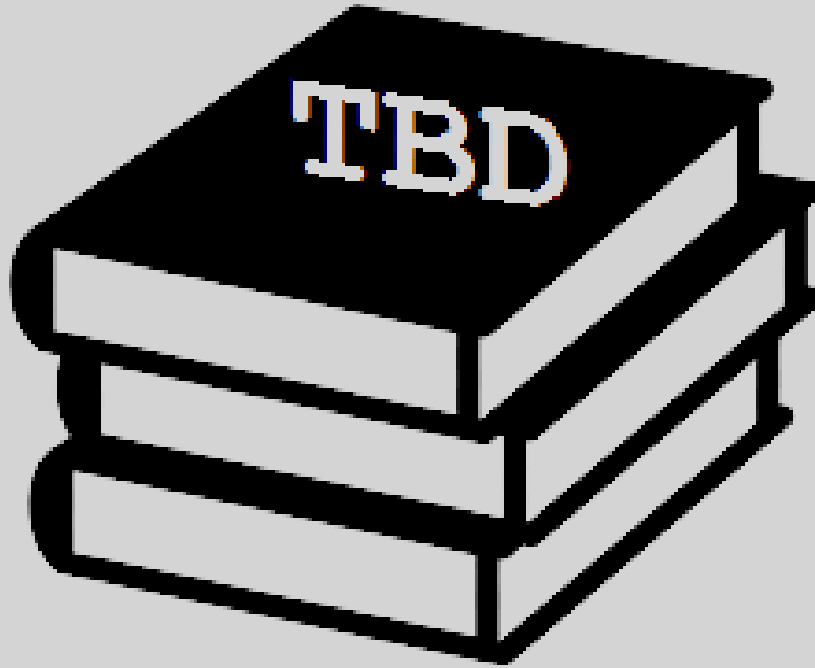


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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TEREKA TAYLOR,

Petitioner,

vs.

Case No. 16-2626

ARC MARION, INC.,

Respondent.

---

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, a telephonic hearing on Respondent's "Motion to Dismiss Petitioner's Petition for Relief for Lack of Jurisdiction" ("the Motion to Dismiss") was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes,<sup>1/</sup> on June 13, 2016, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Tereka Taylor, pro se  
1535 Northeast 31st Street  
Ocala, Florida 34479

For Respondent: B. Tyler White, Esquire  
Jackson Lewis, P.C.  
Suite 902  
501 Riverside Avenue  
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether the Florida Commission on Human Relations ("FCHR") should issue an order of dismissal in the instant case on the ground that Petitioner failed to timely file her charge of discrimination against Respondent.

PRELIMINARY STATEMENT

Petitioner filed a charge of discrimination with FCHR on November 20, 2015, alleging that ARC Marion, Inc. ("ARC Marion") discriminated against her based on race. Petitioner further alleged that ARC Marion unlawfully discharged her when she notified ARC Marion's human resources department of the discrimination.

On April 16, 2016, FCHR determined that there was no reasonable cause to conclude that ARC Marion violated the Florida Civil Rights Act of 1992. FCHR stated the following in its written decision:

[Petitioner] filed a charge of discrimination against [ARC Marion] alleging that she was terminated based on her race and retaliated against for engaging in a protected activity. The facts and evidence as set forth in the Investigative Memorandum do not support [Petitioner]'s allegation. [Petitioner] failed to provide any competent substantial evidence to prove that she was terminated based on her race or retaliated against for engaging in a protected activity.

Petitioner disagreed with FCHR's determination, and FCHR referred this matter to DOAH for a formal administrative hearing.

On June 3, 2016, ARC Marion filed the Motion to Dismiss alleging that Petitioner's charge of discrimination was not filed with FCHR within the 365-day time period established by section 760.11(1), Florida Statutes.

The undersigned considered the Motion to Dismiss during a telephonic hearing convened on June 13, 2016, and heard argument from both Parties.

FINDINGS OF FACT

1. Petitioner's employment with ARC Marion began on May 27, 2008.

2. At some point on or before Thursday, October 30, 2014, ARC Marion decided to discharge Petitioner due to "performance issues." As a result, October 30, 2014, was the last day that Petitioner actually worked for ARC Marion, and her effective date of termination was Monday, November 3, 2014.

3. Petitioner's benefits with ARC Marion ran through November 30, 2014.

4. Petitioner filed a charge of discrimination with FCHR on November 20, 2015, stating on a pre-printed form that the last act of discrimination occurred on November 30, 2014.

5. Petitioner's charge of discrimination was accompanied by a written statement in which Petitioner stated that

[d]uring my time with ARC Marion, Inc., I  
[ ] satisfactorily performed the essential job  
duties of my position. Notwithstanding my

performance, I was subjected to discrimination based on my race and retaliated against for same, as further described below.

Prior to my termination, I complained to human resources ("HR") that I was being treated adversely by my supervisor, Vicky Pritchard, because of my race. Vicky (white) had been treating me less favorably for several years. I believe her intentions were [inspired] by discriminatory animus because a white teacher was excused from completing the same daily notes that I was required to complete. After I complained to HR, I was subsequently terminated. ARC Marion, Inc. was unable to proffer a legitimate non-discriminatory reason for my termination.

