (Recommended Order entered March 18, 1996; Final Order received by DOAH July 3, 1997, but date of entry of Final Order unavailable), wherein a petition filed 47 days after notice was dismissed as untimely; Hall v. Boeing Aerospace Operation, DOAH Case No. 94-6976 (Recommended Order entered March 29, 1995; Final Order received by DOAH on June 19, 1997, but date of entry of Final Order unavailable), wherein a petition filed one-day past the statutory deadline was dismissed as untimely; Wright v. HCA Central Florida Regional Hospital, Inc., DOAH Case No. 94-0070 (Recommended Order entered July 27, 1995; Final Order entered January 26, 1995), wherein a 20-day late petition was dismissed; and Pusey v. Knapp, DOAH Case No. 96-3321 (Recommended Order entered November 25, 1996; Final Order entered October 16, 1997), holding that failure to file a petition within an extension of time granted by the Human Relations Commission required dismissal of the Petition absent proof of equitable tolling or excusable neglect.

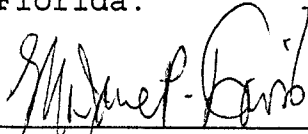
RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 20th day of October, 2000, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of October, 2000.

COPIES FURNISHED:

James J. Dean, Esquire
Ricky Polston, Esquire
Polston & Dean, P.A.
106 East College Street
Suite 900, Highpoint Center
Tallahassee, Florida 32302-1836

Bobbi Debose
1129 Northeast 24th Street
Gainesville, Florida 32641

Sharon Moultry, Clerk
Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149

Dana A. Baird, General Counsel
Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

Exhibit C



STATE OF FLORIDA

Florida Commission on Human Relations

FCHR No. 97-1298
EEOC No. 15D970716

Bush, Governor
Rick Daniel, Interim Executive Director

Complainant

Ms. Bobbi Debose
1129 NE 24th Street
Gainesville, Florida 32641

Respondent

Columbia North Florida
Regional Medical Center
c/o Mark E. Edwards, Esquire
2501 Park Plaza
Nashville, Tennessee 37203

NOTICE OF DETERMINATION: NO CAUSE

PLEASE TAKE NOTICE that a Determination has been made on the above-referenced complaint that there is no reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

FOR THE COMMISSION ON HUMAN RELATIONS

Sharon Moultry
Clerk of the Commission a. a.

I HEREBY CERTIFY that a copy of the foregoing Notice of determination was mailed to the above-named addresses this 21st day of June, 2000, by U.S. Mail.

By: Sharon Moultry a. a.

Enclosure: Petition for Relief, in blank (Complainant)

Exhibit D



State of Florida
 Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer



Complainant

Jeb Bush
 Governor

Bobbie Debose

v.

COMMISSIONERS

Respondent

Whitfield Jenkins, Chair
 Ocala

**Columbia North Florida Regional
 Medical Center**

FCHR No: 971298

EEOC No: 15D970716

Sharon Ofuani, Vice
 Chair
 Tallahassee

Clarethea Brooks
 Jacksonville

Rita Craig
 Palm Beach Gardens

George Farrell
 Tierra Verde

Elena Flom
 Cocoa

Leonie Hermantin
 Miami

Juan Montes
 Miami

Roosevelt Paige
 Orange Park

Keith A. Roberts
 Dania Beach

Aristides Sosa
 Miami

Chriss Walker
 Tallahassee

Derick Daniel
 Executive Director

CERTIFICATE OF AUTHENTICITY OF DOCUMENTS

I, the undersigned, do hereby certify that the attached documents are true and correct copies of the originals as filed with the Florida Commission on Human Relations.

Date: August 24, 2000

Gessie M. Stokes
 Customer Service and Records Unit
 Joseph A. Cash, Coordinator
 Florida Commission on Human Relation

Attachments:

Complete copy of FCHR file:

**James J. Dean , Esquire
 Polston & Dean, P.A.
 Post Office Box 1836
 Tallahassee, Florida 32302-1836**

*Please note Respondent's Attorney James J. Dean, Esquire
 Special Request:
 Postmarked enveloped Petitioner mailed Petition for Relief
 To FCHR.

