

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

JOSEPHINE HAYES DAVIS,)	EEOC Case No. N/A
Petitioner,)	FCHR Case No. 95-B665
)	DOAH Case No. 00-002624
vs.)	FCHR Order No. 01-020
)	
ARBORS OF TALLAHASSEE,)	
Respondent)	

**ORDER REMANDING PETITION FOR RELIEF FROM AN UNLAWFUL
EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Josephine Hayes Davis 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 Arbors of Tallahassee committed an unlawful employment practice on the basis of Petitioner's race (Black) when it terminated Petitioner from employment. The allegations set forth in the complaint were investigated, and, on May 10, 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, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. Prior to the conduct of a formal proceeding, Administrative Law Judge William R. Pfeiffer issued an Order Closing File, dated July 13, 2000. The Commission panel designated below considered the record of this matter and determined the action to be taken on the Order Closing File.

Findings of Facts and Conclusions of Law

The above-referenced Order Closing File was issued in response to "Respondent's Motion to Dismiss Petition for Relief From Unlawful Employment Practice." The motion argues that the Petition for Relief should be dismissed for three reasons: (1) the complaint of discrimination was not filed within 365 days of the alleged discriminatory act; (2) the Petition for Relief did not comply with Fla. Admin. Code R. 28-106.201(4), and therefore should be dismissed in accordance with Fla. Admin. Code R. 28-106.201(2) [these rule references relate to the Model Rules provisions regarding the Initiation of Proceedings]; and (3) the Petition for Relief failed to identify any facts that would entitle the Petitioner to relief. See Pleading. The Order Closing File indicates that the matter is before the Administrative Law Judge on Respondent's motion to dismiss, that the Administrative Law Judge is "fully advised," and that the file of the Division of Administrative Hearings, without further explanation, "is hereby closed." See, Order Closing File. We will assume that the Administrative Law Judge granted Respondent's motion to dismiss for all three reasons set out therein. With regard to the suggestion that the complaint of discrimination was not filed within 365 days of the alleged discriminatory act, we note that the Florida Civil Rights Act of 1992 states, "Any person aggrieved by a violation of [the Act] may file a complaint with the commission within 365 days of the alleged violation..." Section 760.11(1), Florida Statutes (1999). The Charge of Discrimination transmitted to the Division of Administrative Hearings in this case does reflect that Petitioner signed the complaint on June 18, 1996, indicating a date of

discrimination of March 31, 1995, and containing a Commission date stamp of June 20, 1996. See Filing. Nevertheless, the Commission's Individual Complaint Log in this matter reflects a filing date of March 28, 1996. Based on the foregoing, we conclude that the allegation that Petitioner's complaint was untimely is not supported by competent substantial evidence, and find that the record reflects that the complaint in this matter was timely filed. Accord, Johnson v. Chautauqua Office of Psychotherapy and Evaluation, FCHR Order No. 00-023; and Jackson v. Halifax Medical Center, FCHR Order No. 00-022. With regard to the allegations that the Petition for Relief did not comply with the Model Rules' provision on the Initiation of Proceedings and did not identify any facts that would entitle Petitioner to relief, we note: (1) that the contents of the Petition for Relief in cases before the Commission are governed by Fla. Admin. Code R. 60Y-4.009 and Fla. Admin. Code R. 60Y-5.008(3), promulgated by the Commission; and (2) that paragraph 3 of the Petition for Relief contains factual allegations of disparate treatment of Petitioner based on Petitioner's race. Finally, to the extent we are correcting conclusions of law of the Administrative Law Judge, we find: (1) that the Administrative Law Judge's conclusions of law we are correcting are within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the Commission's rules regarding Petitions for Relief from Unlawful Employment Practices; (2) the reason the corrections are being made is that the conclusions of law apparently followed by the Administrative Law Judge are contrary to the Commission's rules governing the issues presented; and (3) that in making these corrections the conclusions of law we are substituting are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(I), Florida Statutes (1999).

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Order Closing File.

Remand

The Petition for Relief and Complaint of Discrimination are hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this Order.

DONE AND ORDERED this 22nd day of May, 2001
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Clareth Brooks; and
Commissioner Rita Craig; and
Commissioner Sharon Ofuani;

Filed this 22nd day of May, 2001,
in Tallahassee, Florida

/s/

Azizi Coleman, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Josephine Hayes Davis
Route 4, Box 4699-M
Monticello, FL 3234

James Garrity, Esq.
McConaughay, Duffy, Coonrod, Pope & Weaver, P.A.

Post Office Drawer 229
Tallahassee, FL 32302-0

William R. Pfeiffer, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/
Azizi Coleman,
Clerk of the Commission
Florida Commission on Human Relations