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STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

LADORIS G. TUTSON,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Respondent.

EEOC Case No. 15D990386

FCHR Case No. 97-2169

DOAH Case No. 01-4316

FCHR Order No. 02-094

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ORDER REMANDING PETITION FOR RELIEF  
FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

This cause came before the Commission for review of the Recommended Order of Dismissal issued in this matter on June 24, 2002, by Administrative Law Judge J. D. Parrish.

Pursuant to notice, public deliberations were held on October 22, 2002, 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, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order of Dismissal.

Findings of Fact and Conclusions of Law

The Administrative Law Judge recommended that the Commission dismiss as untimely the Petitioner's Petition for Relief, which alleged that Respondent unlawfully failed to promote Petitioner based on her race (Black).

The Administrative Law Judge found that the last act of alleged discrimination occurred on June 17, 1997, that the Commission issued its Notice of Determination on October 9, 2001, and that Petitioner filed its Petition for Relief on October 31, 2001. See Recommended Order, ¶ 7, ¶ 10, and ¶ 11.

Based on the Supreme Court of Florida's decision in Joshua v. City of Gainesville, 768 So. 2d 432 (Fla. 2000), the Administrative Law Judge concluded that the Petition for Relief was time-barred, because it was filed more than 4 years after the last act of alleged discrimination. Recommended Order, ¶ 19.

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

We note that the Administrative Law Judge found that the Petition for Relief was filed within 35 days of the issuance of the Commission's Notice of Determination. Recommended Order, ¶ 7 and ¶ 11.

A Commission panel has already dealt with the issue of the timeliness of a Petition for Relief filed more than 4 years after the alleged violation, but within 35 days of the issuance of a determination by the Commission. In that case, Ford v. Mold-Ex Rubber Company, 23 F.A.L.R. 1586, (FCHR 2001), the Commission's Order states:

"The Administrative Law Judge....concluded that since Petitioner's Petition for Relief was filed more than four years after the alleged violation, 'Petitioner's Petition for Relief should be dismissed for lack of jurisdiction under Section 760.11(1), Florida Statutes, and Joshua v. City of Gainesville, 786 So. 2d 432 (Fla. 2000) (where FCHR fails to make a determination of cause within 180 days after the filing of a charge of discrimination, the petitioner has four years from the date of the alleged discriminatory action to file a claim in state court).' Recommended Order, ¶ 16.

We reject this conclusion of law as incorrect.

We note that the Administrative Law Judge found that the Petition for Relief in this matter was filed within 35 days of the issuance of the no reasonable cause determination. Recommended Order, Preliminary Statement.

A Commission panel has stated, '...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).

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 the Petition for Relief in this matter was filed within 35 days of the issuance of the no reasonable cause determination, 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 Petition for Relief is untimely. Accord,

Prentice v. North American Realty Corp., d/b/a North American Acquisition Corp., FCHR Order No. 00-021. Ford, at 1587.

Based on the foregoing, as indicated above, we conclude that the Administrative Law Judge committed an error of law in concluding Petitioner's Petition for Relief was time-barred. In so doing, we find: (1) that the Administrative Law Judge's conclusion of law being corrected 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) that 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 being substituted is as or more reasonable than the conclusion which has been rejected. See, Section 120.57(1)(1), Florida Statutes (2001).

#### Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal in a document entitled, "Petitioner's Exceptions to Administrative Recommended Order of Dismissal."


Petitioner objected to several paragraphs of the Recommended Order, generally objecting to the conclusion that the Petition for Relief was not timely filed.

To the limited extent that Petitioner's exceptions except to the conclusion that the Petition for Relief in this matter was not timely filed, we accept Petitioner's exceptions. (There are some factual assertions in the Petitioner's exception document that, in our view, the Commission need not accept or deny at this point, given the current state of the record.)

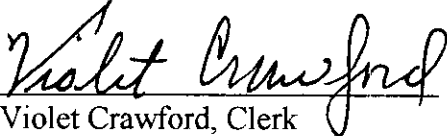
#### Remand

This matter is hereby REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief.

DONE AND ORDERED this 8<sup>th</sup> day of NOVEMBER, 2002.  
FOR THE COMMISSION ON HUMAN RELATIONS:

  
Commissioner Gayle Cannon,  
Panel Chairperson;  
Commissioner Aletta Shutes; and  
Commissioner Billy Whitefox Stall

Filed this 8<sup>th</sup> day of November, 2002,  
in Tallahassee, Florida.



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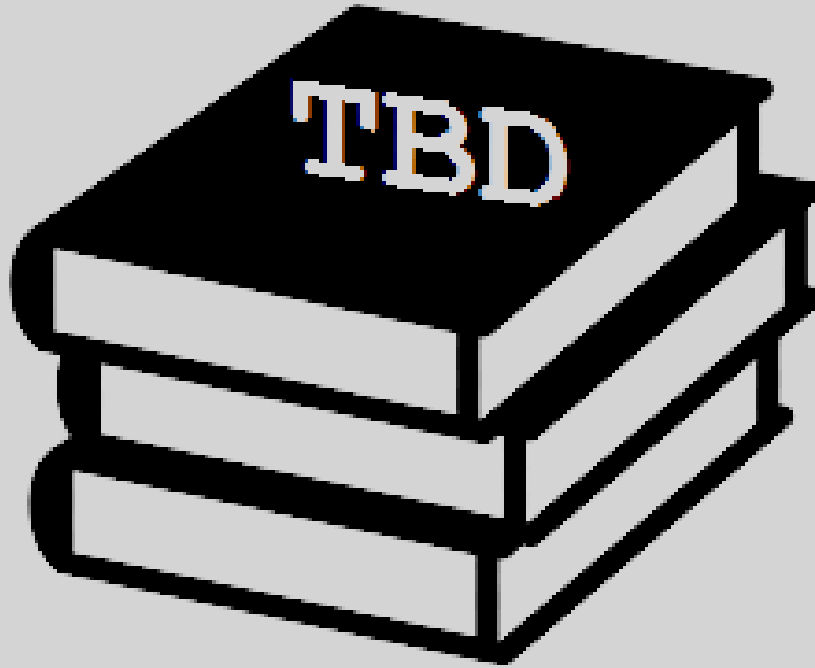
J. D. Parrish, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

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