

3-25-03

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

03 JUL -8 AM 9:15

AT

LADORIS G. TUTSON,

EEOC Case No. 15D990386

Petitioner,

FCHR Case No. 97-2169

v.

DOAH Case No. 01-4316

JDP-CCOS

DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

FCHR Order No. 03-044

Respondent.

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

Preliminary Matters

Petitioner Ladoris G. Tutson 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 Department of Children and Family Services committed an unlawful employment practice on the basis of Petitioner's race (Black) when it denied Petitioner promotions.

The allegations set forth in the complaint were investigated, and, on October 9, 2001, the Executive Director issued his determination finding that there was reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice and the Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding.

Prior to a final hearing on the Petition for Relief, Administrative Law Judge J. D. Parrish issued a Recommended Order of Dismissal, dated June 24, 2002.

Upon consideration of the Recommended Order of Dismissal, the Commission issued an Order Remanding Petition for Relief from an Unlawful Employment Practice, dated November 8, 2002.

Subsequently, Judge Parrish presided at an evidentiary hearing in Fort Lauderdale, Florida, on January 28, 2003.

Judge Parrish issued a Recommended Order of dismissal on March 25, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order, dated March 25, 2003.

### Findings of Fact

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

We note that the Commission's file contains a letter from the Administrative Law Judge indicating that the hearing records were erroneously sent to the Respondent and that Petitioner's Exhibits numbered 1-25, 28, and 33 and Respondent's Exhibits numbered 1-3, were being forwarded to the Commission under cover of the letter. However, the Commission's file does not contain these exhibits. Nevertheless, we note that it has been stated, "In the absence of a transcript of the proceeding before the Administrative Law Judge, the Administrative Law Judge's Recommended Order is the only evidence for the Commission to consider." Miller v. Levy County, Florida, 21 F.A.L.R. 464, at 465 (FCHR 1998), citing National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5<sup>th</sup> DCA 1988).

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 the Administrative Law Judge concluded that the Division of Administrative Hearings does not have jurisdiction over the subject matter of the case, as set forth in the earlier issued Recommended Order of Dismissal, but decided the case on the merits pursuant to the Commission's order of remand. Recommended Order, ¶ 30.

For reasons set out in the Commission's Order Remanding Petition for Relief from an Unlawful Employment Practice, and incorporated by reference herein, we restate that the conclusion that the Division of Administrative Hearings does not have jurisdiction over the subject matter of the case is an error of law.

With the modification indicated, we adopt the Administrative Law Judge's conclusions of law.

### Exceptions

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

### Dismissal

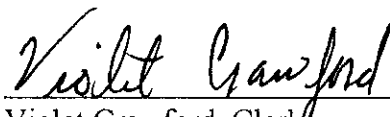
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3<sup>rd</sup> day of July, 2003.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;  
Commissioner Leonie Hermantin; and  
Commissioner Billy Whitefox Stall

Filed this 3<sup>rd</sup> day of July, 2003,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

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:

Ladoris G. Tutson  
c/o Randy A. Fleischer, Esq.  
4801 South University Drive  
Suite 3070  
Davie, FL 33328

Department of Children and Family Services  
c/o Sondra R. Schwartz, Esq.  
c/o John Copelan, Esq.  
201 West Broward Boulevard  
Fort Lauderdale, FL 33301

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J. D. Parrish, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 3<sup>rd</sup> day of July, 2003.

By: *Krist Crawford*  
Clerk of the Commission  
Florida Commission on Human Relations