FLORIDA COMMISSION ON HUMAN RELATIONS

Bobbie DEBOSE
PETITIONER

FCHR No. 97-1298

N. F. R. M. C.
RESPONDENT

00 AUG - 1 PM 2:38

PETITION FOR RELIEF

Petitioner files this Petition for Relief from an Unlawful Employment Practice and says:

1. PETITIONER'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: Bobbie DEBOSE
Street or P.O. Box 1129 N.E. 24th ST
City, State, Zip GAINESVILLE FL 32641
Area Code & Phone Number (352) 373-6845

2. RESPONDENT'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: N. Columbia N.F.R.M.C.
Street or P.O. Box St Rm 26 + I 75
City, State, Zip GAINESVILLE FL
Area Code & Phone Number () _____

PETITION FOR RELIEF

Page Two

3. RESPONDENT HAS VIOLATED THE FLORIDA CIVIL RIGHTS ACT OF 1992, AS AMENDED, IN THE MANNER SPECIFICALLY DESCRIBED BELOW:

This WAS NOT MISCONDUCT.

4. THE DISPUTED ISSUES OF MATERIAL FACT, IF ANY, ARE AS LISTED BELOW:

SAME NOT MISCONDUCT

5. THE ULTIMATE FACTS ALLEGED & ENTITLEMENT TO RELIEF ARE AS LISTED BELOW:

WHEREFORE, Petitioner prays that the Florida Commission on Human Relations enter its order prohibiting the unlawful employment practice and granting such affirmative relief as may be just and equitable in this cause.

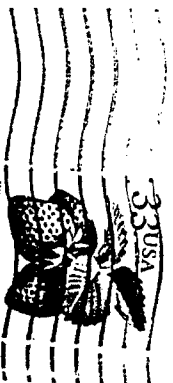
Bobbie DeBore
PETITIONER

Bobbie DeBose
1129 N.E. 24th St
Gainesville, FL
32641

C/O
Sharon
Moohey

FLA Commission on Human Relations

325 John Knox Rd
Suite 240, Building F
Tallahassee, FL



32303/4149
32303 4149

Exhibit E

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS
BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS

BOBBI DEBOSE,

Petitioner,

DOAH Case No. 00-3426

FCHR Case No. 97-1298

vs.

COLUMBIA NORTH FLORIDA
REGIONAL MEDICAL CENTER,

Respondent.

RESPONDENT'S MOTION TO DISMISS
AND MEMORANDUM OF LAW IN SUPPORT

Respondent COLUMBIA NORTH FLORIDA REGIONAL MEDICAL CENTER moves to dismiss the Petition for Relief in this matter, pursuant to Rule 28-106.204, F.A.C., on the following grounds:

1. On June 21, 2000, the Florida Commission on Human Relations issued its Notice of Determination: No Cause, and mailed a copy of the Determination to Petitioner on that same date. (See Exhibit A attached hereto).

2. The Petitioner was required to request an administrative hearing "within 35 days of the date of determination" of no reasonable cause, failing which the claim would be barred and the

complaint dismissed. § 760.11(7), Fla. Stat.¹

3. The Commission notified the Petitioner of this 35 day deadline in the Notice of Determination served on Petitioner on June 21, 2000. (See Exhibit A).

4. The 35 day deadline for filing a Petition for Relief requesting an administrative hearing following the June 21st issuance of the No-cause Determination expired on July 26, 2000.

5. The Petitioner's Petition for Relief was not received by the Clerk of the Florida Commission on Human Relations until August 1, 2000. (See Certified Copy of Petition and Postmarked envelope in which Petitioner mailed Petition to FCHR, attached hereto at Exhibit B).

