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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TESHEKIA D. CARR,

Petitioner,

vs.

Case No. 16-2919

SOUTHERN WINE AND SPIRITS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER OF DISMISSAL

This cause is before the undersigned on Respondent's Motion to Dismiss (Motion) filed on June 9, 2016. A letter in opposition to the Motion was filed by Petitioner on June 16, 2016. The Motion seeks to dismiss the Petition for Relief (Petition) as being untimely filed.

The following facts are not in dispute. On April 19, 2016, the Florida Commission on Human Relations (FCHR) issued a Notice of Determination: No Reasonable Cause (Notice) as to a charge of discrimination previously filed by Petitioner. The Notice contains a certification that the FCHR Clerk mailed a copy to Petitioner the same day.<sup>1/</sup> The Notice stated that Petitioner "may request an administrative hearing with the Division of Administrative Hearings by filing a Petition for Relief within 35 days of the date the determination was signed by the Executive Director." The Notice further stated that "[t]his determination of no reasonable cause will become final if Complainant does not file a Petition for Relief within 35 days, and the Commission will dismiss the complaint." Therefore, a petition was due no later than May 24, 2016.

Petitioner did not file her Petition with the FCHR until May 25, 2016, or one day after the 35-day deadline. This is confirmed by the handwritten date on the Petition, as well as the facsimile date stamp showing that it was faxed to the FCHR on the same day. Thus, the Petition was deemed filed with FCHR on May 25, 2016, or 36 days after the Executive Director signed the Notice. "If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be

barred." § 760.11(7), Fla. Stat. Notably, this is not a case where the Petition was mailed prior to the deadline, but was not timely received by the FCHR due to a delay in the delivery of the mail, or was late due to irregularities in the processing of the paper by the agency.

Based on the foregoing, the Petition for Relief is time-barred. In view of this, the Motion should be granted and the Petition dismissed. The final hearing on July 25, 2016, is accordingly canceled. It is, therefore,

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief as being untimely.

DONE AND ENTERED this 20th day of June, 2016, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of June, 2016.

ENDNOTE

<sup>1/</sup> Petitioner's filing does not indicate whether it was served on opposing counsel or the FCHR. In the letter, Petitioner states that after she filed her complaint, "My response [presumably referring to the Notice of Determination: No Reasonable Cause] was mailed out to me on the April 20, 2016," "The deadline [is] May 25, 2016," and she "contacted THE STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS and I was told it has been stamped." Even assuming that the Notice was mailed on April 20, 2016, rather than April 19, 2016, the clear and explicit instructions in the Notice stated that Petitioner had

35 days from the date the Notice was signed by the Executive Director in which to file a petition, and not 35 days from the date the Notice was postmarked. The fact that she may have misunderstood the filing deadline does not excuse her inaction. Nothing in her letter implicates in any way the doctrine of equitable tolling.

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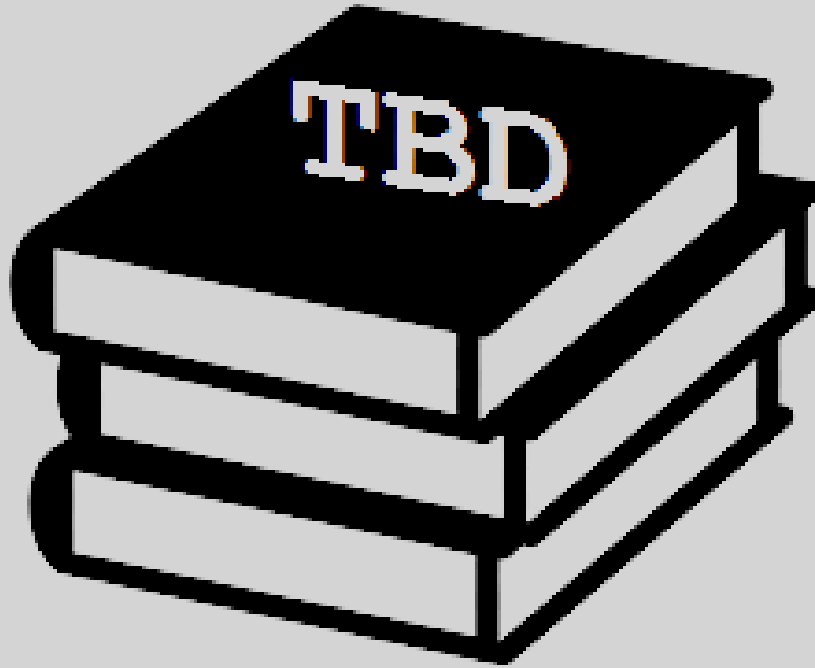
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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

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