Based on the foregoing actions of the ARC Marion, Inc. described herein, I believe that I have been discriminated and retaliated against including my unlawful termination, based on my race in violation of Title VII of the Civil Rights Act and the Florida Civil Rights Act of 1992. Due to my unlawful termination, I have suffered and continue to suffer severe financial and emotional damages.

6. During the telephonic hearing on the Motion to Dismiss, the undersigned asked Petitioner why she waited until November 20, 2015, to file her charge of discrimination with FCHR. Petitioner responded by stating that she had retained an attorney in September of 2015 to represent her in this matter and that the aforementioned attorney spent two months unsuccessfully attempting to open a dialogue with ARC Marion.

7. The documents attached to the Motion to Dismiss establish that the last alleged discriminatory act occurred on or before October 30, 2014, when ARC Marion decided to discharge

Petitioner, and Petitioner did not attempt to refute the information set forth in those documents during the telephonic hearing.

#### CONCLUSIONS OF LAW

8. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes, and Florida Administrative Code Rule 60Y-4.016(1).

9. The State of Florida, under the legislative scheme contained in sections 760.01 through 760.11 and 509.092 Florida Statutes, known as the Florida Civil Rights Act of 1992 ("the Act"), incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e, et seq.

10. The Florida law prohibiting unlawful employment practices is found in section 760.10. This section prohibits discrimination "against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status." § 760.10(1)(a), Fla. Stat.

11. Florida courts have held that because the Act is patterned after Title VII of the Civil Rights Act of 1964, as

amended, federal case law dealing with Title VII is applicable. See e.g., Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991); Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 21-22 (Fla. 3d DCA 2009).

12. In the instant case, ARC Marion asserts through the Motion to Dismiss that the charge of discrimination filed by Petitioner on November 20, 2015, was untimely. In that regard, section 760.11(1), of the Act provides in pertinent part that

"[a]ny person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with [the FCHR] within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation.

(emphasis added).

13. The United States Supreme Court ruled in Delaware State College v. Ricks, 449 U.S. 250, 259, 66 L. Ed. 2d 431, 101 S. Ct. 498 (1980), that the limitations period for a Title VII complaint begins running at the time the actual decision of the allegedly unlawful employment practice was made, and not when the effects of that decision began.

14. Accordingly, the facts of the instant case demonstrate that the limitations period began to run on October 30, 2014, when Petitioner was advised of her termination. Thus, Petitioner needed to file her charge of discrimination with the Commission

on or before October 30, 2015, in order to be timely. See Greene v. Seminole Elec. Coop., 701 So. 2d 646, 648 (Fla. 5th DCA 1997) (stating that “[w]e must agree with the trial court that the statute of limitations bars any claim for damages arising out of acts occurring before 16 June 1993. Section 760.11(1), which is a statute of limitations . . . provides that any person aggrieved by a violation of the Act may file a complaint with the Florida Human Rights Commission within 365 days of the alleged violation. Since Greene filed his complaint with the Commission on 16 June 1994, any claim for damages pre-dating 16 June 1993 is time-barred.”).

15. Even if the 365-day deadline of section 760.11(1) began to run on Petitioner’s effective discharge date of November 3, 2014, her charge of discrimination would still be outside the 365-day filing period.

16. In addition, while Petitioner continued to receive benefits from ARC Marion through November 30, 2014, the 365-day filing period did not start to run on that day because the decision to discharge Petitioner occurred approximately one month earlier.

17. Therefore, the only way to deem Petitioner’s charge of discrimination to be timely filed, would be to conclude that the untimeliness is excused by her former attorney’s failure to file



a charge of discrimination prior to the expiration of the 365-day filing period.

18. Because the 365-day filing period set forth in section 760.11(1) is a statute of limitations, only acts and circumstances set forth in section 95.051(1), Florida Statutes, will toll that time period. See Gonima v. Manatee Cnty. Sch. Bd., 2007 U.S. Dist. LEXIS \*13-14 (M.D. Fla. 2007) (noting that the Act "dictates a charge filing limitation of 365 days from the alleged violation . . . . The only exceptions that allow the tolling of the limitations period are found in § 95.051 of the Florida Statutes.").

19. Section 95.051 provides as follows:

(1) The running of the time under any statute of limitations except ss. 95.281, 95.35, and 95.36 is tolled by:

(a) Absence from the state of the person to be sued.

(b) Use by the person to be sued of a false name that is unknown to the person entitled to sue so that process cannot be served on the person to be sued.

(c) Concealment in the state of the person to be sued so that process cannot be served on him or her.

(d) The adjudicated incapacity, before the cause of action accrued, of the person entitled to sue. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

(e) Voluntary payments by the alleged father of the child in paternity actions during the time of the payments.

(f) The payment of any part of the principal or interest of any obligation or liability founded on a written instrument.

(g) The pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action.