6. Although the date of filing a document with the Commission relates back to the date of the postmark when the document is received by mail, see Rule 60Y-4.004(1), F.A.C., the Petition for Relief was post-marked July 31, 2000 -- five days after expiration of the filing deadline. See Id.

7. The Florida Commission on Human Relations correctly determined that there is no reasonable cause to believe that an

¹The Rules of the Florida Commission on Human Relations provide that the Petition for Relief must be filed even sooner: within 33 days of the date of a No-cause Determination which is served on a complainant by mail. See Rule 60Y-5.004(5) and Rule 60Y-4.007(2), F.A.C. (30 days from service and 3 days added for service by mail).

unlawful employment practice has occurred; the allegations of the administrative complaint and Petition are without merit; and the Petitioner's Petition for Relief was untimely filed.

WHEREFORE, the Respondent requests that an Order be entered recommending to the Florida Commission on Human Relations that the Complaint and Petition be dismissed with prejudice. See § 760.11(7), Fla. Stat. ("If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint.").

Memorandum of Law

In this matter, the Commission issued a Determination: No Cause, and the Petitioner failed to timely file a Petition for Relief requesting an administrative hearing.

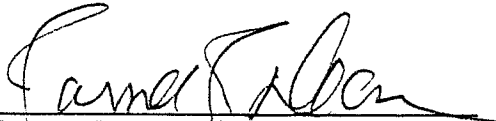
Section 760.11(7), Fla. Stat., provides in pertinent part as follows:

If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

(Emphasis added).

Accordingly, because the Petitioner's Petition for Relief was untimely filed, the Complaint and Petition should be dismissed. See, e.g., Michelle C. Phillips v. Orange Country Club Realty, Inc., DOAH Case No. 00-1794 (July 10, 2000) and decisions cited therein (Recommendation that final order be entered dismissing with prejudice the Petition for Relief, because Petition for Relief was filed nine days late) (courtesy copy of decision attached at Exhibit C).

Respectfully submitted,

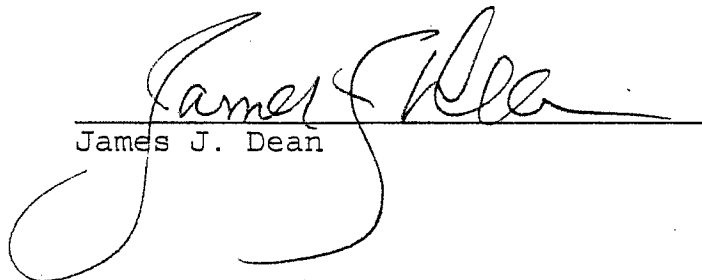


Ricky Polston (#0648906)
James J. Dean (#0832121)
Polston & Dean, P.A.
Suite 900, Highpoint Center
106 East College Avenue
Post Office Drawer 1836
Tallahassee, FL 32302-1836
(850) 513-0404
(850) 681-0506 (Fax)

Attorney for North Florida

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by United States Mail, postage prepaid, this 30th day of August, 2000, to Bobbie DeBose, 1129 N.E. 24th St., Gainesville, Florida 32641 and to the Florida Commission on Human Relations, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida 32303-4149.


James J. Dean

EXHIBIT

A



STATE OF FLORIDA

Florida Commission on Human Relations

Jeb Bush, Governor
Derick Daniel, Interim Executive Director

FCHR No. 97-1298
EEOC No. 15D970716

Ms. Bobbi Debose
1129 NE 24th Street
Gainesville, Florida 32641

Complainant

Columbia North Florida
Regional Medical Center
c/o Mark E. Edwards, Esquire
2501 Park Plaza
Nashville, Tennessee 37203

Respondent

NOTICE OF DETERMINATION: NO CAUSE

PLEASE TAKE NOTICE that a Determination has been made on the above-referenced complaint that there is no reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

FOR THE COMMISSION ON HUMAN RELATIONS

Sharon Moultry
Clerk of the Commission a. a.

