

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

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FLORIDA COMMISSION ON  
HUMAN RELATIONS

FILED

Jesse Toca

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Petitioner,

DIVISION OF  
EEOC Case NO. 216-00538  
FCHR Case NO. 216-00538  
DOAH Case NO. 01-1015  
FCHR Order NO. 01-066

v.

DSM

EXP.COM, Inc. and Mark Benning

Respondents.

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL  
EMPLOYMENT PRACTICE**

**I. Panel of Commissioners**

The following 3 Commissioners participated in the disposition of this matter:

- Commissioner Rita Craig, Panel Chairperson
- Commissioner Gayle Cannon
- Commissioner Roosevelt Paige

**II. Appearances**

For Petitioner: Jesse Toca

For Respondents: Mark Benning, for himself and as former Chief Executive Officer of the Respondent, EXP.COM, Inc.

**III. Preliminary Matters**

Petitioner filed a complaint of discrimination with this Commission, pursuant to F.S. Ch.760, alleging Respondent committed an unlawful employment practice on the bases of religious discrimination. Administrative Law Judge William Quattlebaum, of the state division of Administrative hearings known as DOAH, Ordered Petitioner to show how Petitioner should be deemed to be an employee of the Respondents, instead of an independent contractor, so as to confer jurisdiction upon DOAH pursuant to Fla.Stat.Ch.760, the Florida Civil Rights Act of

1992, as amended. He treated Respondents' Motion for Summary Disposition as a Motion to Dismiss if Petitioner did not comply with the Order.

Administrative Law Judge Daniel Manry replaced Judge Quattlebaum, and reviewed the case. He recommended that the Petition be dismissed for failure to adequately comply with Judge Quattlebaum's Order because Petitioner failed to assert facts, which, if proven, would show that Petitioner is an employee.

The Commission Panel unanimously denied several procedural motions by Petitioner.

Public deliberations were held by the Commission on November 1, 2001.

#### IV. Findings of Fact and Conclusions of Law

Judge Manry's findings are supported by competent substantial evidence, and his ruling that Petitioner did not adequately show why his Petition should not be dismissed is well taken.

#### V. Exceptions

The exceptions of the Petitioner are denied, as they do not show that a triable issue of fact exists that Petitioner is an employee of Respondents or that Judge Manry committed a reversible error of law in holding that Petitioner did not respond properly to Judge Quattlebaum's Order.

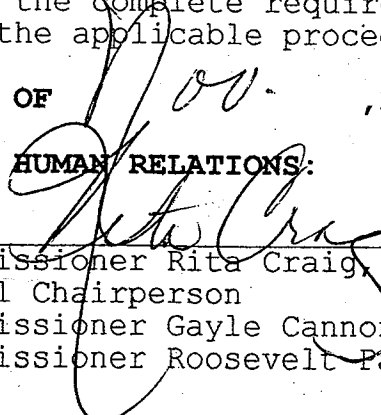
#### VI. Dismissal

Petitioner's Petition For Relief is **DISMISSED** with prejudice. The vote of the Commission Panel was 2 to 1 with Commissioner Paige dissenting.

Each party is advised of their right to petition the Florida District Court of Appeal for judicial review of this Final Agency Order. Such Notice of Appeal must be filed within 30 days of the date that this order is filed with the Clerk of the Commission. See Section 120.68, Florida Statutes, and the Florida Rules of Appellate Procedure, Rule 9.110, for the complete requirements and rules on the right to appeal, and the applicable procedure.

DONE AND ORDERED THIS 1 DAY OF Nov. , 2001

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

  
\_\_\_\_\_  
Commissioner Rita Craig,  
Panel Chairperson  
Commissioner Gayle Cannon  
Commissioner Roosevelt Paige

Filed this 28<sup>th</sup> day of November, 2001

in Tallahassee, Florida.

Violet Crawford  
Violet Crawford  
Clerk of the Commission  
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Miles A. Lance, Legal Advisor for the Commission Panel

Daniel Manry, Administrative Law Judge