



200007 TBD.F
'AGENCY FINAL ORDERS'

Unofficial Reporter

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20007 TBD.F 001
'AGENCY FINAL ORDERS'

CAPTION: *Hils v. Advantage Property Management*

CITATION: 20007 TBD.F 001

ORDER NO: 00-003

DATE: 2/11/2000

STATE: FL

CASE NO: 95-L037H (FCHR)

96-004160 (DOAH)

CASE TYPE: Housing Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 00-003.pdf

PAGES: 3

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

MELANIE A. HILS,	)	HUD Case No. 04-95-2790-8
Petitioner,	)	FCHR Case No. 95-L037H
	)	DOAH Case No. 96-004160
vs.	)	FCHR Order No. 00-003
)	
VERNON DEAN AND ADVANTAGE PROPERTY MANAGEMENT, INC.,)	
Respondent)	

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM A
DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Melanie A. Hils filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (1995), alleging that Respondent Advantage Property Management, Inc., committed a discriminatory housing practice on the basis of Petitioner's sex (female) by sexually harassing Petitioner. The allegations set forth in the complaint were investigated, and, on July 16, 1996, the Commission issued its determination finding that there was no reasonable cause to believe that a discriminatory housing practice occurred. Petitioner filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. An evidentiary hearing was held in Jacksonville, Florida, on March 14, 1997, before Administrative Law Judge Donald R. Alexander. Judge Alexander issued a Recommended Order of dismissal, dated May 6, 1997. Pursuant to notice, public deliberations were held on January 27, 2000, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. 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. We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed four numbered exceptions to the Administrative Law Judge's Recommended Order, in a document entitled, "Claimant's Exceptions to Recommended Order." These exceptions take issue with the Administrative Law

Judge's findings from the evidence presented and inferences drawn therefrom (including the ultimate finding that no discriminatory housing practice occurred in this matter). 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). We reject Petitioner's exceptions.

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 11th day of February, 2000
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aristides Sosa; and
Commissioner Clareth Brooks; and
Commissioner Whitfield Jenkins;

Filed this 11th day of February, 2000,
in Tallahassee, Florida

/s/

Sharon Moultry, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Migdalia Figueroa, Esq.
126 West Adams Street
Jacksonville, FL 3220

Vernon L. Dean
Advantage Property Management, Inc.
1974 Fulton Place
Jacksonville, FL 32207

D.R. Alexander, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/

Sharon Moultry,

Clerk of the Commission
Florida Commission on Human Relations

20007 TBD.F 002
'AGENCY FINAL ORDERS'

CAPTION: *Macy v. Caribe Club Co-Op*

CITATION: 20007 TBD.F 002

ORDER NO: 00-002

DATE: 2/11/2000

STATE: FL

CASE NO: 96-0974H (FCHR)

96-004420 (DOAH)

CASE TYPE: Housing Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
					☒		☒		☒	

FILENAME: 00-002.pdf

PAGES: 2

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

EARLINE MACY,	)	HUD Case No. 04-96-2278-8
Petitioner,	)	FCHR Case No. 96-0974H
	)	DOAH Case No. 96-004420
vs.	)	FCHR Order No. 00-002
)	
CARIBE CLUB CO-OP AND THE BOARD OF DIRECTORS,)	
Respondent)	

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM A
DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Earline Macy filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (1995), alleging that Respondents Caribe Club Co-Operative Apartments, Inc., and the Board of Directors, committed a discriminatory housing practice on the basis of Petitioner's race (white), religion (Presbyterian), sex (female) and national origin (American Indian or Alaskan Native), by rejecting Petitioner's attempts to purchase a housing unit. The allegations set forth in the complaint were investigated, and, on August 14, 1996, the Commission issued its determination finding that there was no reasonable cause to believe that a discriminatory housing practice occurred. Petitioner filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. Eventually, an evidentiary hearing was held in West Palm Beach, Florida, on February 2, 1999, before Administrative Law Judge Claude B. Arrington. Judge Arrington issued a Recommended Order of dismissal, dated May 20, 1999. Pursuant to notice, public deliberations were held on January 27, 2000, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. 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. 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 11th day of February, 2000
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aristides Sosa; and
Commissioner Clareth Brooks; and
Commissioner Whitfield Jenkins;

