

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHELLE C. PHILLIPS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-1794
)	
ORANGE LAKE COUNTRY CLUB)	
REALTY, INC.,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER OF DISMISSAL

This cause came on to be heard on June 26, 2000, by telephone conference call on the Motion to Dismiss filed by Respondent before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings. The Petitioner filed a response, through counsel, to the motion and Respondent answered it; arguments of counsel were made by telephone conference call. The arguments presented in the motion have been fully considered. The following appearances were entered:

APPEARANCES

For Petitioner: Joseph W. Beatty, Esquire
Richard A. Durose, Esquire
Foley and Lardner
Post Office Box 2193
Orlando, Florida 32801-2386

For Respondent: Edward R. Gay, Esquire
Law Firm of Edward R. Gay, P.A.
1516 East Concord Street
Orlando, Florida 32803

STATEMENT OF THE ISSUES

Whether the Division of Administrative Hearings has jurisdiction to conduct a formal hearing under the provisions of Sections 120.569 and 120.57(1), Florida Statutes, if the Petition for Relief was not timely filed pursuant to Section 760.11(7), Florida Statutes.

PRELIMINARY STATEMENT

On January 7, 1998, Petitioner filed with the Florida Commission on Human Relations (FCHR) a charge of discrimination against the Respondent based on her handicap. The FCHR conducted an investigation. During the course of the investigation, Petitioner was represented by counsel. Upon completion of its investigation, the Commission issued its Notice of Determination: No Cause and mailed a copy to Petitioner on January 31, 2000. A copy of the Notice of Determination was not served on Petitioner's counsel of record. Petitioner was advised that she must file a Petition for Relief within 35 days of the date of the Notice of Determination or her claim would be barred. Section 760.11(7), Florida Statutes. Petitioner filed a Petition for Relief with the Commission on March 15, 2000. Petitioner requested a formal hearing under the provisions of Section 120.57(1), Florida Statutes. The Commission referred this matter to the Division of Administrative Hearings on April 27, 2000, for a formal hearing. Respondent filed its Answer and Affirmative Defenses to the Petition for Relief on May 12, 2000. Respondent

filed its Motion to Dismiss on the same date. On May 23, 2000, Petitioner filed a response to the Respondent's motion and Respondent replied to the response on June 1, 2000, and the motion hearing followed. It is, therefore,

FOUND AND DETERMINED that the Petitioner had until March 6, 2000, to file her petition, pursuant to the statute, and the Petition was not filed until March 15, 2000. Therefore, the Petition for Relief is time-barred for failure to file the Petition within 35 days of the date of determination of no reasonable cause by the Commission. Section 760.11(7), Florida Statutes (1997); Wright v. HCA Central Florida Regional Hospital, Inc., 18 FALR 1160 (1995), cf. St. Petersburg Motor Club v. Cook, 567 So. 2d 488 (Fla. 1st DCA 1990); and Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1997); see Blakely v. United States Automobile Ass'n, No. 99-1046-CIV-T-17F, 1999 WL 1053122, 4 (M.D. Fla. Oct. 4, 1999); Dawkins v. Bellsouth Telecommunications, Inc., 53 F. Supp. 2d 1356, 1360-61 (M.D. Fla. 1999).

It is undisputed that the FCHR served the Notice of Determination directly to the Petitioner and not counsel of record. This procedure is correct under the provisions of Rule 60Y-5.004(3), Florida Administrative Code.

RECOMMENDATION

Based on the foregoing facts and conclusions of law, it is RECOMMENDED that a final order be entered dismissing with prejudice the Petition of Michelle C. Phillips in DOAH Case No. 00-1794; FCHR Case No. 98-0713.

DONE AND ENTERED this 10th of July, 2000, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th of July, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.