

6-10-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

02 OCT 11 PM 2:13
ADMINISTRATIVE
SERVICES

THERESA A. STEPHENSON,

EEOC Case no. NONE

Petitioner,

FCHR Case no. 99-1079

v.

DOAH Case no. 02-1440

FSR-CWS

LOURDES-NOREEN MCKEEN RESIDENCE
FOR GERIATRIC CARE, INC.

FCHR Order no. 02-048

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 June 10, 2002, issued in the above-styled matter by Administrative Law Judge Florence Snyder Rivas.

Findings of Fact and Conclusions of Law

Judge Rivas's order states that Petitioner, at a telephonic hearing held on June 3, 2002, stated that she had not filed a response to the Respondent's Motion for Summary Final Order; that she did not plan on filing a response; and further indicated that she did not object to an Order being entered granting Respondent's Motion. In addition, Judge Rivas found that the Petitioner had entered into a settlement agreement purporting to settle all claims resulting from her employment with the Respondent.

The Petitioner can dismiss the complaint at any time prior to the Commission taking final action under FCHR Rule 60Y-5.008(10) which states: "*Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the hearing officer, Panel of Commissioners or Commission (i) by serving or during hearing, by stating on the record, a notice of dismissal at any time before Commission takes final action or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. This dismissal operates with prejudice with respect to the Petitioner's Chapter 760, Florida Statutes, administrative remedies and constitutes final agency action.*" (emphasis supplied) Although in the instant case, the Petitioner did not formally state she was withdrawing her petition that would have allowed an administrative dismissal, she did state for the record that she was not pursuing her relief and was accepting the Respondent's Motion for Final Summary Order dismissing her complaint.

We adopt the Administrative Law Judge's finding as to the statement of Petitioner that she did not wish to pursue the complaint further and had no objection to an Order dismissing her claim and conclude the Petitioner has failed to carry her burden of proof.

With that determination, we find we do not have to reach the issue of whether there was a valid settlement agreement as a matter of law and fact.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's 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 9th day of October, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita Craig, Panel Chairperson
Commissioner Roosevelt Paige
Commissioner Billy Whitefox Stall

Filed this 9th day of October, 2002
in Tallahassee, Florida.


Violet Crawford, Clerk

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Florence Snyder Rivas, Esquire, Administrative Law Judge

Jim Tait, Legal Advisor for Commission Panel