Filed this 11th day of February, 2000,
in Tallahassee, Florida

/s/

Sharon Moultry, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

J.K. Kivisto, Esq.
Kivisto Law Firm
1010 Tenth Avenue, North, Suite 2
Lake Worth, FL 3346

David A. Core, Esq.
St. John, Dicker, Caplan, Krivok & Core, P.A.
500 Australian Avenue South, Suite 600
West Palm Beach, FL 33401

Claude B. Arrington, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/

Sharon Moultry,
Clerk of the Commission
Florida Commission on Human Relations

20007 TBD.F 003
'AGENCY FINAL ORDERS'

CAPTION: *Perez v. Sunset Homes*

CITATION: 20007 TBD.F 003

ORDER NO: 00-004

DATE: 2/11/2000

STATE: FL

CASE NO: 96-1371H (FCHR)
97-005842 (DOAH)

CASE TYPE: Housing Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 00-004.pdf

PAGES: 2

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

ABAD A. PEREZ,	)	HUD Case No. 04-96-2620-8
Petitioner,	)	FCHR Case No. 96-1371H
	)	DOAH Case No. 97-005842
vs.	)	FCHR Order No. 00-004
)	
SUNSET HOMES OF PASCO, INC.,)	
Respondent)	

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM A
DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioners Abad A. Perez and Luz E. Colon filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (1995), alleging that Respondents Sunset Homes of Pasco, Inc., and Mr. John Frank, President, committed a discriminatory housing practice on the basis of Petitioners' race (Black) and national origin (Hispanic) by failing to build Petitioners' home to agreed-upon specifications. The allegations set forth in the complaint were investigated, and, on August 19, 1997, the Commission issued its determination finding that there was no reasonable cause to believe that a discriminatory housing practice occurred. Petitioners filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. Upon consideration of Respondents' Motion in Opposition to First Amended Petition, Administrative Law Judge J. Lawrence Johnston issued a Recommended Order of Dismissal, dated October 16, 1998. Pursuant to notice, public deliberations were held on January 27, 2000, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Adoption of Recommended Order of Dismissal

We find the findings of fact contained in the Recommended Order of Dismissal to be supported by competent substantial evidence and the conclusions of law set out in the Recommended Order of Dismissal to result in a correct disposition of the matter. We adopt the Administrative Law Judge's Recommended Order of Dismissal.

Exceptions

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

Dismissal

The Petition for Relief and Housing Discrimination Complaint 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 11th day of February, 2000
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aristides Sosa; and
Commissioner Clareth Brooks; and
Commissioner Whitfield Jenkins;

Filed this 11th day of February, 2000,
in Tallahassee, Florida

/s/

Sharon Moultry, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

H. James Lentz, Esq. Andrea M. Fair, Esq. Lentz & Fair, P.A. 35111 U.S. 19, North Suite 302 Palm Harbor, FL 3468

Gerald Figurski, Esq.
Figurski & Harrill
The Holiday Tower
2435 U.S. Highway 19, Suite 350
Holiday, FL 34691

J. Lawrence Johnston, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/

Sharon Moultry,
Clerk of the Commission
Florida Commission on Human Relations

200007 TBD.F 004
'AGENCY FINAL ORDERS'

CAPTION: *Mccabe v. Woodland Towers*

CITATION: 200007 TBD.F 004

ORDER NO: 00-005

DATE: 2/11/2000

STATE: FL

CASE NO: 1996-L409 (FCHR)
98-003082 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 98003082 Agency Final Order.PDF

PAGES: 4

RESULT: Remand (re-issuance)



46-99

RWAP

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CO 007-6 PM 1:04

ROBERTA McCABE,

EEOC Case No. 15D970386

Petitioner,

FCHR Case No. 96-L409

v.

DOAH Case No. 98-3082

pmr

WOODLAND TOWERS,

FCHR Order No. 00-005

Respondent.

ORDER REMANDING REQUEST FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Roberta McCabe 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 Woodland Towers, committed an unlawful employment practice on the basis of Petitioner's age (61) when it terminated Petitioner from her position.

Petitioner requested an administrative hearing and the Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Deland, Florida, on December 9, 1998, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated April 5, 1999.

Pursuant to notice, public deliberations were held on January 27, 2000, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order.

Conclusions of Law

We find it necessary to correct/modify the conclusions of law set out by the Administrative Law Judge in the Recommended Order.

First, the Administrative Law Judge suggests that to establish a prima facie case of discrimination in this matter the Petitioner must provide either direct evidence of discriminatory intent or statistical evidence that there is a pattern of discrimination in her employment situation. See, Recommended Order, ¶ 16 and ¶ 17.

We find this to be an error of law.

To establish a prima facie case of discrimination in a termination case the Petitioner must demonstrate, "(1) that he belongs to a group protected by the statute; (2) that he was qualified for the job; (3) that he was terminated; and (4) that after his termination, the employer hired a person not in [P]etitioner's protected class or retained those having comparable or lesser qualifications, not in the protected class." Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993).

Accordingly, we correct this conclusion of law set out by the Administrative Law Judge.

Second, we find the conclusion of law set out in paragraph 18 of the Recommended Order to lack the required preliminary analysis for the conclusion reached.

The Administrative Law Judge indicates in paragraph 18 of the Recommended Order that Petitioner failed to establish that any Woodland Towers employee had committed a similar infraction but was treated more favorably than Petitioner, apparently recognizing as an issue in the case the possibility of the unlawful discriminatory imposition of discipline.

It has been stated that, "to establish a prima facie case of discrimination in cases involving allegations of the discriminatory imposition of discipline, Petitioner, 'in addition to being a member of a protected class, must show either (a) that he did not violate the work rule (in question), or (b) that he engaged in misconduct similar to that of a person outside the protected class, and that the disciplinary measures enforced against him were more severe than those enforced against the other persons who engaged in similar misconduct.' Lumpkin v. Occidental Chemical Company, 19 F.A.L.R. 1542, at 1547, 1548 (FCHR 1996)." Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998).

While the Administrative Law Judge suggested that the rudeness and hostility to fellow employees by another employee did not rise to the level of the infractions committed by Petitioner in violation of Federal Wage and Hour laws and the Respondent's policies, there is no analysis by the Administrative Law Judge regarding whether the conduct of this individual violated Federal or state employment discrimination laws by creating an unlawful hostile work environment based on a protected class, and, if so, whether this violation amounted to misconduct similar to that engaged in by Petitioner. Recommended Order, ¶ 18.

Consequently, we REMAND this matter to the Administrative Law Judge to make all findings and conclusions necessary to determine whether Petitioner's termination amounted to the unlawful discriminatory imposition of discipline.

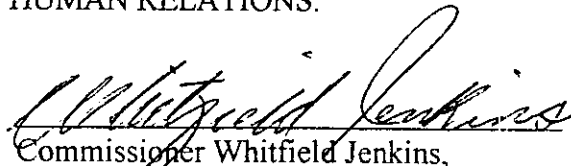
Finally, we find: (1) that the Administrative Law Judge's conclusions of law we are correcting and modifying are within the substantive jurisdiction of the Florida Commission on Human Relations, namely conclusions of law stating what must be demonstrated to establish a prima facie case of unlawful discrimination; (2) the reasons we are rejecting/modifying these conclusions are (a) the test for establishing a prima facie case of discrimination was stated incorrectly by the Administrative Law Judge, and (b) sufficient findings were not made to apply the appropriate conclusions of law relating to the establishment of a prima facie case of the discriminatory imposition of discipline; and (3) that in making these corrections/modifications

the conclusions of law we are substituting are as or more reasonable than those conclusions which have been rejected and modified.

Remand

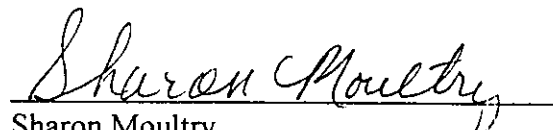
The Request for Administrative Hearing and Complaint of Discrimination are hereby REMANDED to the Administrative Law Judge for further proceedings consistent with the Commission's instructions contained in this Order.

DONE AND ORDERED this 11th day of February, 2000.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:


Commissioner Whitfield Jenkins,
Panel Chairperson;
Commissioner Clarethea Brooks; and
Commissioner Aristides Sosa

(While Commissioner Clarethea Brooks voted to adopt the Recommended Order of the Administrative Law Judge, upon votes to not adopt the Recommended Order by Commissioners Whitfield Jenkins and Aristides Sosa, Commissioner Brooks joined Commissioners Jenkins and Sosa in voting to remand the matter to the Administrative Law Judge.)

Filed this 11th day of February, 2000,
in Tallahassee, Florida.


Sharon Moultry
Clerk, Commission on Human Relations
325 John Knox Rd., Bldg. F, Suite 240
Tallahassee, FL 32303-4149
(850) 488-7082

FCHR Order No. 00-005

Page 4

Copies furnished to:

Roberta McCabe
701 North Ocean Street - *APT 1002*
Jacksonville, FL 32201

Tom Leek, Esq.
Robert W. Lloyd, Esq.
Cobb, Cole and Bell
P.O. Box 2491
Daytona Beach, FL 32115

P. Michael Ruff, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

200007 TBD.F 005
'AGENCY FINAL ORDERS'

CAPTION: *Johnson v. Pensacola Civic Center*

CITATION: 200007 TBD.F 005

ORDER NO: 00-001

DATE: 2/11/2000

STATE: FL

CASE NO: 95-2615 (FCHR)

98-003684 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 00-001.pdf

PAGES: 3

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

JAMES JOHNSON, III,	)	EEOC Case No. 15D961311
Petitioner,	)	FCHR Case No. 95-2615
	)	DOAH Case No. 98-003684
vs.	)	FCHR Order No. 00-001
)	
PENSACOLA CIVIC CENTER,)	
Respondent)	

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

Preliminary Matters

Petitioner James O. Johnson, III, 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 Pensacola Civic Center, committed an unlawful employment practice on the basis of Petitioner's race (Black) by terminating Petitioner from his position. The allegations set forth in the complaint were investigated, and, on June 1, 1998, 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 in Pensacola, Florida, on January 14, 1999, before Administrative Law Judge P. Michael Ruff. Judge Ruff issued a Recommended Order of dismissal, dated May 27, 1999. Pursuant to notice, public deliberations were held on January 27, 2000, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed written exceptions to the Administrative Law Judge's Recommended Order. As indicated, supra, a transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. The filing of

such a transcript is a requirement to the filing of exceptions to the Recommended Order. See, Fla. Admin. Code R. 60Y-4.025(3), and Fla. Admin. Code R. 60Y-4.027(1). In the absence of the filing of a transcript of the proceeding before the Administrative Law Judge, the Petitioner's exceptions are hereby stricken. See, Ebeh v. Consumer Credit Counseling Service of the Tampa Bay Area, Inc., 16 F.A.L.R. 2149, at 2150 (FCHR 1994), and Lee v. Emmer Development Corporation, 20 F.A.L.R. 3132, at 3134 (FCHR 1998).

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.

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.

DONE AND ORDERED this 11th day of February, 2000
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aristides Sosa; and
Commissioner Clareth Brooks; and
Commissioner Whitfield Jenkins;

Filed this 11th day of February, 2000,
in Tallahassee, Florida

/s/

Sharon Moultry, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

James O. Johnson, III
2312 West Wright St.
Apt. B
Pensacola, FL 3250

James O. Johnson, III
1703 Looney Street
Shreveport, LA 71103
Paul F. Flounlacker, Jr., Esq.
Young and Associates, P.A.
Post Office Drawer 1070
Pensacola, FL 32595-1

P. Michael Ruff, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/

Sharon Moultry,

Clerk of the Commission

Florida Commission on Human Relations

APPENDIX



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CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

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