

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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ADMINISTRATIVE HEARINGS
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ZORAIDA M. OLIVERA,

EEOC Case No. N/A

Petitioner,

FCHR Case No. 96-1819

JVL
CLOSED

v.

DOAH Case No. 00-4433

CITY OF HALLANDALE,

FCHR Order No. 02-025

Respondent.

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Zoraida M. Olivera filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1993), alleging that Respondent City of Hallandale committed an unlawful employment practice on the basis of Petitioner's national origin (Hispanic) regarding circumstances surrounding Petitioner's termination from employment with Respondent.

The allegations set forth in the complaint were investigated, and, on September 22, 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.

An evidentiary hearing was held by video teleconference in Tallahassee, Florida, and Fort Lauderdale, Florida, on April 23, 2001, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal on June 12, 2001.

Pursuant to notice, public deliberations were held on April 30, 2002, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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.

Because the Administrative Law Judge's Recommended Order addresses the merits of Petitioner's claim and we have adopted findings of fact which find against Petitioner, we conclude it unnecessary to either accept or reject the Administrative Law Judge's conclusions of law that hold the complaint in this matter was not timely filed. Accord, Kalmbacher v. Department of Environmental Protection, 23 F.A.L.R. 3377, at 3378 (FCHR 2001).

With this limitation, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner's counsel filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to the Recommended Order."

The document presents two broad exceptions: (a) [t]he complaint was filed in a timely manner; and (b) [t]he Petitioner established disparate treatment and harassment. See Filing.

With regard to the timeliness of the complaint, as indicated, supra, we find it is unnecessary for the Commission to accept the Administrative Law Judge's conclusion that the complaint was not timely filed, given the Administrative Law Judge's decision on the merits. Consequently, we neither accept nor reject this exception, but rather simply note that it is unnecessary for the Commission to reach this issue, given the decision on the merits.

With regard to the contention that Petitioner established disparate treatment and harassment, Petitioner essentially takes issue with the credibility given witnesses by the Administrative Law Judge, and inferences drawn by the Administrative Law Judge from the evidence presented. The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.'" Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

We deny this exception.

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HEARINGS

Petitioner, herself, subsequently filed a document entitled "Additional Comments to Exceptions." Because Petitioner was represented by counsel at the time of this filing, and counsel filed exceptions on Petitioner's behalf, we do not believe this document can be appropriately considered by the Commission. See Fla. Admin. Code R. 60Y-4.008(1), which indicates, "Any party shall have the right to appear in person, by counsel, *or* by other authorized representative [emphasis added]," suggesting, in our view, that a party can appear in person or by counsel but not both simultaneously; see, also, Fla. Admin. Code R. 60Y-4.008(2), which states, "An attorney or authorized representative for any party to a proceeding who has filed an initial or pleading notice of appearance for that party shall remain the attorney or authorized representative of record...until notice of withdrawal of authorization is filed with the Commission by the represented party or a motion to withdraw has been served on the represented party and approved by the Commission or hearing officer [emphasis added]," suggesting, in our view, that given Petitioner's representation by counsel, the exceptions document filed by Petitioner, herself, should not be considered.


The exceptions document filed by Petitioner, herself, is hereby stricken.

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.

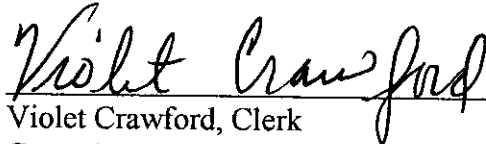
DONE AND ORDERED this 31st day of May, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Gayle Cannon,
Panel Chairperson;
Commissioner Aletta Shutes; and
Commissioner Billy Whitefox Stall

Filed this 31st day of May, 2002,
in Tallahassee, Florida.

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FLORIDA COMMISSION ON HUMAN RELATIONS

A handwritten signature in black ink that reads "Violet Crawford". The signature is written in a cursive style and is positioned above a horizontal line.

Violet Crawford, Clerk
Commission on Human Relations
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John G. Van Laningham, Administrative Law Judge, DOAH

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