I HEREBY CERTIFY that a copy of the foregoing Notice of determination was mailed to the above-named addresses this 21st day of June, 2000, by U.S. Mail.

By: Sharon Moultry a. a.

Enclosure: Petition for Relief, in blank (Complainant)

EXHIBIT

B



State of Florida
 Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer



Complainant

Jeb Bush
 Governor

Bobbie Debose

v.

Respondent

FCHR No: 971298

EEOC No: 15D970716

***Columbia North Florida Regional
 Medical Center***

COMMISSIONERS

Whitfield Jenkins, Chair
 Ocala

Sharon Ofuani, Vice
 Chair
 Tallahassee

Clarethea Brooks
 Jacksonville

Rita Craig
 Palm Beach Gardens

George Farrell
 Tierra Verde

Elena Flom
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Leonie Hermantin
 Miami

Juan Montes
 Miami

Roosevelt Paige
 Orange Park

Keith A. Roberts
 Dania Beach

Aristides Sosa
 Miami

Chriss Walker
 Tallahassee

Derick Daniel
 Executive Director

CERTIFICATE OF AUTHENTICITY OF DOCUMENTS

I, the undersigned, do hereby certify that the attached documents are true and correct copies of the originals as filed with the Florida Commission on Human Relations.

Date: August 24, 2000

Gessie M. Stoltz
 Customer Service and Records Unit
 Joseph A. Cash, Coordinator
 Florida Commission on Human Relation

Attachments:
 Complete copy of FCHR file:
James J. Dean , Esquire
Polston & Dean, P.A.
Post Office Box 1836
Tallahassee, Florida 32302-1836

*Please note Respondent's Attorney James J. Dean, Esquire
 Special Request:
 Postmarked enveloped Petitioner mailed Petition for Relief
 To FCHR.

FLORIDA COMMISSION ON HUMAN RELATIONS

Bobbie DEBASE
PETITIONER

FCHR No. 97-1298

N.F.R.M.C.
RESPONDENT

00 AUG - 1 PM 2:38

PETITION FOR RELIEF

Petitioner files this Petition for Relief from an Unlawful Employment Practice and says:

1. PETITIONER'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: Bobbie DEBASE
Street or P.O.Box 1129 N.E. 24th ST
City, State, Zip GAINESVILLE FL 32641
Area Code & Phone Number (352) 373-6845

2. RESPONDENT'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: N. Columbia N.F.R.M.C.
Street or P.O.Box St Rd 26 + I 75
City, State, Zip GAINESVILLE FL
Area Code & Phone Number () _____

PETITION FOR RELIEF

Page Two.

3. RESPONDENT HAS VIOLATED THE FLORIDA CIVIL RIGHTS ACT OF 1992, AS AMENDED, IN THE MANNER SPECIFICALLY DESCRIBED BELOW:

THIS WAS NOT MISCONDUCT.

4. THE DISPUTED ISSUES OF MATERIAL FACT, IF ANY, ARE AS LISTED BELOW:

SAME NOT MISCONDUCT

5. THE ULTIMATE FACTS ALLEGED & ENTITLEMENT TO RELIEF ARE AS LISTED BELOW:

WHEREFORE, Petitioner prays that the Florida Commission on Human Relations enter its order prohibiting the unlawful employment practice and granting such affirmative relief as may be just and equitable in this cause.

Bobbie DeBore
PETITIONER

Bobbie DeBase
1129 N.E. 24th St
Gainesville, FL
32641

C/O
Sharon
Moohey

FLA Commission ON Human Relations

325 John Knox Rd
Suite 240, Building F
Tallahassee, FL



32303/4143

323034149

EXHIBIT

C

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHELLE C. PHILLIPS,)
)
 Petitioner,)
)
 vs.) Case No. 00-1794
)
 ORANGE LAKE COUNTRY CLUB)
 REALTY, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This cause came on to be heard on June 26, 2000, by telephone conference call on the Motion to Dismiss filed by Respondent before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings. The Petitioner filed a response, through counsel, to the motion and Respondent answered it; arguments of counsel were made by telephone conference call. The arguments presented in the motion have been fully considered. The following appearances were entered:

