

10-30-00

AP

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

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JOEANNE NELSON,

Petitioner,

v.

SUNRISE COMMUNITY, INC.,

Respondent.

EEOC Case No. 15D-970695  
DIVISION OF ADMINISTRATIVE HEARINGS

FCHR Case No. 97-J101

DOAH Case No. 00-2657 SFD

FCHR Order No. 01-008

FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Joanne Nelson 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 Sunrise Community, Inc., committed an unlawful employment practice on the basis of Petitioner's race (Black) when it suspended her from her position and subjected her to different terms and conditions regarding disciplinary actions than those not in Petitioner's protected class, and on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on May 16, 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 (which does not appear to contain the retaliation allegations) and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on October 6, 2000, in Tallahassee, Florida, before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order of dismissal, dated October 30, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that in discussing the Commission's investigation of the matter, the Administrative Law Judge reached the conclusion that, "Although the determination was not timely, the Respondent did not raise this issue." Recommended Order, ¶ 12.

We are unaware of a statutory section, administrative rule, or case decision that has not been reversed, that would allow the conclusion to be made that the Commission's determination in this matter was "not timely," and none was cited by the Administrative Law Judge.

We, therefore, reject this conclusion of law.

In so doing we find: (1) that the Administrative Law Judge's conclusion of law we are correcting is within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the time period for the issuance of a determination by the Commission under the Florida Civil Rights Act of 1992; (2) the reason the correction is being made is that the conclusion of law as stated by the Administrative Law Judge is not supported in law; and (3) that in making this correction the rejection of the conclusion of law in question is as or more reasonable than allowing the incorrect conclusion of law to remain. See, Section 120.57(1)(1), Florida Statutes (1999).

With the above-stated correction, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's recommended order.

Dismissal

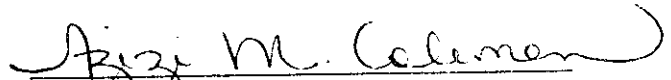
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

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  
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NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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Stephen F. Dean, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel