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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRISTINA QUINTERO,)
)
Petitioner,)
)
v.)
)
CITY OF CORAL GABLES,)
)
Respondent.)
_____)

CASE NO. 06-0413
2005-02416

**RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO QUASH
SUBPOENAS AND MOTION TO COMPEL DISCOVERY**

RESPONDENT, City of Coral Gables ("City"), through its attorney, Akerman Senterfitt, files this Response To Petitioner's Motion To Quash Subpoenas And Motion To Compel Discovery, and states as good cause therefor:

1. On February 15, 2006, counsel for the City contacted Petitioner (who is proceeding pro se) and offered dates for her deposition. Petitioner responded in writing, stating she declined to be deposed.

2. The City thereafter had properly served upon Petitioner a subpoena for testimony at deposition, scheduled for March 20, 2006, and a subpoena for documents, to wit:

All written statements received, taken, or maintained by you or your attorney relating to or in connection with this charge of discrimination, your arbitration against the City, and/or your worker's compensation claim against the City.

All documents relating to the engagement, withdrawal from engagement, fee or other payment arrangement, bills, invoices, statements from your attorney(s) and/or expert witnesses to you and/or from you to your attorney(s) and/or expert witnesses and/or between your attorney(s) and expert witnesses.

All documents not attached to your Petition for Relief and not introduced as an exhibit in your arbitration against the City that support your claim that you were discriminated against by the City.

3. On March 2, 2006, Petitioner served her Motion to Quash Subpoenas. For the reasons stated herein, the City requests the Administrative Law Judge deny the Motion to Quash and grant the City's Motion to Compel.

4. Discovery is proper in these proceedings. Fla. Stat. § 120.569(f); Fla. R. Admin. P. 28-106.206. Discovery may be had as under the Florida Rules of Civil Procedure, Rules 1.280 through 1.400. Fla. R. Admin. P. 28-106.206. Those rules of civil procedure include both depositions and production of documents. Fla. R. Civ. P. 1.310, 1.350. Discovery in these proceedings is referenced in the Administrative Law Judge's Order.

5. Petitioner posits a number of reasons that the subpoenas should be quashed. None are valid.

6. As to documents, Petitioner asserts she will produce comply with the requirement of exchanging exhibits and that whatever unspecified documents she delivers then will be sufficient. She also asserts that the document request is overbroad and seeks irrelevant information.

7. The exchange of exhibits plainly is no substitute for discovery.

8. Petitioner does not explain her assertion that the documents requested are irrelevant (which is not the standard) or that the request is overbroad. It is her burden to do so. Having failed, her motion should be denied.

9. That said, the documents are reasonably calculated to lead to the discovery of admissible evidence. The documents sought include statements taken regarding the subject matter of these proceedings. Statements by potential witnesses on the subject matter of these

proceedings are clearly relevant. Petitioner included such a statement in materials she provided to the Commission during the investigatory phase of these proceedings, thus asserting its relevance. The documents sought include fee arrangements with her attorney and expert witnesses. Both could be asserted as recoverable amounts in these proceedings. See Maddow v. Proctor & Gamble Co., 107 F.3d 846, 853 (11th Cir. 1997) (in an ADEA case, affirming grant of motion to compel disclosure of attorney's fee arrangements). The City may discover information regarding potential damages in order to prepare its defense. The documents sought include other documents, not already produced in the arbitration relating to Petitioner's discharge, that support her claims in these proceedings. First, the request is narrowed, in that it excludes documents previously produced. Second, documents supporting her claims are plainly relevant to the subject matter or may lead to discovery of relevant evidence. Finally, such documents may be different from anything already produced because this action is predicated upon discrimination, while previous proceedings were based on different theories, i.e., contractual just cause.

10. As to her deposition, Petitioner asserts that she was deposed in worker's compensation proceedings she instituted against the City and that this deposition is enough. She also asserts that she submitted to the City two sworn affidavits prior to her termination. She also asserts she submitted a sworn affidavit to the Florida Commission on Human Relations on January 24, 2006. She also asserts it is unnecessary for her to submit to a deposition because "it was not necessary ... before" and there is other evidence from past, unspecified hearings already in existence. [Mot. Quash at 3.]