APPEARANCES

For Petitioner: Joseph W. Beatty, Esquire
Richard A. Durose, Esquire
Foley and Lardner
Post Office Box 2193
Orlando, Florida 32801-2386

For Respondent: Edward R. Gay, Esquire
Law Firm of Edward R. Gay, P.A.
1516 East Concord Street
Orlando, Florida 32803

STATEMENT OF THE ISSUES

Whether the Division of Administrative Hearings has jurisdiction to conduct a formal hearing under the provisions of Sections 120.569 and 120.57(1), Florida Statutes, if the Petition for Relief was not timely filed pursuant to Section 760.11(7), Florida Statutes.

PRELIMINARY STATEMENT

On January 7, 1998, Petitioner filed with the Florida Commission on Human Relations (FCHR) a charge of discrimination against the Respondent based on her handicap. The FCHR conducted an investigation. During the course of the investigation, Petitioner was represented by counsel. Upon completion of its investigation, the Commission issued its Notice of Determination: No Cause and mailed a copy to Petitioner on January 31, 2000. A copy of the Notice of Determination was not served on Petitioner's counsel of record. Petitioner was advised that she must file a Petition for Relief within 35 days of the date of the Notice of Determination or her claim would be barred. Section 760.11(7), Florida Statutes. Petitioner filed a Petition for Relief with the Commission on March 15, 2000. Petitioner requested a formal hearing under the provisions of Section 120.57(1), Florida Statutes. The Commission referred this matter to the Division of Administrative Hearings on April 27, 2000, for a formal hearing. Respondent filed its Answer and Affirmative Defenses to the Petition for Relief on May 12, 2000. Respondent

filed its Motion to Dismiss on the same date. On May 23, 2000, Petitioner filed a response to the Respondent's motion and Respondent replied to the response on June 1, 2000, and the motion hearing followed. It is, therefore,

FOUND AND DETERMINED that the Petitioner had until March 6, 2000, to file her petition, pursuant to the statute, and the Petition was not filed until March 15, 2000. Therefore, the Petition for Relief is time-barred for failure to file the Petition within 35 days of the date of determination of no reasonable cause by the Commission. Section 760.11(7), Florida Statutes (1997); Wright v. HCA Central Florida Regional Hospital, Inc., 18 FALR 1160 (1995), cf. St. Petersburg Motor Club v. Cook, 567 So. 2d 488 (Fla. 1st DCA 1990); and Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1997); see Blakely v. United States Automobile Ass'n, No. 99-1046-CIV-T-17F, 1999 WL 1053122, 4 (M.D. Fla. Oct. 4, 1999); Dawkins v. Bellsouth Telecommunications, Inc., 53 F. Supp. 2d 1356, 1360-61 (M.D. Fla. 1999).

It is undisputed that the FCHR served the Notice of Determination directly to the Petitioner and not counsel of record. This procedure is correct under the provisions of Rule 60Y-5.004(3), Florida Administrative Code.

RECOMMENDATION

Based on the foregoing facts and conclusions of law, it is RECOMMENDED that a final order be entered dismissing with prejudice the Petition of Michelle C. Phillips in DOAH Case No. 00-1794; FCHR Case No. 98-0713.

DONE AND ENTERED this 10th of July, 2000, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th of July, 2000.