(h) The period of an intervening bankruptcy tolls the expiration period of a tax certificate under s. 197.482 and any proceeding or process under chapter 197.

(i) The minority or previously adjudicated incapacity of the person entitled to sue during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue; except with respect to the statute of limitations for a claim for medical malpractice as provided in s. 95.11. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

Paragraphs (a)-(c) shall not apply if service of process or service by publication can be made in a manner sufficient to confer jurisdiction to grant the relief sought. This section shall not be construed to limit the ability of any person to initiate an action within 30 days after the lifting of an automatic stay issued in a bankruptcy action as is provided in 11 U.S.C. s. 108(c).

(2) A disability or other reason does not toll the running of any statute of limitations except those specified in this section, s. 95.091, the Florida Probate Code, or the Florida Guardianship Law.

20. Because none of the acts or circumstances under section 95.051(1) encompass an attorney's error or misjudgment,

Petitioner cannot rely on section 95.051(1) to excuse the untimeliness of her charge of discrimination. See generally Greene, 701 So. 2d at 648 (stating "Greene contends that the limitations period should be equitably tolled, but the only acts or circumstances that will toll a limitations period are those enumerated in section 95.051(2), . . . and Green does not allege that any of the acts or circumstances enumerated in the statute which toll the limitations period apply to him.").

21. Furthermore, even if the undersigned ignored Greene and applied the equitable tolling doctrine to the instant case, the untimeliness of Petitioner's charge of discrimination would not be excused.

22. Under the equitable tolling doctrine, "a late-filled petition should be accepted 'when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum,' provided that the opposing party will suffer no prejudice." Pro Tech Monitoring, Inc. v. Dep't of Corr., 72 So. 3d 277, 280 (Fla. 1st DCA 2011) (quoting Machules v. Dep't of Admin., 523 So. 2d 1132, 1137 (Fla. 1988)).

23. Petitioner has not alleged that ARC Marion misled or lulled her into inaction, or that she timely asserted her rights mistakenly in the wrong forum. In addition, her attorney's failure to file a timely charge of discrimination does not equate

to Petitioner being prevented from asserting her rights in some extraordinary way. See Aleong v. Dep't of Bus. & Prof'l Reg., 963 So. 2d 799, 801 (Fla. 4th DCA 2007) (noting that "[t]hree of Florida's district courts have held that the untimely filing of a request for hearing by counsel is not an 'extraordinary' circumstance which warrants the application of the doctrine of equitable tolling" and holding that "in the instant case, the failure of Dr. Aleong's counsel to timely file a petition for hearing did not amount to an extraordinary circumstance; accordingly, the doctrine of equitable tolling does not apply and does not serve to relieve Dr. Aleong of the consequences of the untimeliness of his petition.").

24. In view of the foregoing, the Motion to Dismiss must be granted and Petitioner's charge of discrimination must be dismissed as having been untimely filed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing Petitioner's charge of discrimination because it was untimely filed.

DONE AND ENTERED this 16th day of June, 2016, in  
Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

---

G. W. CHISENHALL  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of June, 2016.

ENDNOTE

<sup>1/</sup> Unless stated otherwise, all statutory references will be to  
the 2015 version of the Florida Statutes.

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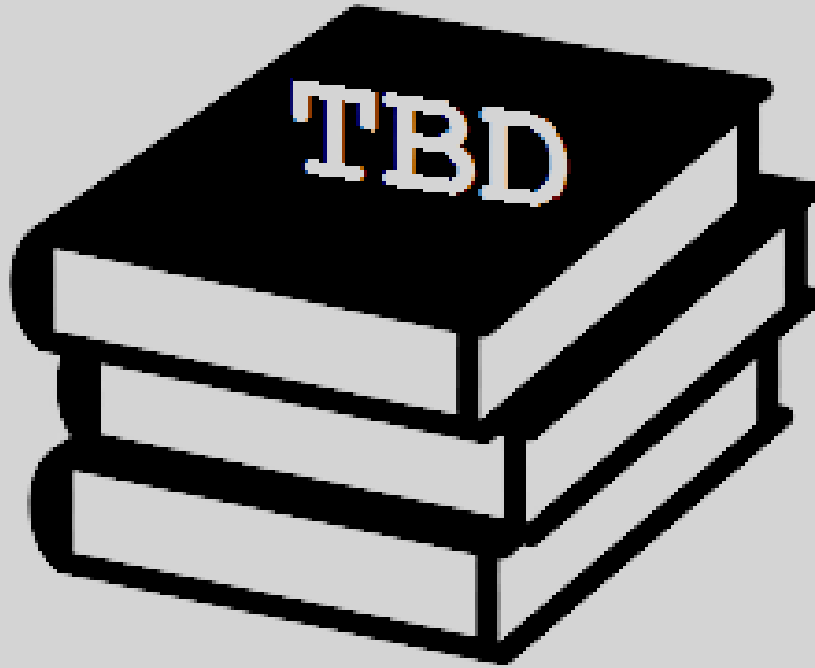
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.

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