

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

03 DEC 29 AM 9:34
RECEIVED
DIVISION OF
ADMINISTRATIVE
HEARINGS

RICHARD B. MARSHALL,

EEOC Case No. 15DA201032

Petitioner,

FCHR Case No. 22-02613

v.

DOAH Case No. 03-0726

JB @ closed

PUBLIX SUPERMARKETS, INC.,

FCHR Order No. 03-078

Respondent.

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated July 3, 2003, issued in the above-styled matter by Administrative Law Judge Jeff B. Clark.

Findings of Fact and Conclusions of Law

Judge Clark's order reflects that Petitioner failed to comply with several orders issued by Judge Clark, including an Order to Show Cause issued on May 13, 2003, directing Petitioner to show "any good cause he may have for his failure and refusal to appropriately respond to various Orders of this tribunal and for his failure to appear for deposition." This Order to Show Cause indicated that, "Petitioner is cautioned that his failure to appropriately respond to this Order to Show Cause will result in the undersigned Administrative Law Judge recommending dismissal of his Petition for Relief."

Judge Clark indicated in the Recommended Order of Dismissal, "Petitioner has failed to respond to discovery and has failed to respond to orders of this tribunal, even though he was cautioned that his failure to appropriately respond would result in a recommendation to the Florida Commission on Human Relations that his Petition for Relief be dismissed."

Ultimately, Judge Clark recommended in the Recommended Order of Dismissal that, "...Petitioner's Petition for Relief be dismissed for his failure and refusal to comply with orders of this tribunal."

Noting that it is within the authority of the Administrative Law Judge to issue sanctions for failure to comply with discovery requests (see, Section 120.569(2)(f), Florida Statutes (2003)), we adopt the Administrative Law Judge's findings of fact, conclusions of law, and recommendation as to the disposition of this matter.

Exceptions

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

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 26th day of DECEMBER, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner John Corbett; and
Commissioner Aletta Shutes

Filed this 26th day of DECEMBER, 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:

Richard B. Marshall
Post Office Box 1171
Lakeland, FL 33801

Publix Supermarkets, Inc.
c/o Tammie L. Rattray, Esq.
Ford & Harrison LLP
101 East Kennedy Boulevard, Suite 900
Tampa, FL 33602-5133

Jeff B. Clark, 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 26th day of December, 2003.

By: Wesley Crawford
Clerk of the Commission
Florida Commission on Human Relations