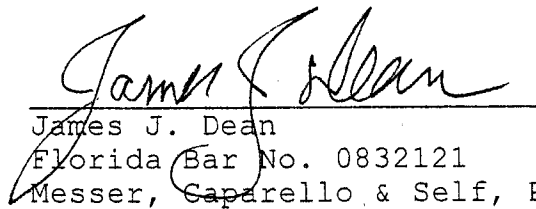
COPIES FURNISHED:

Sharon Moultry, Clerk
Florida Commission on Human Relations
Building F, Suite 240
325 John Knox Road
Tallahassee, Florida 32303-4149

Dana A. Baird, General Counsel
Florida Commission on Human Relations
Building F, Suite 240
325 John Knox Road
Tallahassee, Florida 32303-4149

Edward R. Gay, Esquire
Law Firm of Edward R. Gay, P.A.
1516 East Concord Street
Orlando, Florida 32803

Respectfully submitted,

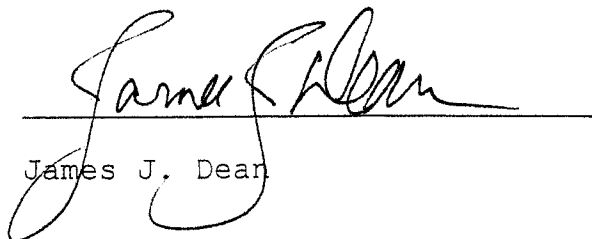


James J. Dean
Florida Bar No. 0832121
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876

(850) 222-0720
(850) 224-4359 (Fax)

Certificate of Service

I hereby certify that a copy of the foregoing has been furnished by United States Mail, postage prepaid, this 8th day of March, 2001, to Bobbie DeBose, 1129 N.E. 24th St., Gainesville, Florida 32641.



James J. Dean

Richard A. Durose, Esquire
Joseph W. Beatty, Esquire
Foley & Lardner
Post Office Box 2193
Orlando, Florida 32801-2386

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

Exhibit F

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOBBIE DEBOSE,)
)
 Petitioner,)
)
 vs.) Case No. 00-3426
)
 COLUMBIA NORTH FLORIDA REGIONAL)
 MEDICAL CENTER,)
)
 Respondent.)
 _____)

ORDER

This cause came on for consideration upon Respondent's Motion to Dismiss served on August 20, 2000. Pursuant to Rule 28-106.204, Florida Administrative Code, Petitioner had until September 11, 2000, in which to file a written response in opposition. No response in opposition has been filed.

The motion relies on documents attached to it, to wit: the "Notice of Determination: No Cause" bearing a date of June 21, 2000; the Petition for Relief bearing the date stamp of the Florida Commission on Human Relations of August 1, 2000, and the envelope for the Petition postmarked July 31, 2000.

In an abundance of caution, and because Petitioner is acting pro se, it is

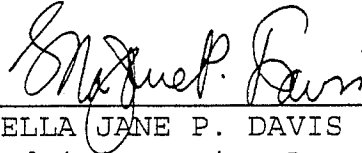
ORDERED:

1. The motion is taken under advisement.

2. Petitioner is granted 10 days from the date of this Order in which to file any written response in opposition to the motion and any disputation, explanation, or mitigation of the documents attached in support of the motion.

3. Respondent shall, within 10 days, file a supplemental memorandum addressing this case in light of Joshua v. City of Gainesville, 25 Fla. L. Weekly S641a (Florida Supreme Court Case No. SC94935, August 31, 2000).

DONE AND ORDERED this 27th day of September, 2000, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of September, 2000.

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Exhibit G

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS
BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS

BOBBI DEBOSE,

Petitioner,

DOAH Case No. 00-3426
FCHR Case No. 97-1298

vs.

COLUMBIA NORTH FLORIDA
REGIONAL MEDICAL CENTER,

Respondent.

MOTION TO STAY PROCEEDING

Respondent COLUMBIA NORTH FLORIDA REGIONAL MEDICAL CENTER ("North Florida") moves for a stay of this proceeding pending review of a Petition for Writ of Prohibition that is being filed in the First District Court of Appeal in connection with the Order of Remand issued by the Florida Commission on Human Relations, and states as follows:

1. On October 20, 2000, Administrative Law Judge Ella Jane P. Davis issued a Recommended Order finding and concluding that the Petition for Relief should be dismissed.

