

1-27-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
21 MAR 19 PM 1:03
TALLAHASSEE

HIMROD AMBROISE,

EEOC Case No. NONE

Petitioner,

AT

FCHR Case No. 21-03151

v.

DOAH Case No. 02-2762

O'DONNELL'S CORPORATION,

FCHR Order No. 04-044

Respondent.

TKW-CLOS

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

On August 16, 2001, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice when he was unfairly terminated because of his race. The allegations set forth in the complaint were investigated and on May 8, 2002, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and, following several interim orders and appeals, was given a formal evidentiary hearing in Orlando, Florida, on January 23, 2004. He failed to make an appearance at the hearing.

Judge T. Kent Wetherell, II, issued a Recommended Order of Dismissal dated January 27, 2004.

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

Findings of Fact and Conclusions of Law

Judge Wetherell's order states that Petitioner failed to appear at a formal hearing that he requested under Section 120.57(1), Florida Statutes. The ALJ noted, in his findings of fact, that the Petitioner had due notice of the date, time and location of the hearing. In fact, the Petitioner had communications with the ALJ's assistant about the upcoming hearing on or about January 9, 2004, and again on January 22, 2004.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a

Commission panel in Spradlin vs. Washington Mutual Bank, d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

We adopt the Administrative Law Judge's finding as to the fact that the Petitioner did not pursue the complaint and further conclude the Petitioner has failed to carry his burden of proof.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal


The Request 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 15th day of April, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita B. Craig, Chairperson
Commissioner Roosevelt Paige
Commissioner Mario Valle

Filed this 15th day of April, 2004
in Tallahassee, Florida.


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Honorable T. Kent Wetherell, II, 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 addressees this 15th day of April, 2004.

BY: 
Clerk of the Commission
Florida Commission on Human Relations