11. Petitioner finally asserts, with no foundation whatsoever, that the City's attorney desires to take her deposition in order to complicate these proceedings and, impliedly, put pressure on her. [Mot. Quash at 4.]

12. As stated above, the basis of this proceeding is distinct from the arbitration proceedings. First, Petitioner's objection that depositions taken in other proceedings precluded depositions in this one, is simply contrary to law. Second, the other proceedings, be they the arbitration or the worker's compensation claim she brought, deal with different legal rights and theories. In the case of the worker's compensation claim, the deposition in which Petitioner offers as a substitute for one herein, even the factual basis is quite distinct from that in these proceedings. The City has the right to examine Petitioner regarding her discrimination claims, which examination has never been done. Further, Petitioner's argument regarding the sufficiency of other statements and testimony fails to mention that Petitioner herself did not testify either in deposition or in the arbitration. The testimony of third parties is no substitute for that of Petitioner.

9. Petitioner states, without explanation, that both subpoenas are unfair and untimely. There is no time restriction on discovery in these proceedings except the admonition in the Order to engage in it quickly, which the City has attempted to do, only to be rebuffed by Petitioner.

10. For the reasons stated above, the City respectfully requests that the Administrative Law Judge deny Petitioner's motion and grant the City's motion to compel. Further, the City requests that the Administrative Law Judge award attorney's fees to the City incurred in responding to Petitioner's frivolous motion. See Fla. Stat. § 120.569(f) (officer has authority to impose sanctions other than contempt).

WHEREFORE, the City requests Petitioner's motion be denied, the City's motion be granted, and fees be awarded to the City.

Respectfully submitted,

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CERTIFICATE OF SERVICE

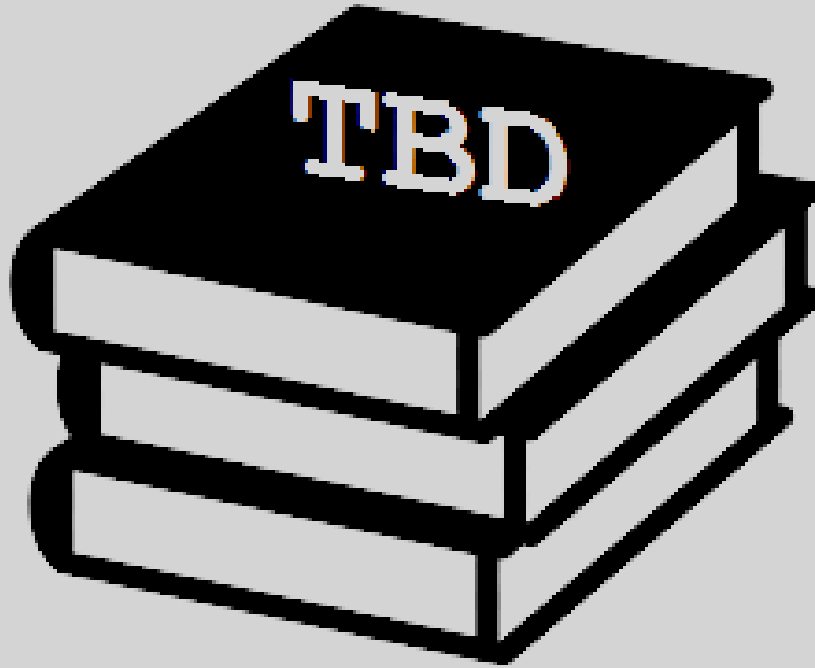
I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Petitioner, Cristina Quintero, 4780 N.W. 2nd Street, Miami, FL 33126, by Certified Mail, Return Receipt Requested, Receipt No. 7004 1160 0001 2056 6243; and Florence Snyder Rivas, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, by Fax Filing, this 3 day of March, 2006.

James C. Crosland
David C. Miller

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