2. The Florida Commission on Human Relations, on February 8, 2001, issued an Order remanding the Petition to the Administrative Law Judge for further proceedings.

3. The Administrative Law Judge has issued a Notice of Hearing, scheduling the hearing in this matter for March 20, 2001.

4. Prior to issuance of the Recommended Order of Dismissal,

Respondent North Florida had propounded its First Set of Interrogatories and noticed Petitioner Debose for deposition duces tecum for October 18, 2000.

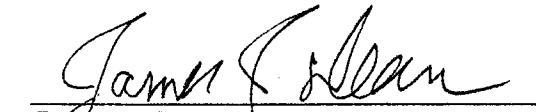
5. Petitioner has not responded to North Florida's Interrogatories and also failed to appear for her deposition. (See Exhibit A, Certificate of Nonappearance).

6. North Florida contends that the Administrative Law Judge correctly determined that the Petition should be dismissed, and North Florida has filed a Petition for Writ of Prohibition or Quo Warranto to restrain the Florida Commission on Human Relations from purporting to exercise jurisdiction of this matter.

7. The Administrative Law Judge is authorized to stay this proceeding pending review by the District Court of Appeal. See MSQ Properties v. Florida Department of Health and Rehabilitative Services, 626 So. 2d 292 (Fla. 1st DCA 1993) (party seeking stay of administrative agency order pending appellate review should first seek stay from lower tribunal). Cf. Florida Department of Administration v. Miranda, 513 So. 2d 170, 171 (Fla. 1st DCA 1987) (DOAH administrative law judge stayed administrative proceeding pending determination of motion to dismiss for lack of jurisdiction), rev. denied, 520 So. 2d 585 (Fla. 1988).

WHEREFORE, Respondent North Florida moves for a stay of this proceeding pending review of the FCHR's jurisdiction of this matter by the First District Court of Appeal.


Respectfully submitted,


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Certificate of Service

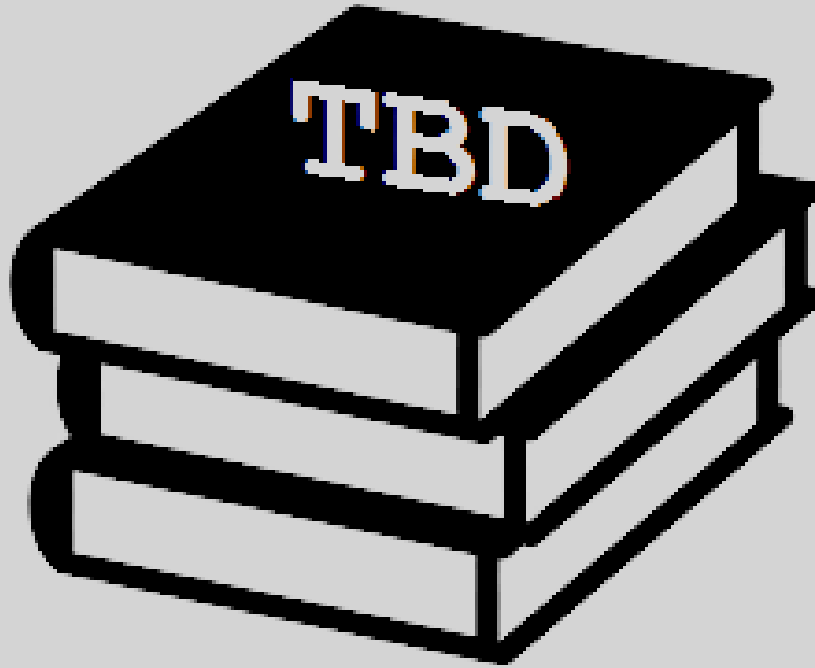
I hereby certify that a copy of the foregoing has been furnished by United States Mail, postage prepaid, this 8th day of March, 2001, to Bobbie DeBose, 1129 N.E. 24th St., Gainesville, Florida 32641.


James J. Dean

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