

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

AMY STEVENS,)	EEOC Case No. 15D996027
Petitioner,)	FCHR Case No. 99U1402
)	DOAH Case No. 02-002310
vs.)	FCHR Order No. 03-016
)	
FEDERAL EXPRESS,)	
Respondent)	

**ORDER REMANDING PETITION FOR RELIEF FROM A DISCRIMINATORY
HOUSING PRACTICE**

Preliminary Matters

On May 8, 2000, the Petitioner filed an Amended Charge of Discrimination with the Commission. After an investigation of the charge, the Commission's Executive Director issued a Determination: No Cause and a Notice of Determination: No Cause on April 18, 2002. Petitioner filed a Petition for Relief that was received by the Commission on June 4, 2002 (although mailed on May 16, 2002, by certified mail). On November 1, 2002, Respondent filed a Motion to Dismiss and Memorandum in support thereof with the ALJ. The Motion was based upon Petitioner's failure to file her Petition for Relief within 35 days of her determination date-April 18, 2002. The Motion was not responded to by the Petitioner and, therefore, the ALJ found no disputed issue of material fact as to the two dates set out above-April 18, 2002 for Determination Date and June 4, 2002, for filing of Petition for Relief, obviously more than 35 days apart. Administrative Law Judge Barbara J. Staros issued a Recommended Order of Dismissal dated November 15, 2002. The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Facts and Conclusions of Law

The Commission's file does not contain a transcript of the proceeding before the Administrative Law Judge. The ALJ based her recommended order upon the Respondent's Motion to Dismiss which was supported by several exhibits indicating the date of initial complaint (amended), the date the Notice of Determination was mailed (April 18, 2002) and the date that the Petition for Relief had been date-stamped in at the Commission (June 4, 2002). Unfortunately, the Petitioner failed to respond to the Motion and advise the ALJ that the Petition, although date-stamped into the Commission on June 4, 2002, was actually mailed by certified mail on May 16, 2002. Although the documents before the ALJ reflect that the notice of determination and determination of no reasonable cause was mailed to the Petitioner on April 18, 2002, and that the Petitioner's Petition for Relief was date-stamped into the Commission on June 4, 2002, clearly more than 35 days apart, the file contains the envelope in which the Petition was mailed by certified US Mail. The date on the envelope and the certified mail receipt reflects that it was mailed from the Myrtle Grove Post Office in Pensacola, FL, at 8:20am on May 16, 2002, to the Commission at its previous address (until late March, 2002, 325 John Knox Road; Bldg F, Suite 240, Tallahassee, FL 32303-4149); and, if properly addressed, would have been clearly received by the Commission within the 35 day period. The delay as the Postal Service rerouted the mail was beyond the Petitioner's direct control and her addressing the envelope to the previous address could be

considered excusable error. In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating when a Petition for Relief is timely filed under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(l), Florida Statutes (2001).

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document dated November 25, 2002. The exceptions stated that:

(1) The Petitioner was advised, albeit incorrectly, by a Commission staff member that her filing was within the time permitted by the relevant Florida Statutes.

(2) In addition, petitioner did make a timely filing which she mailed to Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301;

(3) Said mailing was never returned to her by the USPS; and

(4) At all times relevant hereto, the petitioner was proceeding pro se.

The panel found that the petitioner was advised correctly; did make a timely mailing but to the wrong address; and was represented by Counsel when the Motion to Dismiss was made on November 1, 2002. Based on the foregoing, Petitioner's exceptions are stricken.

Remand

The Petition for Relief from an Unlawful Employment Practice is hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this order.

DONE AND ORDERED this 17th day of February, 2003
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon; and
Commissioner PC Wu; and
Commissioner Rita Craig;

Filed this 17th day of February, 2003,
in Tallahassee, Florida

/s/

Violet Crawford, Clerk
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Barbara J. Staros, Administrative Law Judge, DOAH

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addresses this 17th day of February, 2003.

By: /s/

Violet Crawford,
Clerk of the Commission
Florida Commission on Human Relations